

BOARD MEETING OF SEPTEMBER 6, 2012

J. Paul Ozer, Chair



**TEXAS DEPARTMENT OF
HOUSING & COMMUNITY AFFAIRS**
Building Homes. Strengthening Communities.

Tom Gann, Vice-Chair
Leslie Bingham Escareño, Member
Lowell Keig, Member
Juan Muñoz, Member
J. Mark McWatters, Member

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

A G E N D A

**10:00 a.m.
September 6, 2012**

Capitol Extension, Room E2.026
1500 North Congress Ave.
Austin, TX

CALL TO ORDER, ROLL CALL
CERTIFICATION OF QUORUM

J. Paul Oxer, Chairman

Pledge of Allegiance - I pledge allegiance to the flag of the United States of America, and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

Texas Allegiance - Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible.

Recognition of William Dally

CONSENT AGENDA

Items on the Consent Agenda may be removed at the request of any Board member and considered at another appropriate time on this agenda. Placement on the Consent Agenda does not limit the possibility of any presentation, discussion or approval at this meeting. Under no circumstances does the Consent Agenda alter any requirements under Chapter 551 of the Texas Government Code, Texas Open Meetings Act.

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

EXECUTIVE

- a) Presentation, Discussion, and Possible Action regarding the Board Minutes Summaries for July 10 and July 26, 2012

Brooke Boston
Board Secretary

INTERNAL AUDIT:

- b) Presentation, Discussion, and Possible Action regarding Approval of the FY2013 Audit Plan

Sandy Donoho
Dir. Internal Audit

RULES:

- c) Presentation, Discussion, and Possible Action regarding a final order adopting the repeal of 10 TAC Chapter 1, §1.6, and new 10 TAC Chapter 1, §1.6, concerning Historically Underutilized Businesses for publication in the *Texas Register*

David Cervantes
Dir. Financial Administration

- d) Presentation, Discussion, and Possible Action regarding a final order adopting the repeal and new 10 TAC Chapter 5, Subchapter A, §§5.2 and 5.3, concerning General Provisions, and a final order adopting amendments to 10 TAC Chapter 5, Subchapter A, §§5.4, 5.8, 5.10, 5.13, 5.15 - 5.17, 5.19, and 5.20, concerning General Provisions, for publication in the *Texas Register*

Michael DeYoung
Assist. DED, Network &
Customer Service

- e) Presentation, Discussion, and Possible Action regarding a final order adopting new 10 TAC Chapter 5, Subchapter K, §§5.2001 – 5.2012, concerning the Emergency Solutions Grants (ESG), for publication in the *Texas Register*

Michael DeYoung
Assist. DED, Network &
Customer Service

- f) Presentation, Discussion, and Possible Action regarding a final order adopting new 10 TAC Chapter 5, Subchapter J, §5.1006, and the withdrawal of §5.1007, concerning the Homeless Housing and Services Program (HHSP), for publication in the *Texas Register*

Michael DeYoung
Assist. DED, Network &
Customer Service

- g) Presentation, Discussion, and Possible Action regarding a proposed repeal of 10 TAC Chapter 1, §1.19 concerning Deobligated Funds, and proposed new 10 TAC Chapter 1, §1.19 concerning Reobligation of Deobligated Funds and Other Related Sources of Funds, for public comment and publication in the *Texas Register*

Brooke Boston
Deputy Executive Director

BOND FINANCE:

- h) Presentation, Discussion, and Possible Action on Resolution No. 13-004 authorizing the investment of the TMP Escrow Agreement in mortgage backed securities

Tim Nelson
Dir. Bond Finance

- i) Presentation, Discussion, and Possible Action on Resolution 13-005 authorizing the conversion of the fourth tranche of the New Issue Bond Program 2009C (Program 77), the purchase of warehoused mortgage backed securities with proceeds of Residential Mortgage Revenue Bonds, Series 2009C-4 and approval of the Single Family Residential Mortgage Revenue Bonds Special Advisor
- j) Presentation, Discussion, and Possible Action on Resolution No. 13-007 authorizing the sale of residual mortgage certificates in the Warehousing Agreement
- k) Presentation, Discussion, and Possible Action on Resolution No. 13-006 authorizing the sale of mortgage certificates and redemption of bonds from Residential Mortgage Revenue Bonds Series 2009C-3

HOUSING TRUST FUND:

Homero Cabello
Dir. Colonia Initiatives,
Housing Trust Fund

- l) Presentation, Discussion, and Possible Action to approve amendment to Housing Trust Fund "USDA Section 502 Direct Loan Application Assistance Program" reservation agreement

1001303 Community Development Corporation of Brownsville

- m) Presentation, Discussion, and Possible Action to approve amendment to the Housing Trust Fund – Amy Young Barrier Removal Program Notices of Funding Availability

HOUSING RESOURCE CENTER:

Elizabeth Yevich
Dir. Housing Resource Center

- n) Presentation, Discussion, and Possible Approval of the 2013 State of Texas Consolidated Plan: One-Year Action Plan (Draft for Public Comment)

NEIGHBORHOOD STABILIZATION PROGRAM:

Marni Holloway
Dir. Neighborhood Stabilization Program

- o) Presentation, Discussion, and Possible Action to approve a request for an amendment to Neighborhood Stabilization (NSP) Program Contract with Builders of Hope, Inc.

77090000153 Builders of Hope Dallas County

- p) Presentation, Discussion, and Possible Action to approve direct Department action for the Neighborhood Stabilization Program Contract

ASSET MANAGEMENT:

Cari Garcia
Dir. Asset Management

- q) Presentation, Discussion, and Possible Action on a material amendment to the Land Use Restriction Agreement for Saint Charles Apartments
- r) Presentation, Discussion, and Possible Action on a material amendment to the Land Use Restriction Agreement for Crown Point Apartments
- s) Presentation, Discussion, and Possible Action on a material amendment to the Land Use Restriction Agreement for San Augustine Seniors Apartments
- t) Presentation, Discussion, and Possible Action on a material amendment to the Land Use Restriction Agreement for Meadowbrook Square Apartments
- u) Presentation, Discussion, and Possible Action on a material amendment to the Land Use Restriction Agreement for Mariposa at Ella Blvd
- v) Presentation, Discussion, and Possible Action Regarding Housing Tax Credit Amendment for Eban Village II
- w) Presentation, Discussion, and Possible Action Regarding Housing Tax Credit Amendment for RoseHill Ridge
- x) Presentation, Discussion, and Possible Action Regarding Housing Tax Credit Amendment for Sphinx at Fiji Seniors
- y) Presentation, Discussion, and Possible Action Regarding Housing Tax Credit Amendment for Zion Gardens

MULTIFAMILY FINANCE DIVISION:

Cameron Dorsey
Dir. Multifamily Finance

- z) Presentation, Discussion, and Possible Action Regarding HOME Multifamily Development Program Commitments:

12501 Villas of Brownwood II Brownwood
12503 Chandler Place Apartments Blanco

- aa) Presentation, Discussion, and Possible Action Regarding modifications to Terms of HOME Multifamily Development Program Loans:

1000651 LULAC Amistad Apartments Sinton

- bb) Presentation, Discussion, and Possible Action Regarding a Qualified Investment Banking Firm to provide Underwriting or Remarketing Agent Services for Multifamily Bond Transactions

- cc) Presentation, Discussion, and Possible Action regarding Inducement Resolution No. 13-008 for Multifamily Housing Revenue Bonds and an Authorization for Filing Applications for Private Activity Bond Authority – 2012 Waiting List

12606 Park Creek Manor Dallas

- dd) Presentation, Discussion, and Possible Action Regarding NSP-1 Multifamily Commitments:

12-600 Guadalupe NDC Austin

REPORT ITEMS

The Board accepts the following reports:

- 1. Presentation and Discussion of the Status Report on the Implementation of the American Recovery and Reinvestment Act of 2009 (Recovery Act)
- 2. Report on Roundtables regarding the 2010 Americans with Disability Act Standards
- 3. Presentation and Discussion on Report to Board regarding administrative penalties for The Shire Apartments, HTC 02470 / CMTS 3273
- 4. Report on the State of Texas Housing and Health Services Coordination Council 2012-2013 Biennial Plan
- 5. Status Report on the HOME Program Contracts and Reservation System Participants
- 6. Reservation System Fund Report
- 7. TDHCA Outreach Activities, July-August 2012

Brooke Boston
DED SF, CA & Metrics

Patricia Murphy
Chief of Compliance

Tim Irvine
Executive Director

Elizabeth Yevich
Dir. Housing Resource Center

Sara Newsom
Dir. HOME

Sara Newsom
Dir. HOME

Michael Lyttle
Dir. External Affairs

ACTION ITEMS

ITEM 2: INTERNAL AUDIT:

Report from the Audit Committee Meeting

Sandy Donoho
Dir. Internal Audit

ITEM 3: BOND FINANCE:

Presentation, Discussion, and Possible Action on Resolution No. 13-003 authorizing a Taxable Mortgage Program (TMP) for homebuyers (Program 79) along with related program documents to be administered by the Texas Department of Housing and Community Affairs

Tim Nelson
Dir. Bond Finance

ITEM 4: PROGRAM SERVICES:

Presentation by BBC on the Status of the Preparation of the State of Texas Plan for Fair Housing Choice: Analysis of Impediments

Jennifer Molinari
Fair Housing Coordinator

ITEM 5: APPEALS:

Timely Filed Appeals Under any of the Department's Program or Underwriting Rules

Cameron Dorsey
Dir. Multifamily Finance

12379 Sunrise Terrace La Feria

ITEM 6: MULTIFAMILY FINANCE DIVISION:

Cameron Dorsey
Dir. Multifamily Finance

- a) Presentation, Discussion, and Possible Action Regarding Determination Notices for Housing Tax Credits with another Issuer:

12404	Pine Club Apartments	Beaumont
12405	Saddlewood Club Apartments	Bryan
12406	Ridgewood West Apartments	Huntsville
12407	Woodglen Park Apartments	Dallas
12408	Willow Green Apartments	Houston
12409	Tealwood Place Apartments	Wichita Falls

- b) Presentation, Discussion, and Possible Action Regarding Resolution No. 13-002 for the Second Supplemental Trust Indenture relating to the Multifamily Housing Revenue Bonds for Center Ridge Apartments, Series 2006.

060616	Center Ridge	Duncanville
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- c) Presentation, Discussion, and Possible Action Regarding Resolution No. 13-001 for Modification to Terms of Previous TDHCA Issued Multifamily Mortgage Revenue Bonds, subject Bond Review Board Approval:

12604	Providence at Mockingbird Apartments	Dallas
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ITEM 7: MULTIFAMILY FINANCE DIVISION RULES:

- a) Presentation and Discussion of the new Multifamily Umbrella Rules

Cameron Dorsey
Dir. Multifamily Finance

- b) Presentation, Discussion, and Possible Action regarding the proposed repeal of 10 TAC Chapter 1 §1.1 concerning 2012 Definitions and Amenities for Housing Program Activities, the proposed repeal of 10 TAC Chapter 53, Subchapters A, B, H, and I, concerning HOME, and a proposed new 10 TAC Chapter 10, Subchapters A, B, C, and G, concerning 2013 Uniform Multifamily Rules for publication and public comment in the *Texas Register*

Cameron Dorsey
Dir. Multifamily Finance

- c) Presentation, Discussion, and Possible Action Regarding the proposed repeal of 10 TAC Chapters 33 and 35, concerning the 2011 and 2012 Multifamily Housing Revenue Bond Rules, and a proposed new 10 TAC Chapter 12, concerning 2013 Multifamily Housing Revenue Bond Rules for publication and public comment in the *Texas Register*

Cameron Dorsey
Dir. Multifamily Finance

- d) Presentation, Discussion, and Possible Action regarding the proposed repeal of 10 TAC Chapters 49 and 50 concerning the 2011 and 2012 Housing Tax Credit Program Qualified Allocation Plan and proposal of new 10 TAC Chapter 11, concerning the 2013 Housing Tax Credit Program Qualified Allocation Plan for public comment and publication in the *Texas Register*

Cameron Dorsey
Dir. Multifamily Finance

- e) Presentation, Discussion, and Possible Action regarding the proposed repeal of 10 TAC Chapter 1, Subchapter B, concerning 2012 Real Estate Analysis Rules and Guidelines and a proposed new 10 TAC Chapter 10, Subchapter D, concerning 2013 Underwriting and Loan Policies for public comment and publication in the *Texas Register*

Brent Stewart
Dir. Real Estate Analysis

- f) Presentation, Discussion, and Possible Action regarding the proposed repeal of 10 TAC Chapter 1, §1.9, concerning Qualified Contracts and §1.25 concerning Right of First Refusal; and proposed new 10 TAC Chapter 10, Subchapter E, concerning Post Award and Asset Management Requirements for public comment and publication in the *Texas Register*

Cari Garcia
Dir. Asset Management

- g) Presentation, Discussion, and Possible Action regarding the proposed repeal of 10 TAC Chapter 60, Subchapter A, §§60.101 – 60.130, concerning Compliance Administration; and proposed new 10 TAC Chapter 10, Subchapter F, concerning Compliance Monitoring, for public comment and publication in the *Texas Register*

Patricia Murphy
Chief of Compliance

- h) Presentation, Discussion, and Possible Action regarding the proposed new 10 TAC Chapter 1, §1.5, concerning Previous Participation Reviews, for public comment and publication in the *Texas Register*

Patricia Murphy
Chief Compliance

PUBLIC COMMENT ON MATTERS OTHER THAN ITEMS FOR WHICH THERE WERE POSTED AGENDA ITEMS.

EXECUTIVE SESSION

The Board may go into Executive Session (close its meeting to the public):

J. Paul Oxer
Chairman

1. The Board may go into Executive Session Pursuant to Texas Government Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee including, specifically, the performance evaluation of the Internal Auditor.
2. Pursuant to Tex. Gov't. Code, §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a settlement offer, including:
 - a) *The Inclusive Communities Project, Inc. v. Texas Department of Housing and Community Affairs, et al filed in federal district court, Northern District of Texas*
 - b) *Heston Emergency Housing, LP and Naji Al-Fouzan vs. Texas Department of Housing and Community Affairs, Michael Gerber, Martin Rivera, Jr., Marisa Callan, and Timothy Irvine*
 - c) *Complaint of James Reedom filed with U.S. HHS/OCR (No. 09-99008)*
 - d) *TDHCA v. William Ross & Susan Ross; Cause No. D-1-GN-11-002226, filed in district court, Travis County*
 - e) *Harris County v. Pleasant Hill Community Development Corporation; 80th Jud. Dist., Harris Co., Texas*
 - f) *EEOC Matters;*
3. Pursuant to Tex. Gov't. Code, §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Tex. Gov't. Code, Chapter 551:
 - a) *Attorney General Opinion Request RQ-1068-GA, Rep. Rene Oliveira;*
4. Pursuant to Tex. Gov't. Code, §551.072 to deliberate the possible purchase, sale, exchange, or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person; and/or-
5. Pursuant to Tex. Gov't. Code, §2306.039(c) the Department's internal auditor, fraud prevention coordinator or ethics advisor may meet in an executive session of the Board to discuss issues related to fraud, waste or abuse.

OPEN SESSION

If there is an Executive Session, the Board will reconvene in Open Session. Except as specifically authorized by applicable law, the Board may not take any actions in Executive Session

ADJOURN

To access this agenda & details on each agenda item in the board book, please visit our website at www.tdhca.state.tx.us or contact Nidia Hiroms, 512-475-3930; TDHCA, 221 East 11th Street, Austin, Texas 78701, and request the information. Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Gina Esteves, ADA Responsible Employee, at 512-475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made. Non-English speaking individuals who require interpreters for this meeting should contact Nidia Hiroms, 512-475-3930 at least three days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

**TDHCA GOVERNING BOARD RESOLUTION
IN RECOGNITION OF WILLIAM “BILL” DALLY**

WHEREAS, William Dally, better known to us as Bill, decided eighteen years ago to leave public accountancy and begin a career in state government, coming to the Department in 1994 as Internal Audit Manager,

WHEREAS, since his arrival at the Department Bill has taken on numerous posts and billets, serving as controller, overseeing financial accounting, strategic planning, information services, human resources, bond finance, first time homebuyer programs, and even a major disaster recovery effort in the wake of hurricanes Rita and Katrina,

WHEREAS, Bill brings integrity, knowledge, dedication, and a multiplier effect to every team he joins, making it better and more cohesive,

WHEREAS, Bill has brought his breadth of knowledge, his ability to inspire and focus, and his confidence-building wisdom to the job of leading this Department as Interim Executive Director, and

WHEREAS, Bill has served as a most senior and trusted advisor and administrator to many Board Chairs and fellow executives, including Beth Anderson, Kent Conine, and J. Paul Oxer, Edwina Carrington, Mike Gerber, Tim Irvine, and many others,

WHEREAS, Bill has firmly established himself as an unrivalled counselor, mentor, leader, and strategist,

WHEREAS, Bill has learned well the arcane workings of state budgeting and appropriations and used the value of this unique knowledge and perspective effectively and unstintingly in leading this Department as it has navigated unprecedented changes and challenges, and

WHEREAS, Bill has consistently been a champion for reason, prudence, transparency, and hope, hope not only for his beloved Longhorns and the Great State of Texas but for the programs he has overseen, the Texans he has served, and the team mates with whom he has served

Now, therefore, it is hereby

RESOLVED, that this, the Governing Board of the Texas Department of Housing and Community Affairs, hereby expresses to Bill Dally its deepest gratitude for his service and leadership to the Department and the State of Texas and extends to him and his family its sincere best wishes upon his retirement and

FURTHER RESOLVED, that this Governing Board hereby memorializes in its permanent records that Bill Dally is leaving this Department and this State better for having had the benefit of his knowledge, wisdom, and service.

Adopted by the Governing Board of the Texas Department of Housing and Community Affairs
this sixth day of September 2012 at Austin, Texas.

J. Paul Ozer, Chair

Tom Gann, Vice Chair

Juan Muñoz

Leslie Bingham Escareño

Lowell Keig

J. Mark McWatters

1a

BOARD ACTION REQUEST

BOARD SECRETARY

September 6, 2012

Presentation, Discussion, and Possible Action regarding the Board Minutes Summary for July 10, 2012.

RECOMMENDED ACTION

Approve Board Meeting Minutes Summary for July 10, 2012.

RESOLVED, that the Board Meeting Minutes Summary for July 10, 2012, is hereby approved as presented.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
BOARD MEETING

July 10, 2012
08:00 a.m.

1500 North Congress Ave., Austin, TX
Capitol Extension, E1.036

Summary of Minutes

CALL TO ORDER, ROLL CALL, CERTIFICATION OF QUORUM

The Board Meeting of the Texas Department of Housing and Community Affairs of July 10, 2012, was called to order by J. Paul Ozer, Chair, at 8:09 a.m. It was held at the Capitol Extension, E1.036, 1500 North Congress Ave, Austin, Texas. Roll call certified a quorum was present.

MEMBERS PRESENT:

J. Paul Ozer, Chair
Tom H. Gann, Vice Chair
Lowell Keig
Leslie Bingham-Escareño
J. Mark McWatters
Juan Muñoz (arrived at 9:21)

CONSENT AGENDA

Items on the Consent Agenda may be removed at the request of any Board member and considered at another appropriate time on this agenda. Placement on the Consent Agenda does not limit the possibility of any presentation, discussion or approval at this meeting. Under no circumstances does the Consent Agenda alter any requirements under Chapter 551 of the Texas Government Code, Texas Open Meetings Act.

Chairman Ozer recognized Julie Frank, Senate Intergovernmental Relations, as being in the audience.

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

Community Affairs

- a) Presentation, Discussion, and Possible Approval of the Award of a temporary Community Services Block Grant contract to Community Council of South Central Texas to provide services in Edwards, Kinney, Real, Uvalde, Val Verde, and Zavala Counties
- b) Presentation, Discussion, and Possible approval of the Award of a Community Services Block Grant contract to Community Council of South Central Texas to provide services in Dimmit and LaSalle Counties

Rules

- c) Presentation, Discussion, and Possible Action regarding a final order adopting 10 TAC Chapter 5, Subchapter J, §§5.1001 – 5.1004 for the Homeless Housing and Services Program (HHSP), Withdrawal of proposed §5.1005, and Proposed New §§5.1006 – 5.1007 for public comment in the *Texas Register*
- d) Presentation, Discussion, and Possible Action to publish a proposed new rule for the Taxable Mortgage Program, 10 TAC Chapter 28, §§28.1-28.9 for public comment and publication in the *Texas Register*

This item was pulled from the Consent Agenda for further discussion.

- e) Presentation, Discussion, and Possible Action regarding a proposed repeal of 10 TAC Chapter 1 §1.6 concerning Historically Underutilized Businesses and proposal of a new 10 TAC Chapter 1, §1.6, concerning Historically Underutilized Businesses Program, for public comment and publication in the *Texas Register*

Neighborhood Stabilization

f) Presentation, Discussion, and Possible Action to approve amendments to Neighborhood Stabilization Program (NSP1) contracts

77090000104	Tarrant County Housing Partnership	Tarrant County
77090000105	Brownsville Housing Authority	Brownsville
77090000106	City of Irving	Irving
77090000107	City of Laredo	Laredo
77090000110	City of Galveston Grants and Housing Department	Galveston
77090000112	City of El Paso	El Paso
77090000113	San Benito Housing Authority	San Benito
77090000123	City of Harlingen	Harlingen
77090000125	San Antonio Alternative Housing Corporation	San Antonio
77090000146	City of Austin	Austin
77090000150	Community Development Corporation of Brownsville	Brownsville
77090000154	City of Port Arthur	Port Arthur
77090000155	City of Garland	Garland
77090000158	City of Odessa	Odessa
77090000160	City of Lubbock	Lubbock
77090000163	City of Beaumont	Beaumont
77090000169	Hidalgo County Housing Authority	Hidalgo County
77090000213	Austin Habitat for Humanity	Austin
77099999120	City of Bryan	Bryan
77099999121	City of Seguin	Seguin
77099999124	City of Waelder	Waelder
77099999126	City of Huntsville	Huntsville
77099999141	City of San Marcos	San Marcos
77099999170	Midland County Housing Authority	Midland County
77099999200	Bryan-College Station Habitat for Humanity	Bryan-College Station

Multifamily Division

g) Presentation, Discussion, and Possible Action regarding Inducement Resolution No.12-034 for Multifamily Housing Revenue Bonds and an Authorization for Filing Applications for Private Activity Bond Authority – 2012 Waiting List
12603 E. Thurman Walker Living Center San Antonio

Motion by Leslie Bingham-Escareño to approve the consent agenda, with the exception of Agenda Item 1d, which was pulled from the Consent Agenda for further discussion; Duly Seconded by Lowell Keig; passed unanimously.

REPORT ITEMS

The Board accepts the following reports:

1. Update on the Status of the Preparation of the State of Texas Plan for Fair Housing Choice: Analysis of Impediments
2. Status Report on the HOME Program Contracts and Reservation System Participants
3. TDHCA Outreach Activities, June 2012
4. Report to the Board regarding the Appeal on Villas at Henderson, TDHCA #12362

David Marquez, representing Hidalgo Housing, provided testimony concerning NSP.

Mike Lopez, Executive Director, Hidalgo County Housing Authority, representing Hidalgo Housing, provided testimony concerning NSP.

ACTION ITEMS

- 1d) Presentation, Discussion, and Possible Action to publish a proposed new rule for the Taxable Mortgage Program, 10 TAC Chapter 28, §§28.1-28.9 for public comment and publication in the Texas Register
Motion by Tom Gann to table this item until the July 26th TDHCA Board Meeting; duly seconded by Mark McWatters; passed unanimously.

AGENDA ITEM 2: FINANCIAL ADMINISTRATION:

- a) Presentation, Discussion, and Possible Action regarding the FY 2013 Operating Budget
Motion by Leslie Bingham-Escareño to approve the FY 2013 Operating Budget; duly seconded by Lowell Keig; passed unanimously.
- b) Presentation, Discussion, and Possible Action regarding the FY 2013 Housing Finance Division Budget
Motion by Leslie Bingham-Escareño to approve the FY 2013 Housing Finance Division Budget; duly seconded by Tom Gann; passed unanimously.

AGENDA ITEM 3: STRATEGIC PLANNING & BUDGETING:

Report from the Strategic Planning & Budgeting Committee Meeting by Tom Gann.
No Action Required.

AGENDA ITEM 4: HOUSING RESOURCE CENTER:

Presentation and Discussion on the Preliminary Results of the Contracts for Deed Prevalence Project with the University of Texas at Austin

Dr. Peter Ward and Heather Way presented results on the prevalence of Contract for Deed study.

No Action Required.

Mark Wolfe, Executive Director of the State Historical Commission presented an Award to the TDHCA Energy Assistance division for their work. Award accepted on behalf of TDHCA by Brooke Boston and Tim Irvine.

AGENDA ITEM 5: MULTIFAMILY FINANCE DIVISION:

Presentation and Discussion of Challenges Made in Accordance with §50.10(d) of the 2012 Qualified Allocation Plan (QAP) Concerning 2012 Housing Tax Credit (HTC) Applications

Michele Atkins, TDHCA Assistant Board Secretary read into record support from Anjelica Baldivia, Betty Jo Dunlap, and Lori Weaver regarding TDHCA #12379 in La Feria.

No Action Required.

Juan Muñoz arrived at 9:21 a.m.

The Board took a brief recess at 9:28 a.m. and resumed at 9:55 a.m.

Bill Fisher, Sonoma Housing, provided testimony on Agenda Item #5 with regard to Gulf Coast Arms.

AGENDA ITEM 7: APPEALS:

Timely Filed Appeals Under any of the Department's Program or Underwriting Rules

12025 Hawk Ridge Apartments

White Settlement

Motion by Lowell Keig to approve staff's recommendation to deny the economic development initiatives portion of the appeal; duly seconded by Leslie Bingham-Escareño. Motion by Tom Gann to table the item until after Executive Session; duly seconded by Juan Muñoz; passed unanimously.

12165 Garden Walk of La Grange, Schulenburg and Weimar

La Grange, Schulenburg, Weimar

Motion by Lowell Keig to approve staff's recommendation to deny the appeal; duly seconded by Leslie Bingham-Escareño. Leslie Bingham-Escareño withdrew her second; Tom Gann seconded the motion;

Derek Hamilton, Belmont Development Company, provided testimony in support of Garden Walk of La Grange,

Schulenburg and Weimar

Motion passed with an Opposing vote by Leslie Bingham-Escareño.

12182 1701 Canton – EVERgreen Residences

Dallas

Motion by Lowell Keig to grant the appeal concerning the 12 points for cost per square foot portion of the appeal; duly seconded by Juan Muñoz; motion failed, with four votes in opposition.

Michael Lyttle, TDHCA Director of External Affairs, read into record a letter from The Honorable Senator Royce West in support of 1701 Canton

Diana McIver, DM & Associates, provided testimony in support of 1701 Canton – EVERgreen Residences

Buddy Jordan, First Presbyterian Church, provided testimony in support of 1701 Canton – EVERgreen Residences

Rob Albers, Executive Director, Family Gateway, provided testimony in support of 1701 Canton – EVERgreen Residences

Tamea Dula provided testimony Against 1701 Canton – EVERgreen Residences

Rob Albers, Executive Director, Family Gateway, testified, due to the result of the previous vote, they would like to withdraw the Appeal of 1701 Canton – EVERgreen Residences.

Motion by Juan Muñoz to approve staff's recommendation to grant the appeal of four points for affordability; duly seconded by Lowell Keig, passed unanimously.

Applicant withdrew remaining portions of the appeal.

12366 Pecan Creek & Pecan Grove

Lampasas

Withdrawn by Applicant.

EXECUTIVE SESSION

At 12:03 p.m. Chairman Oxer convened the Executive Session.

1. The Board may go into Executive Session Pursuant to Texas Government Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee
2. Pursuant to Tex. Gov't. Code, §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a settlement offer, including:
 - a) *The Inclusive Communities Project, Inc. v. Texas Department of Housing and Community Affairs, et al filed in federal district court, Northern District of Texas*
 - b) *Heston Emergency Housing, LP and Naji Al-Fouzan vs. Texas Department of Housing and Community Affairs, Michael Gerber, Martin Rivera, Jr., Marisa Callan, and Timothy Irvine*
 - c) *Complaint of James Reedom filed with U.S. HHS/OCR (No. 09-99008)*
 - d) *TDHCA v. William Ross & Susan Ross; Cause No. D-1-GN-11-002226, filed in district court, Travis County*
 - e) *Complaint of Ameenah Montgomery filed with U.S. HUD (No. 06-12-0779-8)*
 - f) *Harris County v. Pleasant Hill Community Development Corporation; 80th Jud. Dist., Harris Co., Texas*
3. Pursuant to Tex. Gov't. Code, §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Tex. Gov't. Code, Chapter 551; OAG opinion request or
4. Pursuant to Tex. Gov't. Code, §551.072 to deliberate the possible purchase, sale, exchange, or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person; and/or-
5. Pursuant to Tex. Gov't. Code, §2306.039(c) the Department's internal auditor, fraud prevention coordinator or ethics advisor may meet in an executive session of the Board to discuss issues related to fraud, waste or abuse.

OPEN SESSION

At 1:30 p.m. Chairman Oxer reconvened the Open Session and announced that no action had been taken during the Executive Session and certified that the posted agenda had been followed.

AGENDA ITEM 7: APPEALS (*CONTINUED*):

Timely Filed Appeals Under any of the Department's Program or Underwriting Rules

12025 Hawk Ridge Apartments

White Settlement

Motion by Lowell Keig to approve staff's recommendation to deny the appeal for one point on the §50.7(b)(22) economic development portion of the appeal; duly seconded by Leslie Bingham-Escareño.

Bert Magill, provided testimony in support of Hawk Ridge Apartments

Stuart Shaw, Bonner Carrington, provided testimony in support of Hawk Ridge Apartments

Motion by Tom Gann to table the motion to deny the appeal for one point until the July 26th TDHCA Board Meeting; duly seconded by Juan Muñoz; passed unanimously.

Motion by Tom Gann to table the entire Appeal until the July 26th TDHCA Board Meeting; duly seconded by Leslie Bingham-Escareño; passed unanimously.

12371 Mariposa at Ranch Road 12

Wimberley

Motion by Juan Muñoz to table this item until the July 26th TDHCA Board Meeting; duly seconded by Leslie Bingham-Escareño; passed unanimously.

PUBLIC COMMENT ON MATTERS OTHER THAN ITEMS FOR WHICH THERE WERE POSTED AGENDA ITEMS.

Angelica P. Baldiva provided testimony in support of 12379 Sunrise

Betty Jo Dunlap provided testimony in support of 12379 Sunrise

Lori Weaver provided testimony in support of 12379 Sunrise

Steve Brewer Mayor, La Feria, provided testimony in support of 12379 Sunrise

Sara Andre provided testimony in support of 12066 Baron's Branch

Toni Jackson provided testimony in support of 12066 Baron's Branch

Timothy Lange Tejas Housing, provided testimony in support of Tejas Housing/Villas at Henderson

Eric Opiela Tejas Housing, provided testimony in support of Tejas Housing/Villas at Henderson

ADJOURN

Motion by Leslie Bingham-Escareño to adjourn; duly seconded by Tom Gann; passed unanimously.

Since there was no other business to come before the Board, the meeting was adjourned at 3:25 p.m. on July 10, 2012.

BROOKE BOSTON, BOARD SECRETARY

For a full transcript of this meeting, please visit the TDHCA website at www.tdhca.state.tx.us

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BOARD ACTION REQUEST

BOARD SECRETARY

September 6, 2012

Presentation, Discussion, and Possible Action regarding the Board Minutes Summary for July 26, 2012.

RECOMMENDED ACTION

Approve Board Meeting Minutes Summary for July 26, 2012.

RESOLVED, that the Board Meeting Minutes Summary for July 26, 2012, is hereby approved as presented.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
BOARD MEETING

July 26, 2012
08:00 A.M.

Capitol Extension Auditorium
1500 North Congress Ave., Austin, TX

SUMMARY OF MINUTES

CALL TO ORDER, ROLL CALL, CERTIFICATION OF QUORUM

The Board Meeting of the Texas Department of Housing and Community Affairs of July 26, 2012, was called to order by J. Paul Oser, Chair, at 8:05 a.m. It was held at the Capitol Extension Auditorium, 1500 North Congress Ave, Austin, Texas. Roll call certified a quorum was present.

MEMBERS PRESENT:

J. Paul Oser, Chair
Tom H. Gann, Vice Chair
Leslie Bingham-Escareño
J. Mark McWatters
Juan Muñoz

CONSENT AGENDA

Items on the Consent Agenda may be removed at the request of any Board member and considered at another appropriate time on this agenda. Placement on the Consent Agenda does not limit the possibility of any presentation, discussion or approval at this meeting. Under no circumstances does the Consent Agenda alter any requirements under Chapter 551 of the Texas Government Code, Texas Open Meetings Act.

Michael Lyttle, TDHCA Director of External Affairs read into record two letters from The Honorable State Representative Jason Isaac. The first letter expressed concern with the lack of allocating tax credits for Rural Region 7 and the second in support of granting the Appeal for DDC Merritt Hill Country Limited.

Michael Lyttle, TDHCA Director of External Affairs read into record a letter from The Honorable State Representative Tom Craddick expressing concern with the lack of allocating tax credits for Region 12.

Mr. Irvine recognized staff who worked on the new Single Family Programs rules.

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

Executive

- a) Presentation, Discussion, and Possible Action regarding the Board Minutes Summary for June 14 2012

Financial Administration

- b) Presentation, Discussion, and Possible Action regarding the 2014-15 Legislative Appropriations Request

Rules

- c) Presentation, Discussion, and Possible Action regarding approval of proposed amendments to 10 TAC Chapter 5, Subchapter H, Section 8 Housing Choice Voucher Program, §5.801, concerning the Project Access Initiative for publication and public comment in the *Texas Register*
- d) Presentation, Discussion, and Possible Action to publish for public comment in the *Texas Register* the proposal of new 10 TAC Chapter 20, §§20.1 – 20.15 regarding the Single Family Programs Umbrella Rule
- e) Presentation, Discussion, and Possible Action regarding a proposed repeal of 10 TAC Chapter 2, §§2.1 – 2.13 regarding the Texas Bootstrap Loan Program Rule and proposal of a new 10 TAC Chapter 22, §§22.1 – 22.13 regarding the Texas Bootstrap Loan Program Rule for public comment and publication in the *Texas Register*
- f) Presentation, Discussion, and Possible Action regarding a proposed repeal of Chapter 3, §§3.1-3.9 regarding the Colonia Self-Help Center Program Rule and proposal of a new 10 TAC Chapter 25, §§25.1 – 25.9

regarding the Colonia Self-Help Center Program Rule for public comment and publication in the *Texas Register*

- g) Presentation, Discussion, and Possible Action regarding the proposed repeal of 10 TAC Chapter 51, §§51.1 – 51.11 regarding the Texas Housing Trust Fund (“HTF”) Program Rule and proposal of a new 10 TAC Chapter 21, §§21.1 – 21.6 regarding the Texas Housing Trust Fund (“HTF”) Program Rule for public comment and publication in the *Texas Register*
- h) Presentation, Discussion, and Possible Action regarding approval of proposed amendments to 10 TAC Chapter 9 regarding the Texas Neighborhood Stabilization Program (“NSP”) Rule and a proposed new 10 TAC Chapter 29, §§29.1 - 29.8 regarding the Texas Neighborhood Stabilization Program Rule for public comment and publication in the *Texas Register*
- i) Presentation, Discussion, and Possible Action regarding a proposed repeal of 10 TAC Chapter 7, §§7.1-7.9 regarding the Texas First Time Homebuyer Program Rule and proposal of a new 10 TAC Chapter 27, §§27.1-27.10 regarding the Texas First Time Homebuyer Program Rule for public comment and publication in the *Texas Register*
- j) Presentation, Discussion, and Possible Action regarding proposed repeals of 10 TAC Chapter 53, Subchapter C, Homeowner Rehabilitation Assistance Program Activity, Subchapter D concerning Homebuyer Assistance Program Activity, Subchapter E concerning Contract For Deed Conversion Program Activity, Subchapter F concerning Tenant-Based Rental Assistance Program Activity, and Subchapter G concerning Single Family Development Program Activity, and proposal of a new 10 TAC Chapter 23, concerning HOME Single Family Program, for public comment and publication in the *Texas Register*

Texas Homeownership

- k) Presentation, Discussion, and Possible Action to publish a proposed new rule for the Taxable Mortgage Program, 10 TAC Chapter 28, §§28.1-28.9 for public comment and publication in the *Texas Register*

Community Affairs

- l) Presentation, Discussion, and Possible Action regarding submission of the FFY 2013 Low Income Home Energy Assistance Program (LIHEAP) State Plan to US Department of Health and Human Services
- m) Presentation, Discussion, and Possible Action regarding the Section 8 Program 2013 Annual Public Housing Agency (PHA) Plan for the Housing Choice Voucher Program

Housing Trust Fund

- n) Presentation, Discussion, and Possible Action to approve or approve with amendments, the proposed amendment to the 2012-2013 Housing Trust Fund Plan and authorize staff to submit the Housing Trust Fund Plan Amendment to all appropriate offices

Colonia Initiatives

- o) Presentation, Discussion, and Possible Action on Colonia Self Help Center Program Awards to Hidalgo and Webb Counties through Community Development Block Grant (CDBG) Funding

Housing Resource Center

- p) Presentation, Discussion, and Possible Ratification of the Agency Strategic Plan for the Fiscal Years 2013-2017 Period

Multifamily Division

- q) Presentation, Discussion, and Possible Action regarding Inducement Resolution No.12-035 for Multifamily Housing Revenue Bonds and Authorization for Filing Applications for Private Activity Bond Authority – 2012 Waiting List
12605 Waters at Willows Run Austin

Agenda Item 1q pulled from Consent Agenda for further discussion.

- r) Presentation, Discussion, and Possible Action regarding approval of Qualified Investment Banking Firms to provide Underwriting or Remarketing Agent Services for Multifamily Bond Transactions
- s) Presentation, Discussion, and Possible Action regarding Qualified Trustee Services for Multifamily Bond Transactions

REPORT ITEMS

The Board accepts the following reports:

1. Presentation and Discussion on a Status Report on the Implementation of the American Recovery and Reinvestment Act of 2009 (Recovery Act)
2. Presentation of the Department's 3rd Quarter investment Report in accordance with the Public Funds investment Act
3. Presentation of the Department's 3rd Quarter investment Report relating to funds held under Bond Trust indentures
4. Presentation and Discussion of the Department's selection of McCall, Parkhurst & Horton as disclosure outside counsel on single family issues and Andrews & Kurth on multifamily issues

Motion by Leslie Bingham-Escareño to approve Consent Agenda, with the exception of Item 1q, which was pulled from the Consent Agenda for further discussion; duly seconded by Tom Gann.

Brooke Boston, Deputy Executive Director, noted two clarifications for the Board. Behind Tab 1e in the Bootstrap rule, the definition for loan origination agreement was shown as stricken. A Decision has been made to keep that definition in and defined the same way. Behind Item 1-I under the First-Time Homebuyer rule, on page 6, a statement related to targeted area is made with a clause that says "or department-designated area of special need" and staff would like to strike that clause, as staff does not have that authority.

Charles Clowton, Program Manager, Meals On Wheels and More, provided testimony in support of the Amy Young Architectural Barrier Removal Program. Mr. Clowton reported that 70+ families have received benefited from this program and their lives are changed because of what TDHCA does.

Motion passed unanimously.

- 1q) Presentation, Discussion, and Possible Action regarding Inducement Resolution No.12-035 for Multifamily Housing Revenue Bonds and Authorization for Filing Applications for Private Activity Bond Authority – 2012 Waiting List
12605 Waters at Willows Run Austin

Motion by Leslie Bingham-Escareño to approve staff's recommendation to approve an inducement Resolution; duly seconded by Juan Muñoz.

Debbie Thompson, Wells Branch Neighborhood Association, provided testimony in opposition to Waters at Willows Run

Scott Swain representing the neighbors of Wells Branch, provided testimony in opposition to Waters at Willows Run

Billy Phoenix, Wells Branch Municipal Utility District, Board Of Directors, provided testimony in opposition to Waters at Willows Run

Annette Cornier, TDHCA Executive Assistant, read into record opposition to Waters at Willows Run from Donna Flores and Chris Flores

Motion passed unanimously.

ACTION ITEMS

AGENDA ITEM 2: APPEALS:

Timely Filed Appeals Under any of the Department's Program or Underwriting Rules

12025 Hawk Ridge Apartments

White Settlement

Motion by Tom Gann to deny the appeal on the first issue, relating to Quantifiable Community Participation (QCP); duly seconded by Juan Muñoz.

Darlene Underwood provided testimony in opposition to Hawk Ridge Apartments

Marcy Galle, City of Fort Worth, provided testimony in opposition to Hawk Ridge Apartments

Bert Magill, Sponsor, Hawk Ridge Apartments, provided testimony in support of Hawk Ridge Apartments

Annette Cornier, TDHCA Executive Assistant, read into record support for Hawk Ridge Apartments from Ronald White and George Klecan.

Motion passed unanimously.

Motion by Juan Muñoz to deny the appeal on the second issue, relating to Economic Development Initiatives; duly seconded by Leslie Bingham-Escareño.

Marcy Galle, City of Fort Worth, provided testimony in opposition to Hawk Ridge Apartments

Bert McGill, Sponsor, Hawk Ridge Apartments, provided testimony in support of Hawk Ridge Apartments

Motion passed unanimously.

12346 Merritt Hill Country

Dripping Springs

Motion by Juan Muñoz to grant the appeal; motion failed for lack of a second.

Motion by Tom Gann to deny the appeal; seconded by Mark McWatters.

Cynthia Bast, Locke Lord, provided testimony (and handouts) in support of Merritt Hill Country

John Crowell, Dripping Springs City Councilman, provided testimony in support of Merritt Hill Country

John Thompson, Planning Director, City of Dripping Springs, provided testimony in support of Merritt Hill Country

Stuart Shaw, President, Bonner Carrington, provided testimony in opposition to Merritt Hill Country

Barry Palmer, Coates Rose, provided testimony in opposition to Merritt Hill Country

Casey Bump, Bonner Carrington, provided testimony in opposition to Merritt Hill Country

Motion Passed with votes of opposition by Leslie Bingham-Escareño and Juan Muñoz.

The Board took a brief recess at 10:00 A.M. and resumed at 10:17 A.M.

AGENDA ITEM 2: APPEALS CONTINUED:

Timely Filed Appeals Under any of the Department's Program or Underwriting Rules

12371 Mariposa at Ranch Road 12

Wimberley

Motion by Juan Muñoz to grant the appeal; duly seconded by Leslie Bingham-Escareño.

Stuart Shaw, President, Bonner Carrington, provided testimony in support of Mariposa at Ranch Road 12

Motion passed unanimously.

AGENDA ITEM 3: MULTIFAMILY FINANCE DIVISION:

a) Report on Challenges Made in Accordance with §50.10(d) of the 2012 Qualified Allocation Plan (QAP) Concerning 2012 Housing Tax Credit (HTC) Applications

Report item only. No action taken.

b) Presentation, Discussion, and Possible Action to Provide Policy Direction to staff regarding Allocation of Credits

Motion by Leslie Bingham-Escareño to approve Staff's recommended methodology; duly seconded by Mark McWatters.

Michael Lyttle, Director of External Affairs read for the record the following letters from: the Honorable State Senator Jeff Wentworth expressing concern with the lack of allocating tax credits for Rural Region 7; Chris Robbin, Chairman, Board of Directors and Robert Burns, President and CEO, Midland Chamber of Commerce, expressing concern with the lack of tax credits allocated in Region 12; and the Honorable W. Wesley Perry, Mayor of Midland, asking the Board to consider Midland's dire need for affordable housing.

Annette Cornier, TDHCA Executive Assistant read into record support for the staff recommendation regarding the RAF for the allocation of credits by Demetrio Jimenez'.

John James provided testimony in opposition to staff recommendation

C. W. Fields, Colt Development, provided testimony in opposition to staff recommendation

Stuart Shaw, President, Bonner Carrington, provided testimony in opposition to staff recommendation

Casey Bump, Bonner Carrington, provided testimony in opposition to staff recommendation

Bobby Bowling, Developer, provided testimony in support of staff recommendation

Lisa Stevens provided testimony in support of staff recommendation

Barry Palmer, Coates Rose, provided testimony in Support/Against of staff recommendation

Motion passed unanimously.

EXECUTIVE SESSION

At 12:25 p.m. Chairman Oxer convened the Executive Session.

1. The Board may go into Executive Session Pursuant to Texas Government Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee
2. Pursuant to Tex. Gov't. Code, §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a settlement offer, including:
 - a) *The Inclusive Communities Project, Inc. v. Texas Department of Housing and Community Affairs, et al* filed in federal district court, Northern District of Texas
 - b) *Heston Emergency Housing, LP and Naji Al-Fouzan vs. Texas Department of Housing and Community Affairs, Michael Gerber, Martin Rivera, Jr., Marisa Callan, and Timothy Irvine*
 - c) *Complaint of James Reedom filed with U.S. HHS/OCR (No. 09-99008)*
 - d) *TDHCA v. William Ross & Susan Ross; Cause No. D-1-GN-11-002226, filed in district court, Travis County*
 - e) *Complaint of Ameenah Montgomery filed with U.S. HUD (No. 06-12-0779-8)*
 - f) *Harris County v. Pleasant Hill Community Development Corporation; 80th Jud. Dist., Harris Co., Texas*
 - g) *EEOC matters;*
3. Pursuant to Tex. Gov't. Code, §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Tex. Gov't. Code, Chapter 551; OAG opinion request or
4. Pursuant to Tex. Gov't. Code, §551.072 to deliberate the possible purchase, sale, exchange, or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person; and/or-
5. Pursuant to Tex. Gov't. Code, §2306.039(c) the Department's internal auditor, fraud prevention coordinator or ethics advisor may meet in an executive session of the Board to discuss issues related to fraud, waste or abuse.

OPEN SESSION

At 1:38 p.m. Chairman Oxer reconvened the Open Session and announced that No Action had been taken during the Executive Session and certified that the posted agenda had been followed.

AGENDA ITEM 3: MULTIFAMILY FINANCE DIVISION *CONTINUED*:

- c) Presentation, Discussion, and Possible Action regarding Awards from the 2012 State Housing Credit Ceiling and Approval of the Waiting List for the 2012 Housing Tax Credit Application Round

Motion by Leslie Bingham-Escareño to approve staff's recommendation regarding awards from the 2012 State Housing Credit Ceiling and approve the waiting list for the 2012 Housing Tax Credit Application Round; duly seconded by Chairman Oxer.

Sean Brady, Abbington Commons, provided testimony with regard to the QAP scoring process

Motion passed unanimously.

- d) Presentation, Discussion, and Possible Action regarding Awards of HOME funds from the 2012-13 HOME Multifamily Development Program Notice of Funding Availability

Motion by Leslie Bingham-Escareño to approve staff's recommendation regarding awards of HOME funds from the 2012-13 HOME Multifamily Development Program NOFA; duly seconded by Tom Gann.

Motion passed unanimously.

- e) Presentation, Discussion, and Possible Issuance of a Determination Notice for Housing Tax Credits Associated with Multifamily Mortgage Revenue Bonds with another Issuer and Award of HOME Multifamily Development Program Funds:

12410 The Gateway Northwest

Georgetown

Motion by Leslie Bingham-Escareño to approve staff's recommendation to issue the tax credits; duly seconded by Juan Muñoz Motion; passed unanimously.

ADJOURN

Motion by Juan Muñoz to adjourn; duly seconded by Tom Gann; passed unanimously.

Since there was no other business to come before the Board, the meeting was adjourned at 2:00 p.m. on JULY 26, 2012.

Brooke Boston, Board Secretary

For a full transcript of this meeting, please visit the TDHCA website at www.tdhca.state.tx.us

1b

**INTERNAL AUDIT
BOARD ACTION REQUEST
SEPTEMBER 6, 2012**

Presentation, Discussion and Possible Approval of the Fiscal Year 2013 Internal Audit Work Plan.

RECOMMENDED ACTION

WHEREAS, the Texas Internal Auditing Act and audit standards require the governing board to approve an annual audit work plan that is based on an agency-wide risk assessment as well as input from the governing board and executive management, and that outlines the internal audits planned for the upcoming fiscal year,

RESOLVED, the internal audit work plan for fiscal year 2013 is hereby approved as presented.

BACKGROUND

The annual internal audit work plan is required by the Texas Internal Auditing Act and by audit standards. The plan outlines the program areas that the Internal Audit Division will audit during the 2013 fiscal year as well as outlining the other planned activities of the Internal Audit Division.

**Department of Housing and Community Affairs
Internal Audit Division
Fiscal Year 2013 DRAFT Internal Audit Plan**

Program Area/Division	Audit	Hours 4160	Comments
Asset Management	Asset Management	900	Scope will be Determined During Planning
Program Services	Program Services – Quality Assurance	1000	Scope will be Determined During Planning
Bond Finance	Housing Trust Fund Transfers	160	Scope will be Determined During Planning
Compliance	Compliance Monitoring	1000	Scope will be Determined During Planning
Agency-Wide	Loan Processing	1000	Scope will be Determined During Planning
Manufactured Housing Division	Mailroom Procedures and Processes	100	Scope will be Determined During Planning
Program Area/Division	Management Assistance/ Special Projects	900	Comments
Internal Audit	Conduct Annual Risk Assessment and Prepare Fiscal Year 2014 Audit Plan	120	Required by the Texas Internal Auditing Act and by Audit Standards
Internal Audit	Annual Review and Revision of Internal Audit Charter	20	Required by Audit Standards
Internal Audit	Review and Revise Internal Audit Policies and Procedures to Comply with New Auditing Standards	60	The IIA Will Be Releasing A Revised Version of the <i>Professional Practices Framework</i> in October 2012
Internal Audit	2012 Peer Review	160	Required by the Texas Internal Auditing Act and by Audit Standards
Internal Audit	Preparation and Submission of the Fiscal Year 2013 Annual Internal Audit Report	40	Required by the Texas Internal Auditing Act
Internal Audit	Coordinate with External Auditors	50	Ongoing Requirement
Internal Audit/IS	Consolidate ERM and Risk Assessment Processes	175	Consolidate ERM into TeamMate software to gain some efficiencies in risk assessment
All Divisions	Follow-up on the Status of Prior Audit Issues	125	Required by Audit Standards
All Divisions	Tracking the Status of Prior Audit Issues	50	Required by Audit Standards
All Divisions	Tracking, Follow-up and Disposal of Fraud Complaints	100	Internal Audit is Responsible for the Fraud Hotline and for Reviewing Fraud Complaints

1c

<p style="text-align:center">BOARD ACTION REQUEST FINANCIAL ADMINISTRATION DIVISION SEPTEMBER 6, 2012</p>
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Presentation, Discussion, and Possible Action regarding a final order adopting the repeal of 10 TAC Chapter 1, §1.6, and new 10 TAC Chapter 1, §1.6, concerning Historically Underutilized Businesses for publication in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, The Department finds that the new section will alleviate any outdated information concerning historically underutilized businesses. Accordingly, the new section provides the Department the ability to reflect current information.

FURTHER RESOLVED, that the Executive Director and his designees be and each them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the repeal and the new rule, in the form presented to this meeting, to be published in the *Texas Register* for final adoption and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the forgoing.

BACKGROUND

The proposed repeal and new rule were approved for publication on July 10, 2012 by the Board, and were published in the July 27, 2012, issue of the *Texas Register* to allow for public comment. The public comment period closed on August 27, 2012. No comments were received.

Attachment A: Preamble, Reasoned Response, and New Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 1, §1.6, concerning Historically Underutilized Businesses, without changes to the proposed text as published in the July 27, 2012 issue of the *Texas Register* (37 TexReg 5532) and will not be republished.

REASONED JUSTIFICATION: The Department finds that the new section will alleviate any outdated information concerning historically underutilized businesses. Accordingly, the new section provides the Department the ability to reflect current information.

The Department accepted public comments between July 27, 2012 and August 27, 2012. Comments regarding the new section were accepted in writing and by fax. No comments were received concerning the new section.

The Board approved the final order adopting the new section on September 6, 2012.

STATUTORY AUTHORITY: The new section is adopted pursuant to the authority of Texas Government Code §2306.053 which authorizes the Department to adopt rules.

§1.6. Historically Underutilized Businesses.

It is the policy of the Department to encourage the use of Historically Underutilized Businesses (HUB). The purpose of the HUB program is to promote full and equal business opportunities for all businesses in an effort to remedy disparity in state procurement and contracting in accordance with the HUB goals specified in the state of Texas Disparity Study. The department and all its programs comply with the Texas Comptroller of Public Accounts HUB Program rules at 34 TAC §§20.10 – 20.28 (relating to the Historically Underutilized Business Program) which describe the minimum steps and requirements to be undertaken by the comptroller and state agencies to fulfill the state's HUB policy and attain aspirations goals recommended by the Texas Disparity Study.

Attachment B: Preamble, Reasoned Response, and Repealed Rule

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal 10 TAC Chapter 1, §1.6, concerning Historically Underutilized Businesses, without changes to the proposed text as published in the July 27, 2012 issue of the *Texas Register* (37 TexReg 5531) and will not be republished.

REASONED JUSTIFICATION: The Department finds that the repeal will alleviate any outdated information. Accordingly, the repeal provides the Department the ability to update and properly reflect new information.

The Department accepted public comments between July 27, 2012 and August 27, 2012. Comments regarding the repeal section were accepted in writing and by fax. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on September 6, 2012.

STATUTORY AUTHORITY: The repeal is adopted pursuant to the authority of Texas Government Code §2306.053 which authorizes the Department to adopt rules.

§1.6. Historically Underutilized Businesses.

1d

BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
SEPTEMBER 6, 2012

Presentation, Discussion, and Possible Action regarding a final order adopting the repeal and new 10 TAC Chapter 5, Subchapter A, §§5.2 and 5.3, concerning General Provisions and a final order adopting amendments to 10 TAC Chapter 5, Subchapter A, §§5.4, 5.8, 5.10, 5.13, 5.15 - 5.17, 5.19, and 5.20, concerning General Provisions, for publication in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the proposed General Provision rules were approved for publication in the *Texas Register* for public comment at the June 14, 2012, Board meeting and the public comment period has ended; therefore, it is hereby

RESOLVED, that the final order adopting the repeal of and new 10 TAC Chapter 5, Subchapter A, General Provisions §§5.2 and 5.3 and a final order adopting amendments to 10 TAC Chapter 5, Subchapter A, General Provisions §§5.4, 5.8, 5.10, 5.13, 5.15 - 5.17, 5.19, and 5.20, regarding the Emergency Solutions Grants Program (ESG) and Homeless Housing and Services Program (HHSP) is hereby adopted, together with the preamble presented to this meeting, for publication in the *Texas Register*; and

FURTHER RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause 10 TAC Chapter 5, Subchapter A, regulations related to the General Provisions, ESG, and HHSP, in the form presented to this meeting, to be published in the *Texas Register* for final adoption, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of subchapter specific preambles.

BACKGROUND

These revisions to the General Provisions subchapter add references to the Emergency Solutions Grants Program, a new program to be funded through the U.S. Department of Housing and Urban Development, and the Homeless Housing and Services Program (HHSP) and remove any reference to Homelessness Prevention Rapid Re-Housing Program (HPRP), an American Recovery and Reinvestment Act of 2009 program, which has closed out.

This revision also adds definitions for the Emergency Shelter Grants Program and the Emergency Solutions Grants Program (ESG), revises the definition for “homeless,” adds the income eligibility requirements for ESG and HHSP, revises the federal poverty levels for the Department of Energy Weatherization Assistance Program (WAP), LIHEAP WAP, and the

Comprehensive Energy Assistance Program based on updated LIHEAP program guidance from the U.S. Department of Health and Human Services. The revision also removes the audit threshold of \$500,000 and adds the requirement to adhere to the threshold requirements of Office of Management and Budget Circular A-133, adds definitions for OMB Circulars, specifies the cost principles and administrative requirements applicable to these programs, adds requirement to use request for qualification, revises the declaration of income statement documentation term to clarify income documentation, and adds definitions for U.S. Department of Housing and Urban Development and U.S. Department of Health and Human Services.

Attachment 1: Preamble and Adopted Repeal 10 TAC Chapter 5, Subchapter A, General Provisions §§5.2 and 5.3.

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal 10 TAC Chapter 5, Subchapter A, General Provisions §§5.2 and 5.3, concerning Cost Principles and Administrative Requirements and Definitions without changes to the proposed text as published in the June 29, 2012, issue of the *Texas Register* (37 TexReg 4765) and will not be republished.

REASONED JUSTIFICATION: The Department finds that the numbering of these sections is inconsistent with other Department rules. Accordingly, the repeal and renumbering of these sections will provide consistency with Department rules.

The Department accepted public comments from June 30, 2012 to July 30, 2012. Comments regarding the repeal sections were accepted in writing and by fax. No comments were received concerning the repeal sections.

The Board approved the final order adopting the repeal sections on September 6, 2012.

STATUTORY AUTHORITY: The repeal sections are adopted pursuant to the authority of §2306.053 of the Texas Government Code which authorizes the Department to adopt rules governing the administration of the Department and its programs.

The adoption of this repeal affects no other code, article, or statute.

§5.2. Cost Principles and Administrative Requirements.

§5.3. Definitions.

Attachment 2: Preamble and Adopted New 10 TAC Chapter 5, Subchapter A, General Provisions §§5.2 and 5.3.

The Texas Department of Housing and Community Affairs (the "Department") adopts the new 10 TAC Chapter 5, Subchapter A, General Provisions §5.2, concerning Definitions with changes to the proposed text as published in the June 29, 2012, issue of the *Texas Register* (37 TexReg 4765) and will be republished in its final adopted form in the September 21, 2012, issue of the *Texas Register*. Section 5.3 concerning Cost Principles and Administrative Requirements is adopted without change and will not be republished.

REASONED JUSTIFICATION. The Department finds that references are needed to reflect definitions and policies and procedures for the new Emergency Solutions Grants Program (ESG) and the Homeless Housing and Services Program (HHSP). Further, the Department finds that §§5.2 and 5.3 need to be renumbered for consistency with Department rules. Accordingly, the

adopted new sections will set forth requirements for the distribution and administration of ESG and HHSP. In addition, the adopted new sections will be renumbered to provide consistency with Department rules.

Comments were accepted from June 30, 2012 to July 30, 2012, with one comment received from Ms. Stella Rodriguez of the Texas Association of Community Action Agencies (TACAA).

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS:

§5.2. Definitions

COMMENT SUMMARY. The commenter brought to the attention of the Department that, in the §5.2 , the definition for Community Action Plan was omitted.

STAFF RESPONSE. The Department finds that the omission of the definition for Community Action Plan was an oversight by the Department. Accordingly, the amended section will be revised to include the definition and as a result, subsequent definitions listed in §5.2 will be renumbered appropriately. The Department thanks the commenter for their review and comments to the proposed §5.2.

STATUTORY AUTHORITY. The new sections are adopted pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs, including specifically §§2306.2585, 2306.053, 2306.092, 2306.094, and 2306.097 which authorize the Department to adopt rules to govern the administration of the CEAP, ESG, HHSP, and LIHEAP WAP.

The adoption affects no other code, article, or statute.

§5.2. Definitions.

(a) To ensure a clear understanding of the terminology used in the context of the Community Affairs Programs, a list of terms and definitions has been compiled as a reference.

(b) The following words and terms in this chapter shall have the following meaning unless the context clearly indicates otherwise.

(1) CAA--Community Action Agency.

(2) CFR--Code of Federal Regulations.

(3) Children--Household dependents not exceeding eighteen (18) years of age.

(4) Collaborative Application--An application from two or more organizations to provide services to the target population. If a unit of general local government applies for only one

organization, this will not be considered a Collaborative Application. Partners in the Collaborative Application must coordinate services and prevent duplication of services.

(5) Community Action Agencies (CAAs)--Local private and public non-profit organizations that carry out the Community Action Program (CAP), which was founded by the 1964 Economic Opportunity Act to fight poverty by empowering the poor in the United States. Each CAA must have a board consisting of at least one-third elected public officials, not fewer than one-third representatives of low-income individuals and families, chosen in accordance with democratic selection procedures, and the remainder are members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community.

(6) Community Action Plan--A plan required by the Community Services Block Grant (CSBG) Act which describes the local (Subrecipient) service delivery system, how coordination will be developed to fill identified gaps in services, how funds will be coordinated with other public and private resources and how the local entity will use the funds to support innovative community and neighborhood based initiatives related to the grant.

(7) [~~6~~] Community Affairs Division (CAD)--The Division at the Department that administers CEAP, CSBG, ESGP, ESG, HHSP, Section 8 Housing Choice Voucher Program, and WAP.

(8) [~~7~~] The Community Services Block Grant (CSBG)--A grant which provides U.S. federal funding for CAAs and other eligible entities that seek to address poverty at the community level. Like other block grants, CSBG funds are allocated to the states and other jurisdictions through a formula.

(9) [~~8~~] CSBG Act--The CSBG Act is a law passed by Congress authorizing the Community Services Block Grant. The CSBG Act was amended by the Community Services Block Grant Amendments of 1994 and the Coats Human Services Reauthorization Act of 1998 under 42 U.S.C. §§9901, et seq. The act authorized establishing a community services block grant program to make grants available through the program to states to ameliorate the causes of poverty in communities within the states.

(10) [~~9~~] Cooling--Modifications including, but not limited to, the repair or replacement of air conditioning units, evaporative coolers, and refrigerators.

(11) [~~10~~] CSBG Subrecipient--Includes CSBG eligible entities and other organizations that are awarded CSBG funds.

(12) [~~11~~] Department--The Texas Department of Housing and Community Affairs.

(13) [~~12~~] Discretionary Funds--Those CSBG funds maintained in reserve by a State, at its discretion, for CSBG allowable uses as authorized by §675C of the CSBG Act, and not designated for distribution on a statewide basis to CSBG eligible entities and not held in reserve for state administrative purposes.

(14) [~~13~~] DOE--The United States Department of Energy.

(15) [~~14~~] DOE WAP Rules--10 CFR Part 440 describes the Weatherization Assistance for Low Income Persons as administered through the Department of Energy.

(16) [~~15~~] Dwelling Unit--A house, including a stationary mobile home, an apartment, a group of rooms, or a single room occupied as separate living quarters. This definition does not apply to the ESG or HHSP.

(17) [~~16~~] Equipment--A tangible non-expendable personal property including exempt property, charged directly to the award, having a useful life of more than one year, and an acquisition cost of \$5,000 or more per unit. For CSBG, CEAP, and WAP, if the unit acquisition cost exceeds \$5,000, approval from the Department's Community Affairs Division must be obtained before the purchase takes place. For ESGP, if the unit acquisition cost exceeds \$500, approval from the Department's Community Affairs Division must be obtained before the purchase is made.

(18) [~~17~~] Elderly Person--A person who is sixty (60) years of age or older.

(19) [~~18~~] Electric Base-Load Measure--Weatherization measures which address the energy efficiency and energy usage of lighting and appliances.

(20) [~~19~~] Eligible Entity--Those local organizations in existence and designated by the federal government to administer programs created under the federal Economic Opportunity Act of 1964. This includes community action agencies, limited-purpose agencies, and units of local government. The CSBG Act defines an eligible entity as an organization that was an eligible entity on the day before the enactment of the Coats Human Services Reauthorization Act of 1998 (October 27, 1998), or is designated by the Governor to serve a given area of the State and that has a tripartite board or other mechanism for local governance.

(21) [~~20~~] Emergency--Defined by the LIHEAP Act of 1981 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981, 42 U.S.C. §8622):

(A) natural disaster;

(B) a significant home energy supply shortage or disruption;

(C) significant increase in the cost of home energy, as determined by the Secretary;

(D) a significant increase in home energy disconnections reported by a utility, a State regulatory agency, or another agency with necessary data;

(E) a significant increase in participation in a public benefit program such as the food stamp program carried out under the Food Stamp Act of 1977 (7 U.S.C. §§2011, et seq.), the national program to provide supplemental security income carried out under Title XVI of the Social Security Act (42 U.S.C. §§1381, et seq.) or the State temporary assistance for needy families program carried out under Part A of Title IV of the Social Security Act (42 U.S.C. §§601, et seq.), as determined by the head of the appropriate federal agency;

(F) a significant increase in unemployment, layoffs, or the number of households with an individual applying for unemployment benefits, as determined by the Secretary of Labor; or

(G) an event meeting such criteria as the Secretary, at the discretion of the Secretary, may determine to be appropriate.

(H) This definition does not apply to ESGP, ESG, or HHSP.

(22) [~~(21)~~] Emergency Shelter Grants Program (ESGP)--A federal grant program established by the Homeless Housing Act of 1986 and incorporated into Title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. §§11371 - 11378) and funded through HUD.

(23) [~~(22)~~] Emergency Solutions Grants (ESG)--A federal grant program authorized in Title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. §§11371 - 11378), as amended by the Homeless Emergency Assistance and Rapid Transition to Housing Act (HEARTH Act). ESG is funded through HUD.

(24) [~~(23)~~] Energy Audit--The energy audit software and procedures used to determine the cost effectiveness of weatherization measures to be installed in a dwelling unit.

(25) [~~(24)~~] Energy Repairs--Weatherization related repairs necessary to protect or complete regular weatherization energy efficiency measures.

(26) [~~(25)~~] Families with Young Children--A family that includes a child age five (5) or younger.

(27) [~~(26)~~] High Energy Burden--Determined by dividing a household's annual home energy costs by the household's annual gross income. The percentage at which energy burden is considered high is defined by data gathered from the State Data Center.

(28) [~~(27)~~] High Energy Consumption--Household energy expenditures exceeding the median of low-income home energy expenditures expressed in the data collected from the State Data Center.

(29) [~~(28)~~] Homeless or homeless individual--An individual as defined by 42 U.S.C. §§11371 - 11378 and 24 CFR §576.2.

(30) [~~(29)~~] Homeless and Housing Services Program (HHSP)--A state funded program established by the State Legislature during the 81st Legislative session with the purpose of providing funds to local programs to prevent and eliminate homelessness in municipalities with a population of 285,500 or more.

(31) [~~(30)~~] Household--Any individual or group of individuals who are living together as one economic unit. For energy programs, these persons customarily purchase residential energy in common or make undesignated payments for energy.

(32) [~~(31)~~] Inverse Ratio of Population Density Factor--The number of square miles of a county divided by the number of poverty households of that county.

(33) [~~(32)~~] Local Units of Government--City, county, council of governments, and housing authorities.

(34) [~~(33)~~] Low Income--Income in relation to family size:

(A) For DOE WAP, at or below 200% of the Income guidelines;

(B) For CEAP, CSBG, and LIHEAP WAP at or below 125% of the Income guidelines;

(C) For ESGP, at or below 100% of the poverty level, determined in accordance with criteria established by the Director of the Office of Management and Budget;

(D) For ESG, 30% of the Area Median Income (AMI) as defined by HUD for persons receiving prevention assistance; and

(E) For HHSP, 50% of the AMI as defined by HUD for persons receiving emergency essential services, essential services, and emergency intervention assistance.

(35) [~~(34)~~] Low Income Home Energy Assistance Program (LIHEAP)--A federally funded block grant program that is implemented to serve low income households who seek assistance for their home energy bills and/or weatherization services.

(36) [~~(35)~~] Migrant Farm worker--An individual or family that is employed in agricultural labor or related industry and is required to be absent overnight from their permanent place of residence.

(37) [~~(36)~~] Multifamily Dwelling Unit--A structure containing more than one dwelling unit. This definition does not apply to ESGP, ESG, or HHSP.

(38) [~~(37)~~] National Performance Indicator--An individual measure of performance within the Department's reporting system for measuring performance and results of Subrecipients of funds. There are currently twelve indicators of performance which measure self-sufficiency, family stability, and community revitalization.

(39) [~~(38)~~] Needs Assessment--An assessment of community needs in the areas to be served with CSBG funds. The assessment is a required part of the Community Action Plan per Assurance 11 of the CSBG Act.

(40) [~~(39)~~] OMB--Office of Management and Budget, a federal agency.

(41) [~~(40)~~] OMB Circulars--OMB circulars set forth principles and standards for determining costs for federal awards and establishes consistency in the management of grants for federal funds. Cost principles for local governments are set forth in Office of Management and Budget

(OMB) Circular A-87, and for non-profit organizations in OMB Circular A-122. Uniform administrative requirements for local governments are set forth in OMB Circular A-102, and for non-profits in OMB Circular A-110. OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations," provides audit standards for governmental organizations and other organizations expending federal funds. The single audit requirements are set forth under OMB Circular A-133.

(42) [(41)] Outreach--The method that attempts to identify clients who are in need of services, alerts these clients to service provisions and benefits, and helps them use the services that are available. Outreach is utilized to locate, contact and engage potential clients.

(43) [(42)] Performance Statement--A document which identifies the services to be provided by a CSBG Subrecipient. The document is an attachment to the CSBG contract entered into by the Department and the CSBG Subrecipient.

(44) [(43)] Persons with Disabilities--Any individual who is:

(A) a handicapped individual as defined in §7(9) of the Rehabilitation Act of 1973;

(B) under a disability as defined in §1614(a)(3)(A) or §223(d)(1) of the Social Security Act or in §102(7) of the Developmental Disabilities Services and Facilities Construction Act; or

(C) receiving benefits under 38 U.S.C. Chapter 11 or 15.

(45) [(44)] Population Density--The number of persons residing within a given geographic area of the state.

(46) [(45)] Poverty Income Guidelines--The official poverty income guidelines as issued by the U.S. Department of Health and Human Services annually.

(47) [(46)] Private Nonprofit Organization--An organization which has status as a §501(c) tax-exempt entity. Private nonprofit organizations applying for ESGP, ESG and HHSP funds must be established for charitable purposes and have activities that include, but are not limited to, the promotion of social welfare and the prevention or elimination of homelessness. The entity's net earnings may not inure to the benefit of any individual(s).

(48) [(47)] Public Organization--A unit of local government, as established by the Legislature of the State of Texas. Includes, but may not be limited to, cities, counties, and councils of governments.

(49) [(48)] Referral--The process of providing information to a client household about an agency, program, or professional person that can provide the service(s) needed by the client.

(50) [(49)] Rental Unit--A dwelling unit occupied by a person who pays rent for the use of the dwelling unit. This definition does not apply to ESGP, ESG, or HHSP.

(51) [~~(50)~~] Renter--A person who pays rent for the use of the dwelling unit. This definition does not apply to ESGP, ESG, or HHSP.

(52) [~~(51)~~] Seasonal Farm Worker--An individual or family that is employed in seasonal or temporary agricultural labor or related industry and is not required to be absent overnight from their permanent place of residence. In addition, at least 20% of the household annualized income must be derived from the agricultural labor or related industry.

(53) [~~(52)~~] Secretary--Chief Executive of the U.S. Department of Health and Human Services.

(54) [~~(53)~~] Service--The provision of work or labor that does not produce a tangible commodity.

(55) [~~(54)~~] Shelter--Defined by the Department as a dwelling unit or units whose principal purpose is to house on a temporary basis individuals who may or may not be related to one another and who are not living in nursing homes, prisons, or similar institutional care facilities.

(56) [~~(55)~~] Single Family Dwelling Unit--A structure containing no more than one dwelling unit. This definition does not apply to ESGP, ESG, or HHSP.

(57) [~~(56)~~] Social Security Act--42 U.S.C. §§601, et seq., CSBG works with activities carried out under Title IV Part A to assist families to transition off of state programs.

(58) [~~(57)~~] State--The State of Texas or the Texas Department of Housing and Community Affairs.

(59) [~~(58)~~] Subcontractor--An organization with whom the Subrecipient contracts with to administer programs.

(60) [~~(59)~~] Subrecipient--According to each program subchapter, Subrecipient may be defined as organizations with whom the Department contracts with and provides CSBG, ESGP, ESG, HHSP, DOE WAP, or LIHEAP funds.

(61) [~~(60)~~] Supplies--All personal property excluding equipment, intangible property, and debt instruments, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement (subject inventions), as defined in 37 CFR Part 401, "Rights to Inventions Made by Non-profit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements."

(62) [~~(61)~~] TAC--Texas Administrative Code.

(63) [~~(62)~~] Targeting--Focusing assistance to households with the highest program applicable needs.

(64) [~~(63)~~] Terms and Conditions--Binding provisions provided by a funding organization to grantees accepting a grant award for a specified amount of time.

(65) [(64)] Treatment as a State or Local Agency--For purposes of 5 U.S.C. Chapter 15, any entity that assumes responsibility for planning, developing, and coordinating activities under the CSBG Act and receives assistance under CSBG Act shall be deemed to be a state or local agency.

(66) [(65)] Units of General Local Government--A unit of local government which has, among other responsibilities, the authority to assess and collect local taxes and to provide general governmental services.

(67) [(65)] U.S.C.--United States Code.

(68) [(67)] USDHHS/HHS--U.S. Department of Health and Human Services.

(69) [(68)] USHUD/HUD--U.S. Department of Housing and Urban Development.

(70) [(69)] Vendor Agreement--An agreement between the Subrecipient and energy vendors that contains assurance as to fair billing practices, delivery procedures, and pricing for business transactions involving LIHEAP beneficiaries.

(71) [(70)] WAP--Weatherization Assistance Program.

(72) [(71)] WAP PAC--Weatherization Assistance Program Policy Advisory Council. The WAP PAC was established by the Department in accordance with 10 CFR §440.17 to provide advisory services in regards to the WAP program.

(73) [(72)] Weatherization Material--The material listed in Appendix A of 10 CFR Part 440.

(74) [(73)] Weatherization Project--A project conducted in a single geographical area which undertakes to reduce heating and cooling demand of dwelling units that are energy inefficient.

§5.3. Cost Principles and Administrative Requirements.

Except as expressly modified by the terms of a contract, Subrecipients shall comply with the cost principles and uniform administrative requirements set forth in the Uniform Grant and Contract Management Standards, 34 TAC §§20.421, et seq. (the "Uniform Grant Management Standards") provided, however, that all references therein to "local government" shall be construed to mean Subrecipient. Non-profit Subrecipients of ESGP, ESG, and DOE WAP do not have to comply with UGMS. For federal funds, Subrecipients will follow OMB Circulars as interpreted by the federal funding agency.

Attachment 3: Preamble and Adopted Amended 10 TAC Chapter 5, Subchapter A, General Provisions §§5.4, 5.8, 5.10, 5.13, 5.15 - 5.17, 5.19, and 5.20.

The Texas Department of Housing and Community Affairs (the “Department”) adopts the amendments to 10 TAC Chapter 5, Subchapter A, General Provisions §§5.4, 5.8, 5.10, 5.13, 5.15 - 5.17, 5.19, and 5.20, concerning references to the Emergency Solutions Grants and the Homeless Housing and Services Program without changes to the proposed text as published in the June 29, 2012, issue of the *Texas Register* (37 TexReg 4768) and will not be republished.

REASONED JUSTIFICATION; The Department finds that revisions are necessary for the administration of the new Emergency Shelter Grants Program (ESG) and Homeless Housing and Services Program (HHSP); the closing of the Homelessness Prevention Rapid Re-Housing Program (HHSP); and updates in federal poverty income guidelines and requirements for OMB circulars and income documentation of the Community Affairs programs.

Accordingly, the amended sections provide reference to ESG, HHSP and removes reference to HPRP. Further, the amended provides revisions to poverty income levels for Department of Energy Weatherization Assistance Program (WAP), Low Income Home Energy Assistance Program WAP and the Comprehensive Energy Assistance Program, removes the audit threshold of \$500,000, stating that the requirements to adhere to the threshold requirements of Office of Management and Budget Circular A-133, and revises the declaration of income statement documentation term to income documentation.

Comments were accepted from June 30, 2012 to July 30, 2012, with one comment received from Ms. Stella Rodriguez of the Texas Association of Community Action Agencies (TACAA).

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS

§5.10(a). Procurement Standards

COMMENT SUMMARY. The commenter suggested that the term entity be changed to Subrecipient for consistency purposes.

STAFF RESPONSE. The Department believes that the use of “entity” in §5.10 reflects the various legal configurations that the Community Affairs Division contracts with and does not imply or confer to a specific federal status. No change is recommended.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the authority of Chapter 2306 of the Texas Government Code, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs, including specifically §§2306.2585, 2306.053, 2306.092, 2306.094, and 2306.097 which authorize the Department to adopt rules to govern the administration of the CEAP, ESG, HHSP, and LIHEAP WAP.

The adoption affects no other code, article , or statute.

§5.4. Prohibitions.

(a) Pursuant to the Office of Management and Budget (OMB) Circular A-122, "Cost Principles for Non-Profit Organizations," specifically §25 titled "Lobbying," costs associated with lobbying are unallowable.

(b) Section 678(F)(b)(2) of the Community Services Block Grant (CSBG) Act prohibits the use of program funds for political activity, voter registration activity or voter registration. The Hatch Act, 5 U.S.C. Chapter 15 and the amendments to the Hatch Act and the repeal of §675(e) and §675(C)(6) of the CSBG Act do not affect the prohibition of §678(F)(b)(2).

(c) Knowingly hiring an undocumented worker is prohibited, 8 U.S.C. §1324a.

(d) Discrimination is prohibited.

(1) Civil Rights Act of 1964 (42 U.S.C. §§2000, et seq.), Age Discrimination Act of 1975 (42 U.S.C. §§6101, et seq.), Rehabilitation Act of 1973 (29 U.S.C. §794), and Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. §§12131, et seq.) shall apply to all programs or activities administered by Subrecipients including the nondiscrimination provisions of the CSBG (42 U.S.C. §§9901, et seq.).

(2) All Subrecipients receiving federal funds must be equal opportunity employers and render services without regard to race, color, religion, sex, familial status, national origin, age, disability, political affiliation or belief. Information on equal opportunity and nondiscrimination shall be made available to participants, employees, subcontractors, and interested parties.

§5.8. Inventory Report.

(a) The Department requires the submission of an inventory report on an annual basis to be submitted to the Department, no later than sixty (60) days after the original end date of the contract.

(b) Vehicles, tools, and equipment purchased with funds under a contract with the Department, must be inventoried and reported to the Department during the contract period.

(c) The inventory report is cumulative and is used for vehicles, tools, and equipment with a useful life of one year or more and a unit acquisition cost of greater than \$5,000 for CSBG, CEAP, and WAP and greater than \$500 for ESG, ESGP, and HHSP. Property must be inventoried and reported on the Cumulative Inventory Report form. The form and instructions are found on the Department's website.

§5.10. Procurement Standards.

(a) In addition to the requirements described in §5.3 of this chapter (relating to Cost Principles and Administrative Requirements), entities must follow the requirements in Texas Government Code, Chapter 783.

(b) Additional Department requirements are:

(1) Small purchase procedures:

(A) This procedure may be used only on those services, supplies, or equipment costing in the aggregate of \$25,000 or less. For Emergency Shelter Grant Program (ESGP), Emergency Solutions Grant (ESG), and the Homeless Housing and Services Program (HHSP), the threshold is \$500 and more per unit;

(B) Subrecipient must establish a clear, accurate description of the specifications for the technical requirements of the material, equipment, or services to be procured; and

(C) Subrecipient must obtain a written price or documented rate quotation from an adequate number of qualified sources. An adequate number is, at a minimum, three different sources.

(2) Sealed bids:

(A) Subrecipient must formally advertise, for a minimum of three (3) days, in newspapers or through notices posted in public buildings throughout the service area. Advertising beyond the Subrecipient's service area is allowable and recommended by the Department. The advertisement should include, at a minimum, a response time of fourteen (14) days prior to the closing date of the bid request. A Government Entity must comply with the statutorily imposed publication requirements in addition to those requirements stated herein; and

(B) When advertising for material or labor services, Subrecipient shall indicate a period for which the materials or services are sought (e.g. for a one-year contract with an option to renew for an additional four (4) years). This advertised time period shall determine the length of time which may elapse before re-advertising for material or labor services, except that advertising for labor services must occur at least every five (5) years.

(3) Competitive proposals:

(A) The Request for Proposal (RFP) or Request for Qualification (RFQ) must be publicized. The preferred method of advertising is the local service area newspapers. This advertisement should, at a minimum, allow fourteen (14) days before the RFP or RFQ is due. The due date must be stated in the advertisement; and

(B) The time period for services shall be one year, plus four (4) additional years at a maximum.

(4) Non-competitive proposals:

(A) The service, supply, or equipment is available only from a single source;

(B) A public emergency exists preventing the time required for competitive solicitation; and

(C) After solicitation of a number of sources, competition is determined inadequate.

(5) Required contract provisions shall include the following contract provisions or conditions in procurement contracts or subcontracts:

(A) Contracts in excess of \$25,000 shall include contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances where subcontractors violate or breach the contract terms, and provide for such remedial actions as may be appropriate;

(B) All contracts in excess of \$25,000 shall include suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the Subrecipient;

(C) Contracts shall include a provision with regard to independent subcontractor status to hold harmless and indemnify the Subrecipient from and against any and all claims, demands and course of action asserted by any third party arising out of or in connection with the services to be performed under contract;

(D) Contracts shall include a provision regarding conflict of interest. Subrecipient's employees, officers, and/or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from subcontractors, or potential subcontractors; and

(E) Contracts shall include a provision to prevent fraud and abuse.

(i) Subrecipient shall establish, maintain, and utilize internal control systems and procedures sufficient to prevent, detect, and correct incidents of waste, fraud, and abuse in all Department funded programs and to provide for the proper and effective management of all program and fiscal activities funded by this contract. Subrecipient's internal control systems and all transactions and other significant events must be clearly documented and the documentation made readily available for review by Department.

(ii) Subrecipient shall give Department complete access to all of its records, employees, and agents for the purpose of monitoring or investigating the program. Subrecipient shall fully cooperate with Department's efforts to detect, investigate, and prevent waste, fraud, and abuse. Subrecipient shall immediately notify the Department of any identified instances of waste, fraud, or abuse.

(iii) Department will notify the funding source upon identification of possible instances of waste, fraud, and abuse or other serious deficiencies.

(iv) Subrecipient may not discriminate against any employee or other person who reports a violation of the terms of this contract or of any law or regulation to Department or to any appropriate law enforcement authority, if the report is made in good faith.

(F) Contracts shall include a provision to the effect that any alterations, additions, or deletions to the terms of the contract which are required by changes in federal law and regulations or state

statute are automatically incorporated into the contract without written and administrative code amendment hereto, and shall become effective on the date designated by such law and or regulation; and any alterations, additions, or deletions to the terms of the contract shall be amended hereto in writing and executed by both parties to the contract.

(G) Contracts shall include the following provision assuring legal authority to sign the contract.

(i) Subcontractor represents that it possesses the practical ability and the legal authority to enter into the contract, receive and manage the funds authorized by the contract, and to perform the services subcontractor has obligated itself to perform under the contract.

(ii) The person signing the contract on behalf of the subcontractor warrants that he/she has been authorized by the subcontractor to execute the contract on behalf of the subcontractor and to bind the subcontractor to all terms set forth in the contract.

(iii) Department shall have the right to suspend or terminate the contract if there is a dispute as the legal authority of either the subcontractor or the person signing the contract to enter into the contract or to render performances thereunder. Should such suspension or termination occur, the subcontractor is liable to the Subrecipient for any money it has received for performance of provisions of the contract.

§5.13. Bonding Requirements.

(a) The following requirements relate only to construction or facility improvements.

(1) For contracts exceeding \$100,000 the Department may accept the bonding policy and requirements of the Subrecipient, provided the Department has made a written finding that the Department is adequately protected.

(2) For contracts in excess of \$100,000, and for which the Subrecipient cannot make a determination that the Department's interest is adequately protected, a "bid guarantee" from each bidder equivalent to 5% of the bid price shall be requested. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified. A bid bond in the form of all of the following may represent a "bid guarantee."

(A) A performance bond on the part of the Subrecipient for 100% of the contract price. A "performance bond" is one executed in connection with a contract, to secure fulfillment of all subcontractors' obligations under such contract.

(B) A payment bond on the part of the subcontractor for 100% of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(C) Where bonds are required, in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR Part 223, "Surety Companies Doing Business with the United States."

(b) A Government Entity must comply with the bond requirements of Texas Civil Statutes, Articles 2252, 2253, and 5160, and Local Government Code §252.044 and §262.032, as applicable.

§5.15.Federal Funding Accountability and Transparency Act (FFATA).

All entities receiving federal funds of \$25,000 or more must be registered in the federal Central Contractor Registration (CCR) and have a current Data Universal Numbering System (DUNS) number.

§5.16.Monitoring of Subrecipients.

(a) The Department's Compliance Division is responsible for ensuring that the program activities are completed and that the funds are expended in accordance with the contract provisions and applicable State and Federal rules, regulations, policies, and related statutes. In order to ensure such, the Department will conduct monitoring reviews of the Subrecipients to evaluate the effectiveness of the Subrecipient's performance and program compliance through on-site and desk monitoring as described in §5.15 of this chapter (relating to Federal Funding Accountability and Transparency Act (FFATA)) following the requirements of §678B of PL 105-285 Subtitle B, §2605(B)(10) of PL 97-35, as amended, 10 CFR §440.23(d), and 24 CFR §576.61 and §576.57(f) and (g), respectively.

(1) The Department employs a Subrecipient monitoring procedure that is based upon an assessment of associated risks. The factors may include but are not limited to the status of the most recent monitoring report, timeliness of grant reporting, results of the last on-site monitoring review, number and funding amount of Department funded contracts, final expenditure rate, and single audit status or other factors. Ranking of Subrecipients will determine whether an on-site review or a desk review is completed unless Department management determines an on-site review is needed.

(2) The Department may conduct unannounced on-site monitoring reviews of a Subrecipient identified as at risk for contract termination, if deficiencies identified from prior monitoring activities persist or remain unresolved for an unreasonable period of time. In the event of reports of fraud and abuse or other extenuating circumstances the Department may make an unannounced on-site monitoring review.

(3) Follow-up reviews may be performed to ensure implementation of corrective action of Subrecipients that failed to meet the goals, standards, and requirements established by the Department.

(4) Technical assistance and training will be provided to the Subrecipient to address program deficiencies.

(5) A monitoring instrument is used to perform monitoring reviews. Support documentation is retained by the Department to verify: the achievement of performance goals; conduct of eligible activities; and compliance with other contractual regulatory provisions and financial accountability. Monitoring reviews of Subrecipients also include reviewing annual financial reports and any related management letters and financial documents.

(6) Following the onsite monitoring review, a monitoring report is prepared and submitted to the Subrecipient outlining any administrative, program, and financial deficiencies. The monitoring report also includes notes, recommended improvements, corrective actions or a corrective action plan. Subrecipients must respond to the monitoring report within forty-five (45) calendar days from the date of the monitoring report except for WAP Subrecipients whom must respond within thirty (30) calendar days.

(A) Finding--The written description of a deficient condition which is significantly substandard according to the monitoring standards. Findings may also be deficiencies found with regard to compliance with program rules, required cost principles, federal, state and/or local laws, and generally accepted accounting procedures or Generally Accepted Accounting Principles. In general, findings require corrective action to create an acceptable level of risk for disbursement of funds. The description of a finding might include the cause and effect of the deficient condition.

(B) Recommended Improvement--Suggested best practice(s) to enhance program, operational, financial, or administrative practices.

(C) Note--An explanatory tool to further describe and clarify findings or recommended improvements. A note may also be used to include additional information related to the monitoring review but not related to a finding or recommended improvement.

(7) Subrecipients are required to have at a minimum the following documents available, and any other requested documents, for the monitoring review:

(A) Roster of staff (name, title, salary and status);

(B) Current agency organization chart;

(C) List of Board of Directors to include: names, addresses and telephone numbers, tenure on the board, section represented by the board member, list of committees--CSBG, ESGP, ESG, and HHSP;

(D) Board election/selection materials--CSBG;

(E) Board minutes (previous six meetings) and attendance roster--CSBG, ESGP, ESG, and HHSP;

(F) List of neighborhood centers with names of staff--CSBG and CEAP;

- (G) Personnel policies;
- (H) Bylaws--CSBG, ESGP, ESG, and HHSP;
- (I) Travel policies and records;
- (J) Chart of accounts;
- (K) Accounting records (journals/ledgers) and support documentation;
- (L) Amount of Cash on Hand (at time of monitoring);
- (M) Bank reconciliation records;
- (N) Agency's proof of fidelity bond coverage;
- (O) Documentation of match requirements--ESGP, ESG, and when applicable for HHSP;
- (P) Closeout data for prior program year--CEAP and WAP;
- (Q) Access to client files and documentation of performance;
- (R) Income documentation;
- (S) Appeals Procedures--CEAP, ESG, ESGP, and WAP;
- (T) Subcontract agreements with appropriate procurement packages (if applicable);
- (U) Procurement policy;
- (V) Documentation of current contract inventory;
- (W) Documentation of coordination with other local programs (including contact person and phone numbers)--CSBG;
- (X) Copies of most recent monitoring reports and/or performance reviews of all programs administered by the organization;
- (Y) Copy of the most recent Single Audit Report--Organizations that expend more than the expenditure threshold under OMB Circular A-133 must have a single audit conducted for that year (A-133 Subpart B.200). Organizations that do not exceed the expenditure threshold under OMB Circular A-133 are exempt from the single audit requirements. If an organization is not required to have a single audit performed, the organization must provide the end-of-the-year financial statements (balance sheet, income statement, and statement of cash flow); and

(Z) If applicable, documentation of the most recent Head Start Onsite Monitoring Document review, including results, responses, and current status--CSBG.

(b) Subrecipients not exempt from the single audit requirements are responsible for submitting their Single Audit Report within thirty (30) days of completion of their audit and no later than nine (9) months after the end of the audit period (fiscal year end) to the Department's Compliance Division as well as to the Community Affairs (CA) Division. Refer to 31 U.S.C. §7502.

(c) Monitoring reviews of Subrecipients will include a review of the Subrecipient's annual financial reports and any related management letters and financial documents.

§5.17.Sanctions and Contract Close Out.

(a) Subrecipients that have entered into contract with the Department to administer programs are required to follow state and federal laws and regulations and rules governing these programs.

(b) If a Subrecipient fails to comply with program requirements, rules, or regulations and in the event monitoring or other reliable sources reveal material deficiencies in performance, or if the Subrecipient fails to correct any deficiency within the time allowed by federal or state law, the Department will apply one or more of the following sanctions:

(1) Deny the Subrecipient's requests for advances and place it on a cost reimbursement method of payment until proof of compliance with the rules and regulations are received by the Department;

(2) Withhold all payments from the Subrecipient (both reimbursements and advances) until proof of compliance with the rules and regulations are received by the Department, reduce the allocation of funds (with the exception of Community Services Block Grant (CSBG) funds to eligible entities as described in §5.206 of this chapter (relating to Termination and Reduction of Funding) and as limited for LIHEAP funds as outlined in Texas Government Code, Chapter 2105) or impose sanctions as deemed appropriate by the Department's Executive Director, at any time, if the Department identifies possible instances of fraud, abuse, fiscal mismanagement, or other serious deficiencies in the Subrecipient's performance;

(3) Suspend performance of the contract or reduce funds until proof of compliance with the rules and regulations are received by the Department or a decision is made by the Department to initiate proceedings for contract termination;

(4) Elect not to provide future grant funds to the Subrecipient until appropriate actions are taken to ensure compliance; or

(5) Terminate the contract. Adhering to the requirements governing each specific program administered by the Department, as needed, the Department may determine to proceed with the termination of a contract, in whole or in part, at any time the Department establishes there is good cause for termination. Such cause may include, but is not limited to, fraud, abuse, fiscal

mismanagement, or other serious deficiencies in the Subrecipient's performance. For CSBG contract termination procedures, please refer to §5.206 of this chapter.

(c) Contract Close-out. When the Department moves to terminate a contract, the following procedures will be implemented.

(1) The Department will issue a termination letter to the Subrecipient no less than thirty (30) days prior to terminating the contract. The Department may determine to take one of the following actions: suspend funds immediately; establish a cost reimbursement plan for closeout proceedings; or provide instructions to the Subrecipient to prepare a proposed budget and written plan of action that supports the closeout of the contract. The plan must identify the name and current job titles of staff that will perform the close-out and an estimated dollar amount to be incurred. The Department will respond within ten (10) working days from receipt of the plan.

(2) If the Department determines that cost reimbursement is an appropriate method of providing funds to accomplish closeout, the Subrecipient will submit backup documentation for all current expenditures associated with the closeout. The required documentation will include, but not be limited to, the chart of accounts, detailed general ledger, revenue and expenditure statements, time sheets, payment vouchers and/or receipts, and bank reconciliations.

(3) No later than thirty (30) days after the contract is terminated, the Subrecipient will take a physical inventory of client files, including case management files, and will submit to the Department an inventory of equipment with a unit acquisition cost of \$5,000 or greater for Comprehensive Energy Assistance Program (CEAP), Weatherization Assistance Program (WAP) and Community Services Block Grant (CSBG) or a unit acquisition cost of \$500 or greater for ESGP, ESG, and HHSP.

(4) The terminated Subrecipient will have thirty (30) days from the date of the physical inventory to copy all current client files. Client files must be boxed by county of origin. Current and active case management files also must be copied, inventoried, and boxed by county of origin.

(5) Within thirty (30) days following the Subrecipient's due date for copying and boxing client files, Department staff will retrieve copied client files.

(6) The terminated Subrecipient will prepare and submit no later than sixty (60) days from the date the contract is terminated, a final report containing a full accounting of all funds expended under the contract.

(7) A final monthly expenditure report and a final monthly performance report for all remaining expenditures incurred during the close-out period must be received by the Department no later than sixty (60) days from the date the Department determines that the closeout of the program and the period of transition are complete.

(8) The Subrecipient will submit to the Department no later than sixty (60) days after the termination of the contract, an inventory of the non-expendable personal property acquired in whole or in part with funds received under the contract.

(9) The Department may transfer title to equipment having a unit acquisition cost (the net invoice unit price of an item of equipment) of:

(A) \$5,000 or greater for CEAP, CSBG, and WAP; or

(B) \$500 or greater for ESG, ESGP, and HHSP, to the Department or to any other entity receiving funds under the program in question. The Department will make arrangements to remove equipment covered by this paragraph within ninety (90) days following termination of the contract.

(10) Upon selection of a new service provider, the Department will transfer to the new provider client files and, as appropriate, equipment.

(11) As required by OMB Circular A-133, a current year single audit must be performed for all agencies that have exceeded the federal expenditure threshold under OMB Circular A-133. The Department will allow a proportionate share of program funds to pay for accrued audit costs, when an audit is required, for a single audit that covers the date up to the closeout of the contract. The terminated Subrecipient must have a binding contract with a CPA firm on or before the termination date of the contract. The actual costs of the single audit and accrued audit costs including support documentation must be submitted to the Department no later than sixty (60) days from the date the Department determines the close-out is complete.

(12) Subrecipients shall submit within sixty (60) days after the date of the close-out process all financial, performance, and other applicable reports to the Department. The Department may approve extensions when requested by the Subrecipient. However, unless the Department authorizes an extension, the Subrecipient must abide by the sixty (60) day contractual requirement of submitting all referenced reports and documentation to the Department.

§5.19. Client Income Guidelines.

(a) The Department has defined eligibility for program assistance under the poverty income guidelines provided annually by the Secretary of the U.S. Department of Health and Human Services (USDHHS). For ESG and HHSP, Subrecipients will adhere to 24 CFR §5.609, subject to the revisions of The Housing and Economic Recovery Act of 2008 (HERA), P.L. 110-289.

(b) For USDHHS funded programs, Subrecipients will use the following list of included and excluded income to determine eligibility for all programs.

(1) Included Income:

(A) Temporary Assistance for Needy Families (TANF);

(B) Money, wages and salaries before any deductions;

(C) Net receipts from non-farm or farm self-employment (receipts from a person's own business or from an owned or rented farm after deductions for business or farm expenses);

- (D) Regular payments from social security;
 - (E) Railroad retirement;
 - (F) Unemployment compensation;
 - (G) Strike benefits from union funds;
 - (H) Worker's compensation;
 - (I) Training stipends;
 - (J) Alimony;
 - (K) Military family allotments;
 - (L) Private pensions;
 - (M) Government employee pensions (including military retirement pay);
 - (N) Regular insurance or annuity payments; and
 - (O) Dividends, interest, net rental income, net royalties, periodic receipts from estates or trusts; and net gambling or lottery winnings.
- (2) Excluded Income:
- (A) Social Security Disability Insurance (SSDI) payments;
 - (B) Supplemental Security Income (SSI) payments;
 - (C) Capital gains; any assets drawn down as withdrawals from a bank;
 - (D) The sale of property, a house, or a car;
 - (E) One-time payments from a welfare agency to a family or person who is in temporary financial difficulty;
 - (F) Tax refunds, gifts, loans, and lump-sum inheritances;
 - (G) One-time insurance payments, or compensation for injury;
 - (H) Non-cash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits;
 - (I) Food or housing received in lieu of wages;

- (J) The value of food and fuel produced and consumed on farms;
- (K) The imputed value of rent from owner-occupied non-farm or farm housing;
- (L) Federal non-cash benefit programs as Medicare, Medicaid, Food Stamps, and school lunches;
- (M) Housing assistance and combat zone pay to the military;
- (N) Veterans (VA) Disability Payments;
- (O) College scholarships, Pell and other grant sources, assistantships, fellowships and work study, VA Education Benefits (GI Bill); and
- (P) Child support payments.

§5.20. Determining Income Eligibility.

(a) To determine income eligibility for USDHHS funded programs, Subrecipients must base annualized eligibility determinations on household income from thirty (30) days prior to the date of application for assistance. Each Subrecipient must maintain documentation of income from all sources for all household members for the entire thirty (30) day period prior to the date of application and multiply the monthly amount by twelve (12) to annualize income. Income documentation must be collected from all income sources for all household members eighteen (18) years and older for the entire thirty (30) day period.

(b) If proof of income is unavailable, the applicant must complete and sign a Department approved declaration of income statement or complete income documentation attestations required by the federal funding source.

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BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
SEPTEMBER 6, 2012

Presentation, Discussion, and Possible Action regarding a final order adopting new 10 TAC Chapter 5, Subchapter K, §§5.2001 – 5.2012, concerning the Emergency Solutions Grants (ESG), for publication in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the proposed Emergency Solutions Grants (ESG) rules were approved for publication in the *Texas Register* for public comment at the June 14, 2012, Board meeting and the public comment period has ended; therefore, it is hereby

RESOLVED, that the final order adopting new 10 TAC Chapter 5, Subchapter K, §§5.2001 – 5.2012, regarding the ESG is hereby adopted, together with the preamble presented to this meeting, for publication in the *Texas Register*.

FURTHER RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause 10 TAC Chapter 5, Subchapter K, regulations related to the ESG, in the form presented to this meeting, to be published in the *Texas Register* for final adoption, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of subchapter specific preambles.

BACKGROUND

The U. S. Department of Housing and Urban Development (HUD) will be providing the Department with Emergency Solutions Grants funds. The Department drafted proposed rules to set forth policies and procedures governing the administration of ESG funds within the State of Texas. The draft rules were presented at the June 14, 2012, Board meeting and published in the June 29, 2012, edition of the *Texas Register*. Public comment period was open from June 30, 2012, to July 30, 2012, and no public comments were received.

Attachment 1: Preamble and Adopted New 10 TAC Chapter 5, Subchapter K.

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 5, Subchapter K, §§5.2001 – 5.2012, concerning the Emergency Solutions Grants (ESG), without changes to the proposed text as published in the June 29, 2012, issue of the *Texas Register* (37 TexReg 4774) and will not be republished.

REASONED JUSTIFICATION. The Department finds that funds will be provided to the Department by the U. S. Department of Housing and Urban Development (HUD) to administer the Emergency Solutions Grants (ESG) program. Accordingly, the new sections set forth policies and procedures governing the administration of ESG funds within the state of Texas.

The Department accepted public comments between June 30, 2012 and July 30, 2012. Comments regarding the new sections were accepted in writing and by fax. No comments were received concerning the new sections.

The Board approved the final order adopting the new sections on September 6, 2012.

STATUTORY AUTHORITY: The new sections are adopted pursuant to the authority of Texas Government Code §2306.053 which authorizes the Department to adopt rules and pursuant to §2306.094 which authorizes the Department to administer the state's allocation of federal funds provided under the Emergency Shelter Grants Program (42 U.S.C. §§11371 et seq.), as amended, or its successor program, and any other federal funds provided for the benefit of homeless individuals and families.

The adoption affects no other code, article, or statute.

§5.2001. Background.

(a) Emergency Solutions Grants (ESG) funds are federal funds awarded to the State of Texas by the U.S. Department of Housing and Urban Development (HUD) and administered by the Texas Department of Housing and Community Affairs (the "Department").

(b) The regulations in this subchapter govern the administration of ESG funds and establish policies and procedures for use of ESG funds to meet the purposes contained in Title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. §§11371 - 11378) (the "Act"), as amended by the Homeless Emergency Assistance and Rapid Transition to Housing Act (HEARTH Act).

(c) ESG program participants shall comply with the regulations applicable to the ESG program as indicated in this subchapter and as set forth in 24 CFR Part 576 and 24 CFR Part 91 (the "Federal Regulations"). ESG program participants must also follow all other applicable federal and state statutes and the regulations established in this chapter, as amended or suspended.

(d) In the event that Congress, the Texas Legislature, or HUD add or change any statutory or regulatory requirements concerning the use or administration of these funds, ESG program participants shall comply with such requirements.

§5.2002. Purpose and Use of Funds.

(a) The purpose of Emergency Solutions Grants (ESG) is to assist people to quickly regain stability in permanent housing after experiencing a housing crisis and/or homelessness.

(b) ESG eligible activities are:

- (1) the rehabilitation or conversion of buildings for use as emergency shelter for the homeless;
- (2) the payment of certain expenses related to operating emergency shelters;
- (3) essential services related to emergency shelters and street outreach for the homeless;
- (4) homelessness prevention and rapid re-housing assistance;
- (5) Homeless Management Information Systems (HMIS) activities; and
- (6) administrative costs.

(c) The Department's Governing Board, Executive Director or his/her designee may limit activities in a given funding cycle or by contract.

§5.2003. Availability of ESG Funds.

The Department will post on its website the distribution plan for Emergency Solution Grants (ESG) funds.

§5.2004. Eligible Applicants.

(a) Eligible applicants are units of general purpose local government and those private nonprofit organizations that are secular or religious organizations as described in §501(c) of the Internal Revenue Code of 1986, are exempt from taxation under Subtitle A of the Code, have an accounting system and a voluntary board, and practice non-discrimination in the provision of assistance.

(b) The Department reserves the option to limit eligible applicant entities in a given funding cycle.

§5.2005. Eligible Program Participants.

Emergency Solutions Grants (ESG) funds must be used to assist homeless persons or persons at-risk of homelessness as defined in 24 CFR Parts 91 and 576, excluding §576.2(1)(iii)(G).

§5.2006. Contract Execution.

(a) The Department will obligate funds within sixty (60) days of receiving the signed grant agreement from the U.S. Department of Housing and Urban Development (HUD).

(b) Upon approval by the Department's Board of Directors or its designee, applicants receiving Emergency Solutions Grants (ESG) funds shall enter into and execute an agreement for the receipt of ESG funds.

(c) The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver modifications and/or amendments to the ESG contract.

(d) The Department reserves the right to deobligate funds.

(e) The Department reserves the right to negotiate the final grant amounts and local match with successful applicants.

§5.2007. Reporting.

(a) Subrecipients must submit via an electronic web-based system a monthly expenditure and performance report on or before the fifteenth (15th) day of each month following the reported month of the contract period.

(b) Even if a fund reimbursement is not being requested, an expenditure report must be submitted electronically no later than the fifteenth (15th) day of each month of the grant period. A final expenditure report must be submitted within thirty (30) days after the Emergency Solutions Grants (ESG) contract ends.

§5.2008. Program Income.

(a) Program income is gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. Program income received and expended during the contract period will count toward meeting the Subrecipients' matching requirements, provided the costs are eligible Emergency Solutions Grants (ESG) costs that supplement the ESG program.

(b) In addition, utility and security deposit refunds from vendors should be treated as program income.

(c) In accounting for program income, the Subrecipient must accurately reflect the receipt of such funds separate from the receipt of federal funds and Subrecipient funds.

(d) Program income received by the Subrecipient during the two (2) years following the end of the contract period must be returned to the Department. Program income must be returned within ten (10) working days of receipt by the Subrecipient.

(e) Program income received by the Subrecipient after the two (2) year period described in subsection (d) of this section has expired, can be retained by the Subrecipient.

§5.2009. Recordkeeping.

(a) The Subrecipient must follow all the recordkeeping requirements in 24 CFR §576.500(y) for a period of at least five (5) years from the date of the closeout of the program with the exception of records related to renovation or conversion of an emergency shelter which must be retained for ten (10) years.

(b) The Department, or any of the Department's duly authorized representatives, shall have access to all books, accounts, records, reports, files, audits, and other papers or property of

Subrecipients and contractors pertaining to funds provided under this subchapter for the purpose of making surveys, audits, examinations, excerpts and transcripts.

(c) All records shall be sufficient to determine compliance with the requirements and primary objectives of the Emergency Solutions Grants (ESG) program and all other applicable laws and regulations. All records shall be supported by source documentation.

§5.2010. Property and Equipment Management Standards.

(a) Subrecipients that rehabilitate or convert buildings for use as a shelter will be required to enter into a land use restriction agreement or other restrictive covenant that insures a long-term use restriction of the building.

(b) Subrecipients should use proceeds from the disposition of equipment acquired with Emergency Solutions Grants (ESG) funds in a manner which provides benefit to the homeless in their community and complies with HUD requirements.

§5.2011. Compliance and Monitoring.

(a) Subrecipients shall have the responsibility for ensuring that Emergency Solutions Grants (ESG) funds are expended as stated in the grant agreement and in conformance with all applicable federal and state laws, regulations, and guidelines. The Department may prescribe procedures for ensuring compliance with the provision of this section.

(b) The Department may evaluate activities conducted under this subchapter and their effectiveness in meeting the ESG program goals. This may be considered in future Departmental funding decisions.

§5.2012. Redistribution/Reallocation of Additional Grant Funds and Unexpended Funds.

The Department will determine the most equitable and beneficial use of any additional grant year appropriation, unexpended or deobligated program funds. In determining the distribution of funds, the Department will consider program performance and expenditure rates of eligible applicants or Subrecipients.

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BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
SEPTEMBER 6, 2012

Presentation, Discussion, and Possible Action regarding a final order adopting new 10 TAC Chapter 5, Subchapter J, §5.1006, and the withdrawal of §5.1007, concerning the Homeless Housing and Services Program (HHSP), for publication in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the proposed Homeless Housing and Services Program (HHSP) rules were approved for publication in the *Texas Register* for public comment at the July 10, 2012, Board meeting and the public comment period has ended; therefore, it is hereby

RESOLVED, that the final order adopting new 10 TAC Chapter 5, Subchapter J, §5.1006, and the withdrawal of §5.1007, regarding the HHSP is hereby adopted, together with the preamble presented to this meeting, for publication in the *Texas Register*; and

FURTHER RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause 10 TAC Chapter 5, Subchapter J, §5.1006, and the withdrawal of §5.1007, related to the HHSP, in the form presented to this meeting, to be published in the *Texas Register* for final adoption, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of subchapter specific preambles.

BACKGROUND

The Texas Legislature established the HHSP program during the 81st Legislative Session to provide funding to provide local programs to prevent and eliminate homelessness in municipalities with a population of 285,500 or more. In response to comments received during a previous comment period, draft rules were presented at the July 10, 2012, Board meeting and published in the July 27, 2012, edition of the *Texas Register* for comment on §5.1006, Performance and Expenditure Benchmarks and §5.1007, Funding Redistribution. Section 5.1006 requires the establishment of performance and expenditure benchmarks in the contract to ensure timely expenditure of funds and to ensure that acceptable performance targets are met. Section 5.1007 explained how recaptured funds will be distributed. The proposed sections were published in the *Texas Register* on July 27, 2012, and the public comment period was open from July 28, 2012, to August 24, 2012. No public comments were received. Section 5.1007 will be withdrawn to provide uniformity and a more generalized use of Department funds as described in 10 TAC Chapter 1, §1.19 concerning Reobligation of Deobligated Funds and Other Related Sources of Funds.

Attachment 1: Preamble and Adopted New 10 TAC Chapter 5, Subchapter J.

The Texas Department of Housing and Community Affairs (the “Department”) adopts the new 10 TAC Chapter 5, Subchapter J, §5.1006, concerning the Homeless Housing and Services Program (HHSP) without change to the proposed text as published in the July 27, 2012, issue of the *Texas Register* (37 TexReg 5532) and will not be republished. Section 5.1007 concerning Funding Redistribution, is withdrawn due to the proposal of a new section in another rulemaking simplifying the policy used by the Department for the use of deobligated funds.

REASONED JUSTIFICATION. The Department finds that the establishment of performance and expenditure benchmarks for HHSP contracts will ensure timely expenditure of funds, acceptable performance targets and a process for deobligation and recapture of funds. The adopted new section will set forth policies and procedures for Performance and Expenditure Benchmarks governing the administration of HHSP funds within the State of Texas. Section 5.1007 is withdrawn to provide uniformity and a more generalized use of Department funds as described in proposed 10 TAC Chapter 1, §1.19, concerning Reobligation of Deobligated Funds and Other Related Sources of Funds.

The Department accepted public comments between July 28, 2012, and August 24, 2012. Comments regarding the new section were accepted in writing and by fax. No comments were received concerning the new section.

The Board approved the final order adopting the new section on September 6, 2012.

STATUTORY AUTHORITY. The new section is adopted pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs, including specifically Texas Government Code §2306.2585, which authorizes the Department to adopt rules to govern the administration of the Homeless Housing and Services Program. To the extent that funding sources other than unrestricted funds are utilized, such as housing trust fund balances, any HHSP activities conducted with such funds may be subject to additional restrictions.

The adoption affects no other code, article, or statute.

§5.1006. Performance and Expenditure Benchmarks.

The Department will incorporate performance and expenditure benchmarks into each contract.

(1) All performance benchmarks will be based on Homeless Management Information Systems performance measures or other performance measures approved by the Department in writing before the start of the contract period. All performance benchmarks that are not based on Homeless Management Information System performance measures may not become effective unless the municipality in which they are to be employed has made available for fifteen (15) days an opportunity for citizen participation in accordance with its public comment process.

(2) Expenditure benchmarks will be:

(A) 10 percent of the contract amount must be expended by the end of the first quarter;

(B) 40 percent expended by the end of the second quarter;

(C) 75 percent expended by the end of the third quarter;

(D) 100 percent expended by the end of the contract period; and

(E) a municipality or entity administering a contract may ask for a different expenditure deadline before the start of the contract period and the Department staff will evaluate these requests. The Department may approve, reject, or approve with modifications in its sole discretion based on its assessment of the proposed activities, the legitimate need for alternative benchmarks, the risks of timely and compliant expenditure presented, and other relevant factors presented.

(3) Each such municipality or entity will have to submit a quarterly benchmark report to the Department no later than thirty (30) days after the end of each contract quarter and the Department will provide a letter within thirty (30) days if the municipality or entity is out of compliance with benchmarks giving notice of such noncompliance and setting forth any reasonable opportunity for corrective or curative action, the consequences of failure to correct or cure, and any opportunity for appeal of such consequences. If a municipality or entity is out of compliance with performance or expenditure benchmarks, the Department staff may deobligate all or a portion of any remaining funds under the contract.

(4) Each municipality or entity will be monitored annually by the Department either through a desk review or in-person monitoring review to determine contract compliance.

(5) In the monitoring process if non-compliant expenditures have been made and cannot be corrected or cured, the Department may recapture such funds. Recapture amounts are immediately due and payable to the Department in full.

~~§5.1007. Funding Redistribution.~~

~~If HHSP funds are remaining at the close of the contract period, are voluntarily or involuntarily deobligated by a municipality or entity, or are recaptured through a monitoring review, and statutory deadlines remain in which to spend the funds, the Department will reallocate funds in accordance with §5.1004 of this chapter (relating to Formula), except that any municipality or entity that has not met or did not meet its expenditure benchmarks for the contract period in which funds are being redistributed from or which is in material noncompliance will be ineligible for this funding redistribution.~~

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BOARD ACTION REQUEST
PROGRAM POLICY, PLANNING & METRICS
September 6, 2012

Presentation, Discussion, and Possible Action regarding a proposed repeal of 10 TAC Chapter 1, §1.19 concerning Deobligated Funds, and proposed 10 TAC Chapter 1, §1.19 concerning Reobligation of Deobligated Funds and Other Related Sources of Funds, for public comment and publication in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the Governing Board of the Texas Department of Housing and Community Affairs (the "Department") periodically reviews and updates its policies and rules; and

WHEREAS, the rule describing the uses of deobligated funds identified in 10 TAC Chapter 1, §1.19 requires simplification and clarity, It is hereby

RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to approve the proposed repeal of 10 TAC Chapter 1, §1.19 and the proposed new 10 TAC Chapter 1, §1.19 to be published in the *Texas Register* for review and public comment, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

The purpose of the repeal and proposed new Deobligation Rule is to ensure that the Deobligation Rule is as simplified as possible; to allow for prompt reprogramming of funds into activities already authorized by the Board for that program; and to not unduly limit or restrict the Board in using funds in ways that are permissible and address critical needs identified by the Board. An overview of the changes being proposed in comparison to the current rule (which is being proposed for repeal) includes:

- Definitions are removed, as all funds referenced in this rule are correlated to programs already governed by other rules with definitions.
- The rule is clarified to reflect that funds to be reobligated under this rule include loan repayments and program income as well as deobligations.
- The rule no longer identifies a list of what events may trigger a deobligation or the process of notification of deobligation, as these are both program specific and are already specified in program rules and contracts.

- The rule reorders the priority list of how deobligated funds can be spent from a narrow list of possible uses that may or may not be consistent with funds deobligated, to a more generalized use of funds for purposes approved previously by the Board for that year, disasters and other items.
- The rule clarifies flexibility for the programming of funds for the disaster set aside.

Attachment 1: Preamble and proposed repeal of 10 TAC, Chapter 1, §1.19.

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC Chapter 1, §1.19 concerning Deobligated Funds. The purpose of the proposed repeal is to establish a simplified process for the use of deobligated or other available funds the program governs. The proposed new 10 TAC Chapter 1, §1.19, is published concurrently with this proposed repeal in this issue of the *Texas Register*.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal will be in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal will be in effect, the public benefit anticipated as a result of the repeal, is to increase program flexibility in expending funds and assisting households and communities. There will be no economic cost to any individuals required to comply with the repealed rule.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012 to receive input on the proposed repealed section. Written comments may be submitted to Texas Department of Housing and Community Affairs, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to Brooke Boston at the following address: brooke.boston@tdhca.state.tx.us, or by fax to (512) 475-1162. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 22, 2012.**

STATUTORY AUTHORITY. The repealed section is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed repealed rule affects no other code, article, or statute.

§1.19. Deobligated Funds.

Attachment 2: Preamble and proposed new 10 TAC Chapter 1, §1.19.

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 1, §1.19 concerning Reobligation of Deobligated Funds and Other Related Sources of Funds. The purpose of the proposed new section is to establish a new rule to set forth a clear and simplified policy for the use of deobligated or other available funds the program governs. The proposed repeal of 10 TAC Chapter 1, §1.19, is published concurrently with this proposed new section in this issue of the *Texas Register*.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section will be in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section will be in effect, the public benefit anticipated as a result of the new rule is to increase program flexibility in expending funds and assisting households and communities. There will be no economic cost to any individuals required to comply with the proposed new section.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012 to receive input on the new sections. Written comments may be submitted to Texas Department of Housing and Community Affairs, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to Brooke Boston at the following address: brooke.boston@tdhca.state.tx.us, or by fax to (512) 475-1162. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 22, 2012.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules. The proposed new rule affects no other code, article, or statute.

§1.19. Reobligation of Deobligated Funds and Other Related Sources of Funds.

(a) Purpose. The Department strives to use public funds in a timely compliant manner. From time-to-time, it becomes necessary to make changes to previously awarded contracts for funds, or programmed activities in order to expedite the delivery of funds, meet state or federal guidelines or statutes, or meet unexpected needs like disaster relief or leveraging of additional funds. The funds made available from these actions are generally considered deobligated funds, however each Department program’s rules and/or contracts may provide for greater specificity regarding what events may authorize or permit a deobligation of funds. This rule identifies how the Department will reprogram and reobligate deobligated or otherwise unexpended funds or program income. The funds covered by this section are previously awarded funds under a program administered by the Department, funds that become available to the Department through program income or loan repayments (except those loan repayments required to be

included as appropriations under the General Appropriations Act, Rider 9), and funds received by other means not part of a new funding allocation.

(b) Deobligated Funds and Program Income.

(1) Deobligated funds are those funds voluntarily or involuntarily released from the cancellation of a contract or award by the Department involving some or all of a contractual financial obligation. The Department has specified those events which may authorize or permit a release or cancellation of its contractual commitment of funds to any administrator or contractor resulting in deobligated funds pursuant to the federal guidance, program rules and contractual documents executed between the Department and an administrator or contractor. Deobligated funds also include those funds awarded under board authority or delegated authority but declined by an administrator or contractor, and those funds which an administrator or contractor fails to fully expend and voluntarily releases. The Board may determine and authorize other circumstances which warrant deobligation.

(2) Deobligated funds do not include funds reserved in a reservation system under a notice of funding and subsequently cancelled and returned to the reservation system under that notice of funding.

(3) Program Income is the return of funds to the department by the administrator or contractor after the funds were used for their intended purpose or any other funds generated from the use of program funds or as otherwise defined in specific program rules.

(c) Reporting. The Board will be provided with periodic reports on deobligation and program income activity and balances for programs that are impacted by this section.

(d) Timely Reobligation of Funds. The Department will reprogram and/or reallocate funds under this section in a timely fashion and will as a goal strive to ensure that the unprogrammed balance for any program which has Deobligated funds does not exceed 15 percent of the most current annual allocation for more than three (3) consecutive months will initiate efforts to reprogram or reobligate funds.

(e) Reobligation of Funds. This rule directs staff on the use of funds that are either characterized as deobligated funds under this rule or program income funds. To the extent that federal requirements further limit the eligible use of Deobligated funds or program income, those limitations must also be satisfied.

(1) Reserve for Disasters. The Department shall not recommend to reprogram or reassign Deobligated Funds from the HOME Program for purposes other than disaster relief unless the remaining Deobligated Fund balance for that program after reprogramming of funds is an amount equivalent to or greater than 5 percent of the most current annual allocation of such funds, as established once per year.

(2) Authority for Reobligation. It is the rule of the Department that funds available for reobligation can be used, without further Board approval, contingent upon subsequent report to the Board, in these instances:

(A) for disaster relief as purposed in paragraph (1) of this subsection. Disaster relief includes but is not limited to disaster declarations or documented extenuating circumstances such as imminent threat to health and safety; and

(B) when not reserved for disaster relief as specified in paragraph (1) of this subsection, for any activity or program previously approved by the Board for that program for the year the funds become available. For example, if \$400,000 of Housing Trust Funds become available through loan repayments and deobligations in 2013, those funds can be reprogrammed into any activity referenced in the 2012 - 2013 Housing Trust Fund plan approved by the Board; likewise if \$1 million becomes available in 2013 of HOME funds in excess of the disaster set-aside, those funds can be reprogrammed into activities authorized by the Board and HUD in the One Year Action Plan. The use of these funds within a previously authorized activity can include, but is not limited to:

- (i) use for successful appeals;
- (ii) funding of applications or awards for existing Department waiting lists or reservation systems;
- (iii) contract increases authorized in accordance with the program's contract amendment policies;
- (iv) re-release or amended release of Notices of Funding Availability;
- (v) fully funding an application that was previously only partially funded; and
- (vi) funding other critical agency goals or initiatives.

(3) In the instance of funds available for reobligation being used for any purpose other than those listed in paragraph (2) of this subsection, the Board will be required to provide specific authorization.

(f) After adoption in final form and publication in the *Texas Register*, this section shall supersede any other rule or policy governing the use of Deobligated Funds for the Department regardless of where published, unless any portion of this section conflicts with statutory language or federal rules, in which case those shall be controlling.

(g) Any portion of this rule may be waived for good cause by the Governing Board of the Department.

1h

BOARD ACTION REQUEST

BOND FINANCE DIVISION

September 6, 2012

Presentation, Discussion, and Possible Action on Resolution No. 13-004 authorizing the investment of the Taxable Mortgage Program (TMP) Escrow Agreements in mortgage backed securities

RECOMMENDED ACTION

WHEREAS, the Department anticipates entering into two escrow agreements in connection with its TMP (the "TMP Escrow Agreements") with Texas Treasury Safekeeping Trust Company to minimize the risk to the state; and

WHEREAS, on May 10, 2012, the Governing Board adopted Resolution No. 12-029 approving the sale of all or a portion of the 2002 Mortgage Certificates in an amount sufficient to effect a redemption of the Department's outstanding Residential Mortgage Revenue Bonds, Series 2002A, which sale and redemption was completed on August 1, 2012; and

WHEREAS, following the redemption of the Series 2002A Bonds, there are on deposit in the 2002A Residual Revenues Account certain residual Mortgage Backed Securities guaranteed by Fannie Mae; and

WHEREAS, the Department desires to invest a portion of the funds held under the anticipated TMP Escrow Agreements in the 2002 Residual MBSs; and

RESOLVED, that as approved and presented at the TDHCA Board meeting, the Department is hereby authorized to invest the TMP Escrow Funds in mortgage backed securities; and

FURTHER RESOLVED, that Resolution No. 13-004 is hereby adopted in the form presented to this meeting.

BACKGROUND

The Department's Investment Policy was revised and approved at the April 12, 2012, Board Meeting to allow Escrow Funds to be invested in securities exceeding five years and the investment of funds being sold from a bond indenture so long as such investment furthers the goals of that program and the Investment Officer receives Board approval prior to undertaking such investment.

The TMP Escrow Funds will be initially funded with \$4 million from the Department's Bond Program Cost of Issuance Account (\$2 million to be invested into two separate agreements). Staff is requesting authorization to invest funds held under the Escrow Agreements in residual mortgage backed securities (MBSs) guaranteed by Fannie Mae, as set-forth in the attached Exhibit "A" at an approximate balance of \$1.3 million from Residential Mortgage Revenue Bonds, Series 2002A. This transfer would effectively produce a sale of the residual MBSs into the Escrow Accounts at a price no less than 108%. All bonds associated with these MBSs were redeemed on August 1, 2012.

The investment of Escrow Funds in residual MBSs will further the goals of the Department by increasing the rate of return on the Escrow Funds while also increasing the funds available for Down Payment Assistance for Program 77 and Program 79.

EXHIBIT A
Residual Mortgage Backed Securities

Below is a listing, by pool number, of each mortgage backed security to be held in escrow. FN prefixes indicate Fannie Mae Mortgage Backed Securities.

POOL NUMBER	8/31/2012 BALANCE	MORTGAGE RATE	MBS RATE	MATURITY DATE
FN 742892	\$ 70,010.53	5.30%	4.80%	7/1/2033
FN 759568	\$ 245,374.87	5.30%	4.80%	11/1/2033
FN 766616	\$ 82,920.05	5.30%	4.80%	1/1/2034
FN 800074	\$ 55,729.41	5.30%	4.80%	10/1/2034
FN 848557	\$ 63,485.43	5.30%	4.80%	10/1/2035
FN 708778	\$ 204,443.68	5.99%	5.49%	4/1/2033
FN 754202	\$ 50,456.71	5.99%	5.49%	11/1/2033
FN 774856	\$ 61,615.15	5.99%	5.49%	6/1/2033
FN 790949	\$ 229,068.62	5.99%	5.49%	8/1/2034
FN 826554	\$ 35,984.50	5.99%	5.49%	5/1/2035
FN 844259	\$ 126,291.14	5.99%	5.49%	10/1/2035
FN 872269	\$ 63,947.97	5.99%	5.49%	3/1/2036
	\$ 1,289,328.06			

RESOLUTION NO. 13-004

RESOLUTION AUTHORIZING THE INVESTMENT OF ESCROWED FUNDS HELD BY THE TEXAS TREASURY SAFEKEEPING TRUST COMPANY UNDER TMP ESCROW AGREEMENTS IN MORTGAGE-BACKED SECURITIES; AUTHORIZING THE EXECUTION OF DOCUMENTS AND INSTRUMENTS RELATING TO THE FOREGOING; MAKING CERTAIN FINDINGS AND DETERMINATIONS IN CONNECTION THEREWITH; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code (the "Act"), as amended from time to time, for the purpose of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe and sanitary housing for individuals and families of low and very low income and families of moderate income (as described in the Act as determined by the Governing Board of the Department (the "Governing Board") from time to time) at prices they can afford; and

WHEREAS, the Department anticipates entering into two escrow agreements in connection with its TMP Program (the "TMP Escrow Agreements") with the Texas Treasury Safekeeping Trust Company (the "Trust Company"); and

WHEREAS, on May 10, 2012, the Governing Board adopted Resolution No. 12-029 approving, among other things, the sale of all or a portion of the 2002 Mortgage Certificates (as described in Resolution No. 12-029) in an amount sufficient to effect a redemption of the Department's outstanding Residential Mortgage Revenue Bonds, Series 2002A (the "Series 2002A Bonds"), which sale and redemption were completed on August 1, 2012; and

WHEREAS, following redemption of the Series 2002A Bonds, certain mortgage backed securities originally purchased with proceeds of the Department's Series 2002A Bonds (the "2002 Residual MBSs") were transferred to the 2002 A Residual Revenues Account under the Department's Residential Mortgage Revenue Bond Trust Indenture dated as of November 1, 1987 (as heretofore amended and supplemented, the "RMRB Indenture") between the Department and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"), and

WHEREAS, the Governing Board desires to authorize the investment of funds held under the TMP Escrow Agreements (the "TMP Escrows") in the 2002 Residual MBSs and authorizes the sale of the 2002 Residual MBSs in accordance with the terms of the RMRB Indenture; and

WHEREAS, the Governing Board desires to approve taking of such other actions as may be necessary or convenient to carry out the purposes of this Resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THAT:

ARTICLE 1

APPROVAL OF DOCUMENTS AND CERTAIN ACTIONS

Section 1.1 Investment of TMP Escrows in 2002 Residual MBSs. The investment of the TMP Escrows in the 2002 Residual MBSs is hereby authorized and approved.

Section 1.2 Sale of 2002 Residual MBSs. The sale of the 2002 Residual MBSs identified on Exhibit A at a price of no less than 106% in accordance with the terms of the RMRB Indenture is hereby authorized.

Section 1.3 Execution and Delivery of Documents. The Authorized Representatives are each hereby authorized to execute and deliver all agreements, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, notices, written requests and other papers, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.4 Authorized Representatives. The following persons are hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Governing Board, the Executive Director of the Department, the Chief of Agency Administration of the Department, the Director of Bond Finance of the Department, and the Secretary or any Assistant Secretary to the Governing Board. Such persons are referred to herein collectively as the "Authorized Representatives."

Section 1.5 Ratifying Other Actions. All other actions taken or to be taken by the Executive Director and the Department's staff in connection with the investment of escrowed funds under the TMP Escrow Agreement are hereby ratified and confirmed.

ARTICLE 2

GENERAL PROVISIONS

Section 2.1 Notice of Meeting. This Resolution was considered and adopted at a meeting of the Governing Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Governing Board.

Section 2.2 Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

[Execution page follows]

PASSED AND APPROVED this 6th day of September, 2012.

Chair, Governing Board

ATTEST:

Secretary to the Governing Board

(SEAL)

EXHIBIT A

2002 Residual MBSs

POOL NUMBER	8/31/2012 BALANCE	MORTGAGE RATE	MBS RATE	MATURITY DATE
FN 742892	70,010.53	5.30%	4.80%	7/1/2033
FN 759568	245,374.87	5.30%	4.80%	11/1/2033
FN 766616	82,920.05	5.30%	4.80%	1/1/2034
FN 800074	55,729.41	5.30%	4.80%	10/1/2034
FN 848557	63,485.43	5.30%	4.80%	10/1/2035
FN 708778	204,443.68	5.99%	5.49%	4/1/2033
FN 754202	50,456.71	5.99%	5.49%	11/1/2033
FN 774856	61,615.15	5.99%	5.49%	6/1/2033
FN 790949	229,068.62	5.99%	5.49%	8/1/2034
FN 826554	35,984.50	5.99%	5.49%	5/1/2035
FN 844259	126,291.14	5.99%	5.49%	10/1/2035
FN 872269	63,947.97	5.99%	5.49%	3/1/2036
	1,289,328.06			

1i

BOARD ACTION REQUEST

BOND FINANCE DIVISION

September 6, 2012

Presentation, Discussion, and Possible Action on Resolution 13-005 authorizing the conversion of the fourth tranche of the New Issue Bond Program 2009C (Program 77), the purchase of warehoused mortgage backed securities with proceeds of Residential Mortgage Revenue Bonds, Series 2009C-4 and approval of the Single Family Residential Mortgage Revenue Bonds Special Advisor

RECOMMENDED ACTION

WHEREAS, in accordance with the Thirtieth Series Supplement and the provisions of the NIBP, the Department is entitled, on up to nine separate dates occurring no later than December 31, 2012, to convert all or a portion of the Series 2009C Bonds previously issued as taxable bonds to tax-exempt bonds and, in connection with each such conversion, to release a portion of the proceeds of the Series 2009C Bonds held in escrow to be used with the proceeds of a series of tax-exempt Residential Mortgage Revenue Bonds to be issued in connection with the respective conversion to acquire Mortgage Certificates; and

WHEREAS, the Board further desires to approve a Special Advisor for the Single Family Residential Mortgage Revenue Bonds for Bond Program 77; therefore

RESOLVED, that Resolution No. 13-005 is hereby adopted in the form presented to this meeting; and

FURTHER RESOLVED, that as approved and presented at the TDHCA Board meeting, the Department is hereby authorized to convert the fourth tranche of the New Issue Bond Program 2009C (Program 77).

BACKGROUND

As part of the U.S. Department of the Treasury's comprehensive plan to stabilize the housing market, on October 19, 2009 the Homeowner Affordability and Stability Plan was announced for state and local housing finance agencies (HFAs) that will help support low mortgage rates and expand resources for low and middle income borrowers to purchase or rent homes that are

affordable over the long term. As part of this initiative, the New Issue Bond Program (NIBP) was created to support new lending by HFAs with the issuance of bonds at below market rates.

At the Board Meeting of November 9, 2009, Resolution 10-006 was approved authorizing the issuance of \$300 million in principal amount of new money, taxable residential mortgage revenue bonds which were placed with Fannie Mae and Freddie Mac under the NIBP. The NIBP Bonds were settled on December 23, 2009, with a temporary variable interest rate that may be converted in tranches at the Department's election up to three times in 2010.

On September 1, 2010, the Treasury announced an extension of the NIBP to address the continuing difficulty of originating mortgages for HFAs across the nation. Modifications to the program include an extension of the escrow draw period from December 31, 2010 to December 31, 2011; provisions to allow additional interest rate resets; and an increase in the number of draws on the program from three to six.

On November 23, 2011, the Treasury announced an additional extension of NIBP to December 31, 2012.

Today, staff is seeking final approval of the fourth, and final, conversion of an amount not to exceed \$80 million of NIBP bonds to tax-exempt conversion bonds. No market bonds will be issued in connection with this conversion. Staff is also asking the Board to approve the purchase of mortgage certificates held under the Warehouse Agreement representing participations in Mortgage Loans under Program 77 with interest rates of 3.00% to 5.50% as described in Commitment Lot Notice 8 through Commitment Lot Notice 27.

Since May 2010, TDHCA has originated loans under Program 77 and has purchased mortgage-backed securities backed by these mortgage loans into the Department's warehouse facility. The first tranche of NIBP bonds was converted and closed on March 10, 2011, for approximately \$150 million. The second tranche of NIBP bonds was converted and closed on September 29, 2011, for approximately \$150 million. The third tranche was converted and closed on December 15, 2011 for \$72,820,000. All proceeds from the first three tranches have been expended and as of August 14, 2012, approximately \$79 million in mortgage loans have been committed to the fourth tranche and have been pooled and purchased by the Warehouse Provider.

As required by state law, 30% of the Department's bond proceeds have been set-aside for a period of not less than one year for families with income less than 80% of area median family income (AMFI). In addition, as required by federal tax law, 20% of bond proceeds will have been set-aside for use in federally designated targeted areas within the State of Texas. Proceeds made available for both set-asides - along with the remaining bond proceeds - have been

marketed to mortgagors with up to five percent of down-payment assistance in the form of a 30-year term, zero percent interest second lien, due on sale, mortgage loan.

TDHCA has issued 27 Commitment Lots with unassisted first-lien mortgage rates between 3.00% and 4.99% and assisted first-lien mortgage rates between 3.70% and 5.74%. The first lien mortgages have been marketed to very low, low and moderate income residents of the State of Texas. TDHCA expects that approximately 600 new first-time homebuyers will be able to take advantage of this program. Overall, the TDHCA expects to assist over 4,600 first-time homebuyers under Program 77 by the time it is fully originated.

Staff is also seeking approval today of George K. Baum & Company, the Department’s Financial Advisor, as the Special Advisor for the conversion of the fourth tranche. Since these term bonds will be converted under the New Issue Bond Program and no bonds will be sold to the market, TDHCA will not require a syndicate of Co-Senior or Co-Managers.

The following table provides certain key dates for this plan of finance.

Program Schedule	Program 77
TDHCA TEFRA Hearing	February 28, 2012
Texas Bond Review Board Approval Date	Not Applicable
TDHCA Board Approval Date	September 6, 2012
Pricing Dates	Not Applicable
Execute Bond Purchase Agreement	Not Applicable
Pre-Closing/Closing Dates	September 12 – 13, 2012

RESOLUTION NO. 13-005

RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION FOR RESERVATION WITH TEXAS BOND REVIEW BOARD WITH RESPECT TO QUALIFIED MORTGAGE BONDS; AUTHORIZING THE RELEASE OF THE REMAINING PORTION OF THE PROCEEDS OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS RESIDENTIAL MORTGAGE REVENUE BONDS, SERIES 2009C FROM ESCROW AND THE CONVERSION THEREOF; APPROVING THE FORM AND SUBSTANCE AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE FOURTH AMENDMENT TO THIRTIETH SUPPLEMENTAL RESIDENTIAL MORTGAGE REVENUE BOND TRUST INDENTURE, THE TWELFTH SUPPLEMENT TO AMENDED AND RESTATED DEPOSITORY AGREEMENT, THE CONTINUING DISCLOSURE AGREEMENT AND THE OFFICIAL STATEMENT FOR THE CONVERTED BONDS; AUTHORIZING AMENDMENT OF THE WAREHOUSING AGREEMENT; AUTHORIZING THE EXECUTION OF DOCUMENTS AND INSTRUMENTS NECESSARY OR CONVENIENT TO CARRY OUT THE SINGLE FAMILY MORTGAGE PURCHASE PROGRAM; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code (the "Act"), as amended from time to time, for the purpose of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe and sanitary housing for individuals and families of low and very low income and families of moderate income (as described in the Act as determined by the Governing Board of the Department (the "Governing Board") from time to time) at prices they can afford; and

WHEREAS, the Act authorizes the Department: (a) to acquire, and to enter into advance commitments to acquire, mortgage loans (including participations therein) secured by mortgages on residential housing in the State of Texas (the "State"); (b) to issue its bonds for the purpose of obtaining funds to make and acquire such mortgage loans or participations therein, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such mortgage loans or participations therein, and to mortgage, pledge or grant security interests in such mortgages, mortgage loans or other property of the Department, to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, Section 103 and Section 143 of the Internal Revenue Code of 1986, as amended (the "Code"), provide that the interest on obligations issued by or on behalf of a state or a political subdivision thereof the proceeds of which are to be used to finance owner-occupied residences will be excludable from gross income of the owners thereof for federal income tax purposes if such issue meets certain requirements set forth in Section 143 of the Code; and

WHEREAS, Section 146(a) of the Code requires that certain "private activity bonds" (as defined in Section 141(a) of the Code) must come within the issuing authority's private activity bond limit for the applicable calendar year in order to be treated as obligations the interest on which is excludable from the gross income of the holders thereof for federal income tax purposes ("tax-exempt bonds"); and

WHEREAS, the private activity bond "State ceiling" (as described in Section 146(d) of the Code) applicable to the State is subject to allocation, in the manner authorized by Section 146(e) of the Code, pursuant to Chapter 1372, Texas Government Code, as amended (the "Allocation Act"); and

WHEREAS, the Allocation Act requires the Department, in order to reserve a portion of the State Ceiling for qualified mortgage bonds (the “Reservation”) and satisfy the requirements of Section 146(a) of the Code, to file an application for reservation (the “Application for Reservation”) with the Texas Bond Review Board (the “Bond Review Board”), stating the maximum amount of the bonds requiring an allocation, the purpose of the bonds and the section of the Code applicable to the bonds; and

WHEREAS, the Allocation Act and the rules promulgated thereunder by the Bond Review Board (the “Allocation Rules”) require that the Application for Reservation be accompanied by a copy of the certified resolution of the issuer authorizing the filing of the Application for Reservation; and

WHEREAS, the Board has determined to authorize the filing of an Application for Reservation with respect to qualified mortgage bonds to be issued by the Department;

WHEREAS, the Texas Housing Agency (the “Agency”) or the Department, as its successor, has, pursuant to and in accordance with the provisions of the Act, issued, sold and delivered its residential mortgage revenue bonds pursuant to the Residential Mortgage Revenue Bond Trust Indenture dated as of November 1, 1987 (as currently amended by supplemental indentures numbered First through Thirty-Second and any amendments thereto, collectively, the “RMRB Indenture”) between the Department, as successor to the Agency, and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the “Trustee”), to implement the various phases of the Agency’s (now the Department’s) single family mortgage purchase program by providing funds to make and acquire qualifying mortgage loans (including participations therein through the purchase of mortgage backed securities (“Mortgage Certificates”) issued and guaranteed by Fannie Mae (“Fannie Mae”), Federal Home Loan Mortgage Corporation (“Freddie Mac”) or Government National Mortgage Association (“Ginnie Mae”)) (referred to herein as “Mortgage Loans”); and

WHEREAS, the Department issued, under the Act and the federal government’s New Issue Bond Program (“NIBP”), its Residential Mortgage Revenue Bonds, Series 2009C (the “Series 2009C Bonds”) pursuant to the RMRB Indenture and the Thirtieth Supplemental Residential Mortgage Revenue Bond Trust Indenture dated as of December 1, 2009, as amended by the First Amendment to Thirtieth Supplemental Residential Mortgage Revenue Bond Trust Indenture dated as of December 1, 2010, the Second Amendment to Thirtieth Supplemental Residential Mortgage Revenue Bond Trust Indenture dated as of December 21, 2011 and the Third Amendment to Thirtieth Supplemental Residential Mortgage Revenue Bond Trust Indenture dated as of January 20, 2012, each between the Department and the Trustee (collectively, the “Thirtieth Series Supplement”); and

WHEREAS, in accordance with the Thirtieth Series Supplement and the provisions of the NIBP, the Department is entitled, on up to nine separate dates occurring no later than December 31, 2012, to convert all or a portion of the Series 2009C Bonds previously issued as taxable bonds to tax-exempt bonds and, in connection with each such conversion, to release a portion of the proceeds of the Series 2009C Bonds held in escrow to be used with the proceeds of a series of tax-exempt Residential Mortgage Revenue Bonds to be issued, under certain circumstances, in connection with the respective conversion (such bonds are referred to in the NIBP and herein as “Market Bonds”) to acquire Mortgage Certificates; and

WHEREAS, the Department has previously issued two series of its Market Bonds in the aggregate principal amount of \$147,955,000 and has converted three tranches of Series 2009C Bonds to tax-exempt bonds and released the proceeds thereof from escrow in the aggregate principal amount of \$221,930,000 for the purpose of acquiring Mortgage Certificates under the Department’s single family mortgage purchase program designated as “Bond Program 77” (“Program 77”); and

WHEREAS, the Governing Board now desires to authorize the conversion, in accordance with the Thirtieth Series Supplement, of the remaining portion of the Series 2009C Bonds from taxable bonds to tax-exempt bonds (such converted portion being the “Series 2009C-4 Bonds”) and to authorize the release of the

proceeds of the Series 2009C-4 Bonds currently held in escrow to be used to acquire Mortgage Certificates under Program 77; and

WHEREAS, the Governing Board desires to authorize the execution and delivery of the Fourth Amendment to Thirtieth Supplemental Residential Mortgage Revenue Bond Trust Indenture (the “Amendment to Series Supplement”) in substantially the form attached hereto relating to the Series 2009C-4 Bonds; and

WHEREAS, the Governing Board has determined to authorize the execution and delivery of a Twelfth Supplement to Amended and Restated Depository Agreement (the “Depository Agreement”), by and among the Department, the Trustee and the Texas Treasury Safekeeping Trust Company, in substantially the form attached hereto to provide for the holding, administering and investing of certain moneys and securities pertaining to the Series 2009C-4 Bonds; and

WHEREAS, the Governing Board desires to authorize the execution and delivery of a Continuing Disclosure Agreement relating to the Series 2009C-4 Bonds (the “Continuing Disclosure Agreement”) in substantially the form attached hereto between the Department and the Trustee; and

WHEREAS, the Governing Board has been presented with a draft of an official statement to be delivered to the owners of the Series 2009C-4 Bonds (the “Official Statement”) and the Governing Board desires to approve such Official Statement in substantially the form attached hereto; and

WHEREAS, the Governing Board has determined to authorize the investment of the proceeds of the Series 2009C-4 Bonds and any other amounts held under the RMRB Indenture with respect to the Series 2009C-4 Bonds in one or more guaranteed investment contracts (the “GICs”) on or after the closing date or such other investments as the Authorized Representatives named herein may approve; and

WHEREAS, the Governing Board desires to approve the use of an amount not to exceed \$600,000 of Department funds for any purpose authorized under the Act and the RMRB Indenture, including to pay a portion of the costs of conversion of the Series 2009C-4 Bonds and the release of the proceeds thereof, and to fund capitalized interest and down payment and closing cost assistance; and

WHEREAS, the Governing Board desires (i) to authorize the use of an amount not to exceed \$4,000,000 of funds on deposit under the RMRB Indenture, from General Funds of the Department or from any other source to fund down payment and closing cost assistance loans (“DPA Loans”) and (ii) to waive the requirements of the Texas Administrative Code, Title 10, Part 1, Chapter 7, Rule 7.3 that restricts down payment assistance to borrowers earning not more than 80 percent of the area median family income and to make down payment assistance available, in the form of a second mortgage, to all eligible borrowers; and

WHEREAS, the Governing Board desires to waive the rules contained in Chapter 7, Title 10 of the Texas Administrative Code to the extent such rules are inconsistent with the terms of Program 77, this Resolution and the documents approved hereunder; and

WHEREAS, the Governing Board desires to retain George K. Baum & Company as Special Advisor in connection with the conversion of the Series 2009C-4 Bonds; and

WHEREAS, the Governing Board desires to amend the Second Amended and Restated Warehousing Agreement (the “Warehousing Agreement”) with The Bank of New York Mellon Trust Company, N.A., as indenture trustee (the “Trustee”), First Southwest Company and PlainsCapital Bank (collectively, the “Warehouse Provider”) and The Bank of New York Mellon Trust Company, N.A., as custodian (the “Custodian”), providing for the acquisition and temporary warehousing by the Warehouse Provider of mortgage-backed certificates; and

WHEREAS, the Department, the Trustee, the Warehouse Provider and the Custodian now desire to amend the Warehousing Agreement pursuant to the terms of the Third Amended and Restated Warehousing Agreement (the “Amended Warehousing Agreement”); and

WHEREAS, the Governing Board desires to approve the execution and delivery of the Amended Warehousing Agreement and the taking of such other actions as may be necessary or convenient to carry out the purposes of this Resolution; and

WHEREAS, the Governing Board desires to approve the forms of the Amendment to Series Supplement, the Depository Agreement, the Continuing Disclosure Agreement, the Official Statement and the Amended Warehousing Agreement, in order to find the form and substance of such documents to be satisfactory and proper and the recitals contained therein to be true, correct and complete; and has determined to further Program 77 in accordance with such documents by authorizing the conversion of the Series 2009C-4 Bonds to tax-exempt bonds and the release of the proceeds thereof from escrow, the execution and delivery of such documents and the taking of such other actions as may be necessary or convenient to carry out Program 77;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS:

ARTICLE 1

APPLICATION FOR RESERVATION

Section 1.1 Application for Reservation. That the Board hereby authorizes Bracewell & Giuliani LLP, as Bond Counsel to the Department, to file on its behalf with the Bond Review Board an Application for Reservation for qualified mortgage bonds to be issued and delivered within 180 days after receipt of a “reservation date,” as defined in the Allocation Rules, in the maximum aggregate amount of \$78,070,000, together with any other documents and opinions required by the Bond Review Board as a condition to the granting of the Reservation.

Section 1.2 Authorization of Certain Actions. That the Board authorizes the Executive Director, the staff of the Department, as designated by the Executive Director, and Bond Counsel to take such actions on its behalf as may be necessary to carry out the actions authorized in Section 1.1.

ARTICLE 2

RELEASE OF SERIES 2009C BOND PROCEEDS FROM ESCROW; APPROVAL OF DOCUMENTS

Section 2.1 Release of Series 2009C Bond Proceeds from Escrow. That the conversion of the remaining portion of Series 2009C Bonds to tax-exempt bonds and the release of the proceeds thereof from escrow in an amount not to exceed \$78,070,000 is hereby authorized in accordance with the Thirtieth Series Supplement; and the Authorized Representatives named herein each are hereby authorized to execute, attest, affix the Department’s seal to and deliver such notices, documents and supplemental disclosure documents, including the documents hereinafter approved, as are required by the Thirtieth Series Supplement to implement such release.

Section 2.2 Approval, Execution and Delivery of the Amendment to Series Supplement. That the form and substance of the Amendment to Series Supplement are hereby approved, and that the Authorized Representatives of the Department named in this Resolution each are hereby authorized to execute, attest and affix the Department’s seal to the Amendment to Series Supplement, and to deliver the Amendment to Series Supplement to the Trustee.

Section 2.3 Approval of Depository Agreement. That the form and substance of the Depository Agreement are hereby approved and that the Authorized Representatives of the Department named in this Resolution each are hereby authorized to execute, attest and affix the Department's seal to the Depository Agreement and to deliver the Depository Agreement to the Trustee and to the Texas Treasury Safekeeping Trust Company.

Section 2.4 Approval of Continuing Disclosure Agreement. That the form and substance of the Continuing Disclosure Agreement are hereby approved and that the Authorized Representatives of the Department named in this Resolution each are hereby authorized to execute, attest and affix the Department's seal to the Continuing Disclosure Agreement and to deliver the Continuing Disclosure Agreement to the Trustee.

Section 2.5 Official Statement. That the Official Statement relating to the Series 2009C-4 Bonds, in substantially the form presented to the Governing Board, is hereby approved and that the Authorized Representatives of the Department named in this Resolution each are hereby authorized to execute the Official Statement and to deliver the Official Statement to the owners of the Series 2009C Bonds.

Section 2.6 Approval of Amended Warehousing Agreement. The Amended Warehousing Agreement, in substantially the form presented to the Governing Board, is hereby approved and the authorized representatives of the Department named in this Resolution each are hereby authorized to execute, attest and affix the Department's seal to the Amended Warehousing Agreement and to deliver the Amended Warehousing Agreement to the Trustee, the Warehouse Provider and the Custodian.

Section 2.7 Execution and Delivery of Other Documents. That the Authorized Representatives of the Department named in this Resolution each are hereby authorized to execute, attest, affix the Department's seal to and deliver such other agreements, advance commitment agreements, assignments, bonds, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, notices of acceptance, written requests and other papers, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, the RMRB Indenture, the Amendment to Series Supplement, the Depository Agreement, the Continuing Disclosure Agreement and the Amended Warehousing Agreement.

Section 2.8 Power to Revise Form of Documents. That, notwithstanding any other provision of this Resolution, the Authorized Representatives of the Department named in this Resolution each are hereby authorized to make or approve such revisions in the form of the documents attached hereto as exhibits as, in the judgment of such Authorized Representative, and in the opinion of Bracewell & Giuliani LLP and Bates and Coleman, PC, Co-Bond Counsel to the Department, may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, such approval to be evidenced by the execution of such documents by the Authorized Representatives of the Department named in this Resolution.

Section 2.9 Exhibits Incorporated Herein. That all of the terms and provisions of each of the documents listed below as an exhibit shall be and are hereby incorporated into and made a part of this Resolution for all purposes:

- Exhibit B - Amendment to Series Supplement
- Exhibit C - Depository Agreement
- Exhibit D - Continuing Disclosure Agreement
- Exhibit E - Official Statement
- Exhibit F - Amended Warehousing Agreement

Section 2.10 Authorized Representatives. The following persons are hereby named as Authorized Representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or

Vice Chair of the Governing Board, the Executive Director of the Department, the Chief of Agency Administration of the Department, the Director of Bond Finance of the Department, and the Secretary or any Assistant Secretary to the Governing Board. Such persons are referred to herein collectively as the “Authorized Representatives.”

Section 2.11 Department Contribution. That the contribution of Department funds in an amount not to exceed \$600,000 to be used for any purpose authorized under the Act and the RMRB Indenture, including to pay a portion of the costs of conversion of the Series 2009C-4 Bonds and the release of the proceeds thereof and to fund capitalized interest and down payment and closing cost assistance, is hereby authorized.

Section 2.12 Use of RMRB Indenture Funds and Other Funds. That the use of an amount not to exceed \$4,000,000 of funds on deposit under the RMRB Indenture, from General Funds of the Department or from any other source to fund down payment and closing cost assistance loans is hereby authorized.

ARTICLE 3

APPROVAL AND RATIFICATION OF CERTAIN ACTIONS

Section 3.1 Engagement of Other Professionals. That the Executive Director or the Director of Bond Finance is authorized to engage Causey Demgen & Moore Inc. as verification agent to perform such verifications, functions, yield calculations and subsequent investigations as necessary or appropriate to comply with the requirements of Bond Counsel to the Department, provided such engagement is done in accordance with applicable State law. That the Board acknowledges and approves the engagement by George K. Baum & Company, the Department’s financial advisor, of Chapman and Cutler as its Special Counsel.

Section 3.2 Certification of the Minutes and Records. That the Secretary and any Assistant Secretary to the Governing Board are hereby authorized to certify and authenticate minutes and other records on behalf of the Department for Program 77, the Series 2009C-4 Bonds and all other Department activities.

Section 3.3 Approval of Requests for Rating from Rating Agencies. That the Executive Director, the Director of Bond Finance and the Department’s consultants are authorized to seek ratings from Moody’s Investors Service, Inc. and Standard & Poor’s Ratings Services.

Section 3.4 Ratifying Other Actions. That all other actions taken or to be taken by the Executive Director and the Department’s staff in connection with Program 77 and the conversion of the Series 2009C-4 Bonds are hereby ratified and confirmed.

Section 3.5 Authority to Invest Funds. That the Executive Director or the Director of Bond Finance is hereby authorized to undertake all appropriate actions required under the RMRB Indenture and the Depository Agreement and to provide for investment and reinvestment of all funds held under the RMRB Indenture.

Section 3.6 Approval of GIC Broker; Approval of Investment in GICs. That the Executive Director or the Director of Bond Finance and the Chair of the Governing Board are hereby authorized to select a GIC Broker, if any, and that the investment of funds held under the RMRB Indenture in connection with the Series 2009C-4 Bonds in GICs is hereby approved and that the Executive Director or the Director of Bond Finance of the Department is hereby authorized to complete arrangements for the investment in GICs or such other investments as the Authorized Representatives named herein may approve.

Section 3.7 Approval of Special Advisor. That from the approved current pool of senior underwriters, the Governing Board retains George K. Baum & Company as Special Advisor in connection with the conversion of the Series 2009C-4 Bonds.

ARTICLE 4

CERTAIN FINDINGS AND DETERMINATIONS

Section 4.1 Determination of Interest Rate. That the Governing Board hereby approves the purchase of participations in Mortgage Loans under Program 77 with interest rates no less than 3.00% and no greater than 6.25%, and as described in various Commitment Lot Notices issued by the Department containing such authorized rates, and finds that such rates will produce, together with other available funds, the amounts required to pay for the Department's costs of operation with respect to Program 77 and debt service on the Series 2009C-4 Bonds, and will enable the Department to meet its covenants with and responsibilities to the holders of the bonds issued under the RMRB Indenture without adversely affecting the exclusion from gross income for federal income tax purposes of interest on any of such tax-exempt bonds or the rating thereof. Such approved range of rates is subject to adjustment from time to time by action of the Governing Board.

Section 4.2 Bonds to Finance Mortgage Loans in Underserved Economic and Geographic Markets. That, in accordance with Section 2306.142(m) of the Act, the Governing Board hereby finds that the issuance of bonds to finance Mortgage Loans to meet the credit needs of borrowers in underserved economic and geographic submarkets in the State is unfeasible or would damage the financial condition of the Department.

ARTICLE 5

GENERAL PROVISIONS

Section 5.1 Limited Obligations. That the Series 2009C-4 Bonds and the interest thereon shall be limited obligations of the Department payable solely from the trust estate pledged under the RMRB Indenture to secure payment of the bonds issued under the RMRB Indenture and payment of the Department's costs and expenses for Program 77 thereunder and under the RMRB Indenture, and under no circumstances shall the Series 2009C-4 Bonds be payable from any other revenues, funds, assets or income of the Department.

Section 5.2 Non-Governmental Obligations. That the Series 2009C-4 Bonds shall not be and do not create or constitute in any way an obligation, a debt or a liability of the State or create or constitute a pledge, giving or lending of the faith or credit or taxing power of the State.

Section 5.3 Purposes of Resolution. That the Governing Board has expressly determined and hereby confirms that the conversion of the Series 2009C-4 Bonds and the furtherance of Program 77 contemplated by this Resolution accomplish a valid public purpose of the Department by providing for the housing needs of persons and families of low, very low and extremely low income and families of moderate income in the State.

Section 5.4 Notice of Meeting. This Resolution was considered and adopted at a meeting of the Governing Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Governing Board.

Section 5.5 Effective Date. That this Resolution shall be in full force and effect from and upon its adoption.

Execution page follows

PASSED AND APPROVED this 6th day of September, 2012.

Chair, Governing Board

ATTEST:

Secretary to the Governing Board

(SEAL)

ALL DOCUMENTS REFERRED TO IN THE FOREGOING RESOLUTION ARE ATTACHED TO THE ORIGINAL COPY OF SAID RESOLUTION, WHICH IS ON FILE IN THE OFFICIAL RECORDS OF THE DEPARTMENT, AND EXECUTED COUNTERPARTS OF SUCH EXHIBITS ARE INCLUDED IN THE OFFICIAL TRANSCRIPT OF PROCEEDINGS RELATING TO THE CONVERSION OF THE SERIES 2009C-4 BONDS.

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BOARD ACTION REQUEST

BOND FINANCE DIVISION

September 6, 2012

Presentation, Discussion, and Possible Action on Resolution No. 13-007 authorizing the sale of residual mortgage certificates in the Warehousing Agreement

RECOMMENDED ACTION

WHEREAS, on June 14, 2012, the Governing Board adopted Resolution No. 12-031 authorizing the increase in the size of Program 77 from \$500,000,000 to \$600,000,000 and to authorize additional down payment assistance related to that increase; and

WHEREAS, the Department staff has determined that, due to unfavorable bond market conditions and due to the successful conclusion of the Department's New Issue Bond Program, it is most advantageous for the Department to sell Mortgage Backed Securities (MBSs) to effect the funding of the first and second lien mortgage loans needed to complete Program 77; and

RESOLVED, the Governing Board of the Department approves the sale of the Mortgage Certificates, the payment of any costs associated with the transaction; and

FURTHER RESOLVED, that Resolution No. 13-007 is hereby adopted in the form presented to this meeting.

BACKGROUND

Bond Finance has affirmed the feasibility of executing a mortgage certificate sale of the residual mortgage certificates held in the warehouse agreement. Principal amount of MBSs are not expected to exceed \$150 million. Staff is so authorized to move forward with the proposed MBS sale so long as the weighted average price received for all of the residual MBSs is no less than 105.20%.

Given the current market conditions, this transaction will generate a present value benefit to the Residential Mortgage Revenue Bond indenture.

The MBSs sold are expected to generate \$1.3 million to be used to fund down payment assistance for Program 77 and Program 79. This will allow the Department to assist approximately 250 new first-time homebuyers.

RESOLUTION NO. 13-007

RESOLUTION AUTHORIZING THE SALE OF RESIDUAL MORTGAGE CERTIFICATES; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code (the "Act"), as amended from time to time for the purpose of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe and sanitary housing for individuals and families of low and very low income and families of moderate income (as described in the Act as determined by the Governing Board of the Department (the "Board") from time to time) at prices they can afford; and

WHEREAS, the Act authorizes the Department: (a) to acquire, and to enter into advance commitments to acquire, mortgage loans (including participations therein) secured by mortgages on residential housing in the State of Texas (the "State"); (b) to issue its bonds, for the purpose of obtaining funds to make and acquire such mortgage loans or participations therein, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such mortgage loans or participations therein, and to mortgage, pledge or grant security interests in such mortgages, mortgage loans or other property of the Department, to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, the Department has previously issued, under the Act and the federal government's New Issue Bond Program ("NIBP"), its Residential Mortgage Revenue Bonds, Series 2009C (the "Series 2009C Bonds") pursuant to the Residential Mortgage Revenue Bond Trust Indenture dated as of November 1, 1987 (as heretofore amended and supplemented, collectively the "RMRB Master Indenture") between the Department, as successor to the Texas Housing Agency, and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "RMRB Trustee"), and the Thirtieth Supplemental Residential Mortgage Revenue Bond Trust Indenture dated as of December 1, 2009 (together with the amendments thereto, the "Thirtieth Series Supplement" and together with the RMRB Master Indenture, collectively the "RMRB Indenture") between the Department and the RMRB Trustee; and

WHEREAS, the Department implemented its single family mortgage purchase program designated as "Program 77" through the issuance of the Series 2009C Bonds and additional series of its Residential Mortgage Revenue Bonds issued simultaneous with the conversion of the Series 2009C Bonds from taxable bonds to tax-exempt bonds and the release of Series 2009C Bond proceeds from escrow; and

WHEREAS, the Department has previously entered into a Second Amended and Restated Warehousing Agreement dated as of December 1, 2011 (the "Warehousing Agreement") with the RMRB Trustee, First Southwest Company and PlainsCapital Bank (collectively, the "Warehouse Provider") and The Bank of New York Mellon Trust Company, N.A., as custodian (the "Custodian"), providing for the acquisition and temporary warehousing by the Warehouse Provider of up to \$500,000,000 of qualifying mortgage-backed securities ("Mortgage Certificates") acquired under Program 77; and

WHEREAS, pursuant to Resolution No. 12-031 adopted on June 14, 2012, the Board authorized an increase to \$600,000,000 in the principal amount of Mortgage Certificates to be warehoused under the Warehousing Agreement; and

WHEREAS, upon the conclusion of the NIBP and the purchase of Mortgage Certificates with proceeds of Series 2009C Bonds that have been converted to tax-exempt bonds, Mortgage Certificates will remain in the Warehousing Agreement (hereinafter referred to as “Residual Mortgage Certificates”); and

WHEREAS, the Department desires to sell all or a portion of the Residual Mortgage Certificates; and

WHEREAS, the Board now desires to authorize and approve (i) the sale of Residual Mortgage Certificates, (ii) the payment of any costs associated with the foregoing transaction, and (iii) the execution and delivery of such documents and the taking of such other actions as may be necessary or convenient to carry out the provisions of this Resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THAT:

ARTICLE 1

SALE OF RESIDUAL MORTGAGE CERTIFICATES

Section 1.1 Sale of Residual Mortgage Certificates. The sale of an amount not to exceed \$150,000,000 of Residual Mortgage Certificates at a weighted average purchase price of no less than 105.20% of the outstanding principal balance thereof is hereby authorized.

Section 1.2 Execution and Delivery of Documents. The Authorized Representatives of the Department named in this Resolution are each hereby authorized to execute, attest, affix the Department’s seal to and deliver such agreements, advance commitment agreements, assignments, bonds, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, notices of acceptance, written requests and other papers, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.3 Authorized Representatives. The following persons are hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department’s seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Governing Board, the Executive Director of the Department, the Chief of Agency Administration of the Department, the Director of Bond Finance of the Department, and the Secretary or any Assistant Secretary to the Governing Board. Such persons are referred to herein collectively as the “Authorized Representatives.”

Section 1.4 Authorization to Pay Costs. The use of an amount not to exceed \$1,500,000 of the sales proceeds is authorized to be used to pay costs of the transactions authorized by this Resolution.

ARTICLE 2

APPROVAL AND RATIFICATION OF CERTAIN ACTIONS

Section 2.1 Ratifying Other Actions. All other actions taken or to be taken by the Executive Director and the Department’s staff in connection with the sale of the Residual Mortgage Certificates are hereby ratified and confirmed.

ARTICLE 3

GENERAL PROVISIONS

Section 3.1 Notice of Meeting. This Resolution was considered and adopted at a meeting of the Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Board.

Section 3.2 Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

[Execution page follows]

PASSED AND APPROVED this 6th day of September, 2012.

Chair, Governing Board

ATTEST:

Secretary to the Governing Board

(SEAL)

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BOARD ACTION REQUEST

BOND FINANCE DIVISION

September 6, 2012

Presentation, Discussion, and Possible Action on Resolution No. 13-006 authorizing the sale of mortgage certificates and redemption of bonds from Residential Mortgage Revenue Bonds Series 2009C-3

RECOMMENDED ACTION

WHEREAS, the Department has previously issued, under New Issue Bond Program (NIBP), its Residential Mortgage Revenue Bonds (RMRB), Series 2009C and the Thirtieth Supplemental Residential Mortgage Revenue Bond Trust Indenture dated as of December 1, 2009; and

WHEREAS, in accordance with the Thirtieth Series Supplement and the provisions of the NIBP, the Department converted a portion of the Series 2009C Bonds from taxable bonds to tax-exempt bonds and authorized the release of the proceeds of the Series 2009C-3 Bonds held in escrow pursuant to the Second Amendment to Thirtieth Supplemental Residential Mortgage Revenue Bond Trust Indenture dated as of December 21, 2011 to be used to acquire 2009C-3 Mortgage Certificates; and

WHEREAS, the Department desires to sell the Residential Mortgage Revenue Bonds Series 2009C-3 Mortgage Certificates in order to effect the redemption of the outstanding Bonds pursuant to the Indenture; it is therefore

RESOLVED, the Governing Board of the Department approves the sale of the Mortgage Certificates, the redemption of the Bonds, the payment of any costs associated with the transaction; and

FURTHER RESOLVED, that Resolution No. 13-006 is hereby adopted in the form presented to this meeting.

BACKGROUND

Bond Finance has affirmed the feasibility of executing a mortgage certificate sale and redemption of the Residential Mortgage Revenue Bonds (RMRB) Series 2009C-3. Amounts are outlined in the following table:

Series	Bonds Outstanding as of July 1, 2012	Mortgage Certificates Outstanding as of July 1, 2012
RMRB 2009C-3	72,660,000	72,723,944

Given the current market conditions, this transaction will generate a present value benefit to the RMRB indenture.

The Department would accomplish this transaction by selling all or a portion of the MBS certificates so long as the gross price received is equal to or greater than 106%.

The mortgage backed securities sold under the RMRB indenture are expected to generate \$3.275 million to be used to fund additional down payment assistance advances. This will allow the Department to assist approximately 630 new first-time homebuyers.

RESOLUTION NO. 13-006

RESOLUTION APPROVING THE SALE OF MORTGAGE CERTIFICATES AND REDEMPTION OF RESIDENTIAL MORTGAGE REVENUE BONDS, SERIES 2009C-3; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code (the "Act"), as amended from time to time for the purpose of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe and sanitary housing for individuals and families of low and very low income and families of moderate income (as described in the Act as determined by the Governing Board of the Department (the "Governing Board") from time to time) at prices they can afford; and

WHEREAS, the Act authorizes the Department: (a) to acquire, and to enter into advance commitments to acquire, mortgage loans (including participations therein) secured by mortgages on residential housing in the State of Texas (the "State"); (b) to issue its bonds, for the purpose of obtaining funds to make and acquire such mortgage loans or participations therein, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such mortgage loans or participations therein, and to mortgage, pledge or grant security interests in such mortgages, mortgage loans or other property of the Department, to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, the Department has previously issued, under the Act and the federal government's New Issue Bond Program ("NIBP"), its Residential Mortgage Revenue Bonds, Series 2009C (the "Series 2009C Bonds") pursuant to the Residential Mortgage Revenue Bond Trust Indenture dated as of November 1, 1987 (as heretofore amended and supplemented, collectively the "RMRB Master Indenture") between the Department, as successor to the Texas Housing Agency, and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "RMRB Trustee"), and the Thirtieth Supplemental Residential Mortgage Revenue Bond Trust Indenture dated as of December 1, 2009 (together with the amendments thereto including the Second Amendment described below, the "Thirtieth Series Supplement" and together with the RMRB Master Indenture, collectively the "RMRB Indenture") between the Department and the RMRB Trustee; and

WHEREAS, in accordance with the Thirtieth Series Supplement and the provisions of the NIBP, the Department converted a portion of the Series 2009C Bonds from taxable bonds to tax-exempt bonds (such converted portion being the "Series 2009C-3 Bonds") and authorized the release of the proceeds of the Series 2009C-3 Bonds held in escrow pursuant to the Second Amendment to Thirtieth Supplemental Residential Mortgage Revenue Bond Trust Indenture dated as of December 21, 2011 (the "Second Amendment") between the Department and the Trustee to be used to acquire 2009C-3 Mortgage Certificates (as defined in the Second Amendment); and

WHEREAS, the Department desires to (i) sell all or a portion of the 2009C-3 Mortgage Certificates in order to effect the redemption of the outstanding 2009C-3 Bonds pursuant to the RMRB Indenture; and

WHEREAS, the Governing Board now desires to authorize and approve (i) sale of the 2009C-3 Mortgage Certificates, the redemption of the 2009C-3 Bonds and the payment of redemption premium, if any, (ii) the payment of any costs associated with the foregoing transactions, and (iii) the execution and delivery of such documents and the taking of such other actions as may be necessary or convenient to carry out the provisions of this Resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THAT:

ARTICLE 1

SALE OF MORTGAGE CERTIFICATES

Section 1.1 Sale of 2009C-3 Mortgage Certificates. The sale of 2009C-3 Mortgage Certificates in an amount sufficient (i) to redeem the outstanding Series 2009C-3 Bonds, (ii) to pay any costs of the transaction, and (iii) to achieve tax compliance or maintain the ratings for bonds issued under the RMRB Indenture at a purchase price of no less than 106% (representing the weighted average sales price of all mortgage certificates sold) of the outstanding principal balance thereof is hereby authorized, all under and in accordance with the RMRB Indenture and subject to compliance with the terms of the RMRB Indenture.

Section 1.2 Redemption of Series 2009C-3 Bonds. The Authorized Representatives are hereby authorized and directed: (i) to instruct the RMRB Trustee to redeem the outstanding Series 2009C-3 Bonds in accordance with the RMRB Indenture and (ii) to take all other actions necessary to cause such redemption to occur including payment of any redemption premium for the Series 2009C-3 Bonds.

Section 1.3 Execution and Delivery of Documents. The Authorized Representatives of the Department named in this Resolution are each hereby authorized to execute, attest, affix the Department's seal to and deliver such agreements, advance commitment agreements, assignments, bonds, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, notices of acceptance, written requests and other papers, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.4 Authorized Representatives. The following persons are hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Governing Board, the Executive Director of the Department, the Chief of Agency Administration of the Department, the Director of Bond Finance of the Department, and the Secretary or any Assistant Secretary to the Governing Board. Such persons are referred to herein collectively as the "Authorized Representatives."

Section 1.5 Authorization to Pay Costs. The use of an amount not to exceed \$400,000 of the sales proceeds is authorized to be used to pay costs of the transactions authorized by this Resolution.

Section 1.6 Authorization to Invest Funds. The Authorized Representatives are hereby authorized to invest any remaining proceeds from the sale of the 2009C-3 Mortgage Certificates in accordance with the RMRB Indenture.

ARTICLE 2

APPROVAL AND RATIFICATION OF CERTAIN ACTIONS

Section 2.1 Engagement of Other Professionals. The Executive Director or the Director of Bond Finance is authorized to engage an accounting firm to perform such functions, audits, yield calculations and subsequent investigations as necessary or appropriate to comply with the RMRB Indenture and the requirements of Bond Counsel to the Department, provided such engagement is done in accordance with applicable State law.

Section 2.2 Ratifying Other Actions. All other actions taken or to be taken by the Executive Director and the Department's staff in connection with the sale of the 2009C-3 Mortgage Certificates are hereby ratified and confirmed.

ARTICLE 3

GENERAL PROVISIONS

Section 3.1 Notice of Meeting. This Resolution was considered and adopted at a meeting of the Governing Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Governing Board.

Section 3.2 Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

[Execution page follows]

PASSED AND APPROVED this 6th day of September, 2012.

Chair, Governing Board

ATTEST:

Secretary to the Governing Board

(SEAL)

11

BOARD ACTION REQUEST
HOUSING TRUST FUND

September 6, 2012

Presentation, Discussion and Possible Action to approve amendment to Housing Trust Fund Rural Housing Expansion USDA Section 502 Direct Loan Application Assistance Program (“USDA Section 502 Direct Program”) reservation agreement with Community Development Corporation of Brownsville (“CDCB”).

RECOMMENDED ACTION

WHEREAS, amending the reservation agreement with CDCB will allow the entity to access additional funds and fulfill the intent of the program, it is hereby

RESOLVED, that the amendment to the reservation agreement with CDCB for USDA 502 Direct Program funds, resulting in USDA loan closing assistance to low-income rural households, is hereby approved as presented at this meeting and staff is authorized to proceed with the issuance of a reservation agreement amendment with the Administrator.

BACKGROUND

On July 8, 2010, the Department’s Governing Board approved a reservation agreement for CDCB to access up to \$49,500 under the 2010 USDA Section 502 Direct Program. Through this Program, CDCB received a \$1,500 administrative grant for every USDA Section 502 loan that is closed with a preapproved household earning up to 80% Area Median Family Income. The intent of the program is to help rural nonprofits cover the underwriting and administrative expenses associated with closing USDA Section 502 loans, and ultimately increase the amount of USDA-funded housing opportunities for rural Texans. The end date of CDCB’s reservation agreement was July 7, 2012, and it limited CDCB to assisting up to thirty-three (33) households.

CDCB has exceeded the number of households served per their original reservation agreement and anticipates closing approximately 60 to 70 low-income households (total) by August 31, 2013.

With the upcoming pooling of all remaining HTF program funds (with the exception of Texas Bootstrap Loan Program funds and Amy Young Barrier Removal funds), an amendment to 1) remove the maximum number of households that can be served and 2) to extend the reservation end date by approximately one additional year will allow CDCB to access to additional funds and further fulfill the intent of the program.

1m

BOARD ACTION REQUEST
HOUSING TRUST FUND
September 6, 2012

Presentation, Discussion and Possible Action to approve amendments to Housing Trust Fund “Amy Young Barrier Removal Program” Notices of Funding Availability (“NOFAs”).

RECOMMENDED ACTION

WHEREAS, amending the subject NOFA will grant Administrators greater access to program funds, it is hereby

RESOLVED, that the amendment to the NOFA for the Amy Young Barrier Removal Program, resulting in accessibility modifications for persons with disabilities earning less than 80% Area Median Family Income (“AMFI”), is hereby approved as presented at this meeting and staff authorized to proceed with the administration of the Program with current and future Administrators.

BACKGROUND

On July 30, 2009 and July 28, 2011, respectively, the Department’s Governing Board approved the 2010-2011 and 2012-2013 Housing Trust Fund Plans which called for the release of NOFAs for the Amy Young Barrier Removal Program. Through this program, eligible entities could obtain grant funds to make accessibility modifications to the dwellings of persons with disabilities earning less than 80% AMFI.

The original NOFAs prohibited the use of program funds for rental units that are financed with *any* federal funding. This restriction intended to prevent property owners from investing program funds into units that 1) should already be in compliance with minimum accessibility standards per applicable federal law or 2) had immediate access to additional federal funding to gain compliance with accessibility requirements per applicable federal law.

Since land-banked properties do not have access to funding to make renovations to meet accessibility standards, the NOFAs should be amended to clarify the type of federally funded rental properties that may not utilize program funds. Accordingly, both NOFAs shall be amended to state “Rental units in a Department-approved land-bank are eligible for program assistance”.

To date, over 27 Administrators have committed more than \$2.7M for accessibility modifications for persons with disabilities earning less than 80% AMFI. Approximately \$1.3M remains to be committed to additional eligible households for fiscal year 2013. This amendment, along with additional modifications to improve formatting and readability, to the NOFAs will grant current and future Administrators greater access to program funds so that they may continue to fulfill the intent of the program.

1n

BOARD ACTION REQUEST
HOUSING RESOURCE CENTER
September 6, 2012

Presentation, Discussion, and Possible Approval of the 2013 State of Texas Consolidated Plan: One-Year Action Plan (Draft for Public Comment)

RECOMMENDED ACTION

WHEREAS, the U.S. Department of Housing and Urban Development (HUD) requires the submission of a One-Year Action Plan in accordance with 24 CFR §91.320,

RESOLVED, that the Draft 2013 State of Texas Consolidated Plan: One-Year Action Plan (Draft for Public Comment), in the form presented to this meeting, is hereby ordered and it is approved, and

FURTHER RESOLVED, that the Executive Director and his designees are each hereby authorized, empowered and directed, for and on behalf of the Department, to cause notice of the Draft 2013 State of Texas Consolidated Plan: One-Year Action Plan to be published in the *Texas Register* and, in connection therewith, to make such non-substantive grammatical and technical changes as they deem necessary or advisable.

BACKGROUND

The Texas Department of Housing and Community Affairs (TDHCA), Texas Department of Agriculture (TDA), and Department of State Health Services (DSHS) prepared the 2013 State of Texas Consolidated Plan: One-Year Action Plan (Plan) in accordance with 24 CFR §91.320. TDHCA coordinates the preparation of the State of Texas Consolidated Plan documents. The Plan covers the State's administration of the Community Development Block Grant Program (CDBG) by TDA, the Housing Opportunities for Persons with AIDS Program (HOPWA) by DSHS, and the Emergency Solutions Grant (ESG) Program and the HOME Investment Partnerships (HOME) Program by TDHCA.

The Plan states the intended use of funds received by the State of Texas from the U.S. Department of Housing and Urban Development (HUD) for Program Year 2013. The Program Year begins on February 1, 2013, and ends on January 31, 2014. The Plan also illustrates the State's strategies in addressing the priority needs and specific goals and objectives identified in the 2010-2014 State of Texas Consolidated Plan.

A draft of the Plan to be approved by the Board for release for public comment can be found online at <http://www.tdhca.state.tx.us/housing-center/pubs.htm>. Upon approval by the Board, the Plan will be available for public comment from September 21 through October 22, 2012. Comment on the Plan may be provided in writing or directly at the consolidated public hearing held on October 10, 2012, at Stephen F. Austin, Room 172, 1700 Congress Avenue, Austin, TX 78701 at 10:00 am. The Plan will also be on the agenda for the October 9, 2012 Board meeting,

during which time public comment on the Plan will also be considered and accepted. At this time, changes have not been made by HUD to the consolidated planning certifications and forms SF-424 required to be submitted with the Plan. If there are any changes to the consolidated planning certifications or forms 424, these documents may also be released for public comment. The final version of the Plan will be presented to the Board for approval in November and is due to HUD by December 15, 2012.

10

BOARD ACTION REQUEST
NEIGHBORHOOD STABILIZATION PROGRAM
September 6, 2013

Presentation, Discussion, and Possible Action to approve direct Department action for the Neighborhood Stabilization Program (NSP)

RECOMMENDED ACTION

WHEREAS, Grantees under the Neighborhood Stabilization Program are allowed to take direct action to complete NSP projects, and

WHEREAS, TDHCA currently holds title to blighted properties received in foreclosure that require demolition and clearance in order to protect public safety and welfare, and

WHEREAS, additional opportunities may arise prior to the upcoming NSP expenditure deadline for TDHCA to take direct action to initiate and complete projects, thereby assuring timely and compliant completion of NSP, therefore be it

RESOLVED, that the Executive Director or his designee be and each of them hereby are authorized, empowered, and directed, for and on behalf of this Board to take such actions as they or any of them may deem necessary or advisable to effectuate the foregoing, and;

FURTHER RESOLVED, that all such actions, projects, and their results shall be reported to this Board.

BACKGROUND

The Neighborhood Stabilization Program (NSP) is a HUD-funded program authorized by HR3221, the “Housing and Economic Recovery Act of 2008” (HERA), as a supplemental allocation to the Community Development Block Grant (CDBG) Program through an amendment to the State of Texas 2008 CDBG Action Plan (Action Plan) and provided under Section 1497 of the Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. 111-203, approved July 21, 2010) (Dodd-Frank Act) through an amendment to the existing State of Texas 2010 CDGB Action Plan. The purpose of the program is to redevelop into affordable housing, or acquire and hold, abandoned, foreclosed, and vacant properties in areas that are documented to have the greatest need for arresting declining property values.

TDHCA currently holds title to eight single family properties in the Rio Grande Valley; pending action may add additional lots in the future. The properties have derelict structures and debris, which must be cleared for future redevelopment. The condition of the properties creates downward pressure on the values of neighboring properties, and has the potential to attract criminal activity. NSP funds may be appropriately used for clearance of these properties so that they may be redeveloped for future affordable housing. Procurement and selection of the contractor to complete the demolition work will follow all State and Federal requirements.

As the NSP expenditure deadline in March 2013 approaches, staff is working closely with NSP subgrantees to complete their projects and reach full expenditure. While applications received to date under the NSP – PI NOFA exceed the projected available funds, the possibility remains that small amounts of funds may remain to be expended as existing contracts reach completion. NSP proposes to take direct action with any remaining funds to support the efforts of existing subgrantees, with those actions designed for timely and compliant expenditure of funds. Activities may include additional demolition or acquisition of NSP-eligible properties to further stabilize local real estate markets and provide for future development of affordable housing.

1p

NEIGHBORHOOD STABILIZATION PROGRAM

BOARD ACTION REQUEST

SEPTEMBER 6, 2012

Presentation, Discussion, and Possible Action to approve an amendment to the Neighborhood Stabilization Program Contract with Builders of Hope, Inc.

Recommended Action

WHEREAS, Builders of Hope has requested amendment of their NSP1 contract to add additional funds for new construction; therefore be it

RESOLVED, that amendment of NSP Contract 77090000153, be and hereby is approved as presented to this meeting.

Background

The Neighborhood Stabilization Program (NSP) is a HUD-funded program authorized by HR3221, the “Housing and Economic Recovery Act of 2008” (HERA), as a supplemental allocation to the Community Development Block Grant (CDBG) Program through an amendment to the existing State of Texas 2008 CDBG Action Plan. The purpose of the program is to redevelop into affordable housing, or acquire and hold, abandoned and foreclosed properties in areas that are documented to have the greatest need for arresting declining property values as a result of excessive foreclosures.

Builders of Hope (BOH) received an award of NSP funds on July 16, 2009, in the original amount of \$2,661,370. Amendment 1 to the contract increased the amount to \$3,321,368.00. Builders of Hope was not able to secure the additional properties required to fulfill the contract requirements prior to the September 3, 2010 Obligation deadline, consequently Amendment 2 reduced the contract amount to \$1,113,541.80. Since that time, BOH has secured additional vacant lots through their agreement with the Texas State Affordable Housing Corporation (TSAHC), and has requested an increase to their contract sufficient to construct six new affordable homes in the Creekside subdivision. The proposed new construction will create renewed interest in the neighborhood, effectively jump-starting the stabilization of the area.

Activity	Original Budget	Current Budget	Proposed Budget
Purchase and Rehabilitation	\$1,104,448.00	\$0.00	\$0.00
New Construction	\$1,394,190.00	\$1,060,516.00	\$1,816,516.00
Demolition	\$ 36,000.00	\$0.00	\$0.00
Administration	\$126,732.00	\$ 53,025.80	\$90,826.00
Totals	\$2,661,370.00	\$1,113,541.80	\$ 1,907,342.00

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BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
September 6, 2012

Presentation, Discussion, and Possible Action on a material amendment to the Land Use Restriction Agreement (LURA) for Saint Charles Apartments.

RECOMMENDED ACTION

WHEREAS, Saint Charles Apartments was awarded Housing Tax Credits in 1990 for the rehabilitation of 126 units in Lewisville, Texas and the Land Use Restriction Agreement (LURA) requires that 100% of the units in the Project be leased to individuals or families whose incomes are 60% or less of the area median gross income, and

WHEREAS, the property does not have a leasing office and has been using unit #8 as an office,

WHEREAS, the owner has requested a material amendment to the LURA reducing the number of low income units to preserve the office, and the owner has complied with the notification requirements under the Department's Material Amendment rule, 10 TAC §60.130

WHEREAS, the property needs a leasing office to operate effectively which constitutes good cause for permitting the amendment, it is hereby

RESOLVED, that the Executive Director and his designees are hereby, authorized, directed, and empowered, for and on behalf of the Department, to amend the LURA for Saint Charles Apartments to permit one of the units to be used as an office.

BACKGROUND

The LURA for Saint Charles Apartments was executed in July 1992. The version of the LURA in use at that time did not specifically list the number of units on the property. The LURA requires 100% of the units to be leased to low income households. The property has been using unit #8 as an office which is a violation of sections 3(g) and 3(l) of the LURA which requires all units to be used as housing and rented to members of the general public.

The property management changed in 2007 when Myan Management became the management agent. At that time, Unit #8 was being used as a management office. Myan Management was provided a

letter from TDHCA dated May 5, 2006 and there were no findings of noncompliance during that onsite audit. This unit has been designated as an exempt unit on the Unit Status Report since then.

The owner has complied with the material amendments policy adopted by the Board; given the appropriate notices to the tenants and elected officials and provided the opportunity for public input. The public hearing was held on August 9, 2012 at 6:00 p.m. Approximately 36 residents attended and were in support of the requested change.

Staff recommends approval to amend the LURA for Saint Charles Apartments to permit one of the residential units to be used as an office.



MYAN MANAGEMENT GROUP

520 SILICON DRIVE
SOUTHLAKE, TEXAS 76092
817.442.8200 FAX: 817.442.7802

June 15, 2012

Texas Department of Housing and Community Affairs
221 East 11th
P.O. Box 1394
Austin, TX 78711

RE: Request for Material Amendment
 Saint Charles Apartments
 HTC: 70027
 CMTS ID: 891

Dear Ms. Hammond:

This letter is in response to the February 9, 2012 TDHCA findings regarding unit #8 located at Saint Charles Apartments. This unit is currently utilized as the leasing office for Saint Charles. Per 10TAC 60.130, the owner is requesting a material amendment to reduce the number of low income units in order to preserve the office. This office unit is valuable to current and future residents at Saint Charles and allows these individuals to:

- Complete lease/renewal paperwork
- Make rental/deposit payments to a person in lieu of mailing or placing in a "drop box"
- Place work orders for emergency and non-emergency repairs
- List concerns regarding residents or guests of residents on property
- Gain access to apartments when keys have been misplaced

The removal of the office unit could potentially have adverse effects not only on the residents who live at Saint Charles, but also the surrounding area. The presence of office personnel during normal business hours can also act as a deterrent for possible criminal activity.

The City of Lewisville building code does not allow portable buildings to be placed within the City limits unless as a temporary area for construction purposes; therefore a permit structure will need to be constructed if the board does not approve the reduction in low income units at Saint Charles.

Enclosed is a proposal from Bulldog Construction for a freestanding office building at an estimated cost of \$172,280. The Ownership of Saint Charles cannot afford the cost of this construction as the property has not experienced positive cash flow in over 5 years as noted by the year ending profit and loss statements included with this letter.

Please advise as to how we should further proceed in the material amendment process and also where to send the \$2,500.00 fee that should accompany this request.

If I can provide any further information, please feel free to contact me at jrust@myan.com or 817-442-8200 ext. 1208.

Sincerely,

A handwritten signature in black ink that reads "Jessica A. Rust". The signature is written in a cursive style with a large initial "J".

Jessica A. Rust
Operations Support Coordinator
Myan Management Group

Enclosures

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BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
September 6, 2012

Presentation, Discussion, and Possible Action on a material amendment to the Land Use Restriction Agreement (LURA) for Crown Point Apartments.

RECOMMENDED ACTION

WHEREAS, Crown Point Partnership, Ltd. received Housing Tax Credits in 1997 for the rehabilitation of 24 units of affordable housing in Venus, Texas, and the Land Use Restriction Agreement requires a provision for the following supportive services: emergency food/utilities assistance, Job Training Partnership Act (JTPA), and Comprehensive Energy Assistance Program (CEAP) through Palo Pinto Community Services, and

WHEREAS, at the time of application, the owner agreed to provide these services but now requests approval to revise the scope of the services and change the provider, and

WHEREAS, Crown Point Partnership, Ltd. has requested to amend the LURA to reflect a change in services and the owner has complied with the notification requirements under the Department's Material Amendment rule, 10 TAC §60.130, it is hereby

RESOLVED, that the Executive Director and his designees are hereby, authorized, directed, and empowered, for and on behalf of the Department, to amend the LURA for Crown Point Apartments as described below.

BACKGROUND

Crown Point Apartments was monitored in October 2010 and found to be in noncompliance for failure to provide required social services. The initial corrective action deadline was March 1, 2011.

On March 22, 2011, the property owner was referred to the Administrative Penalties Committee for review. On July 19, 2012, prior to an informal conference, the owner requested this material amendment to the LURA. The owner would like to remove the JTPA requirement and replace this with home chore services consisting of valet trash removal, assistance with recycling, furniture movement, and other home chores provided weekly. On-site social service activities will be provided twice monthly and include potluck dinners, game night, sing-a-longs, movie nights, and birthday parties. The owner would like to delete reference to Palo Pinto Community Services, which is no longer in business, and provide emergency food/utility assistance to the residents directly by

setting aside \$5,000 annually. The assistance will be provided through an application process that is open to all residents of the property.

The current LURA states:

“Throughout the Compliance Period, unless otherwise permitted by the Department, the Project shall provide the following services: Emergency Food/Utilities Assistance, JTPA, CEAP through Palo Pinto Community Services.”

Crown Point Apartments has requests that the LURA be amended to read:

Throughout the Compliance Period, unless otherwise permitted by the Department, the Project shall provide the following services: Emergency Food/Utilities Assistance, ~~JTPA, CEAP through Palo Pinto Community Services~~ Weekly Home Chores Services and Twice Monthly Onsite Social Events .

The owner has complied with the material amendments policy adopted by the Board; given the appropriate notices to the tenants and elected officials and provided the opportunity for public input. The public hearing was held on August 21, 2012 at 1:00 p.m. at the property.

Staff recommends approval of the requested LURA amendment, conditioned upon no negative public comment received as a result of the scheduled hearing.


MAC-RE, LLC
CORPORATE OFFICE
3224 26th STREET
METAIRIE, LA 70002

Phone (504) 561-1172 Fax (504) 561-1182

To: TDHCA Governing Board

From: Crown Point Partnership, Ltd., HTC #97001

Re: Request for Material Amendment to LURA to Exclude JTPA Services

Date: July 19, 2012

FACTS

In 1998, Crown Point Partnership, Ltd. (the "Project Owner"), through its former general partner, promised to provide Supportive Services to the residents of Crown Point Apartments (the "Complex").¹ On the other hand, Palo Pinto Community Service Corporation, who is no longer in business, agreed to provide all these services. The Complex has operated for over a decade with this mismatch between the LURA and the service provider agreement.

These promises were made over a decade ago by persons who are gone or out of business and at a time before the economic landscape darkened in rural Texas. Today, the services are just not feasible for the amount of space that is available at the property. There is nowhere for a community group or non-profit service provider to meet with tenants or provide services at the property. It is also hard pressed for organizations to provide individual services in an atmosphere of limited government funding. On the other hand, a small, rural Texas complex like Crown Point does not generate sufficient funds to run a jitney service, nor other off property services.

The residents have been giving in the past numerous referrals, recommendations and assistance in finding the service they were in need of. A host of service providers provide these services off site some the tenants have taken advantage of are:

- Helping Hands of Alvarado – Provided food pantry items
- Harvest Home - Provided Food items and Utility Assistance
- Hugley Health Services- Home Health Care
- Texas Neighborhood Services-provides one time emergency utility assistance for qualified applicants of Johnson county.
- C.H.I.P.S. – Insurance for children of low income families.

¹ Specifically "emergency food/utilities assistance, JTPA, CEAP through Palo Pinto Community Services" as handwritten in the Declaration of Land Use Restrictive Covenants for Low-Income Housing Credits dated July 16, 1998 by and between the Project Owner and TDHCA. We stepped in as the new general partner in 2005.



"This Institution is an Equal Opportunity Provider and Employer"



"Handicapped Units Available"

We request that the Board approve a limited amendment to the LURA that removes the JTPA requirement at Crown Point Apartments and replace it with Weekly Home Chore Services and Twice Monthly On-Site Social Events. This LURA requirement is a promise that the Complex Owner cannot keep due to limited space and inadequate funds for this small, rural apartment complex. The residents would greatly enjoy the assistance provide by the Weekly Home chore services and the Twice Monthly On-site social events. It would also benefit the residents we have due to 38% of our residents at this time are elderly, handicapped or disabled, 17% have employment and are earning wages, and 29% are single parent households, but due to low income, may not afford little extras. They would benefit from activities they could participate in, that would not disrupt their budget. It would also increase the morale of the community in a whole. The CEAP requirement will be provided by the owner as well.

EVALUATION FACTORS

We address the factors that the Board has asked Staff to review in evaluating requests for LURA material amendments.

1. Good cause exists to amend the LURA to exclude the JTPA component.
 - Although the LURA includes JTPA as a Supportive Service, the original service provider no longer exists and therefore cannot provide this service.
 - There is no indoor area other than the management office, which is barely adequate to house the management office.
 - There is no funding in the budget of the complex to build a space that would be needed to provide the services required.
 - The services that are being proposed to replace will be a benefit to the residents. It will allow them to have some simple chores done for them, that they would not otherwise be able to do, which will increase the quality of life for the resident. It will also allow all residents to interact with one another in a socialized setting.
2. If the amendment is approved and implemented, the Complex Owner and Complex will remain continuously in compliance with all applicable state and federal laws as follows: IRC Section 42, The HOME Final Rule, the QAP, Tex. Gov't Code, Chapter 2306 and the Fair Housing Act.

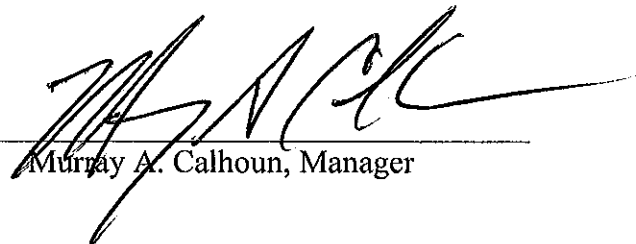
3. Crown Point Apartments does not have the resources it would take to build a adequate space for training or other such services that would require a classroom or meeting type setting.²
4. The included budget shows the Complex operating projections.
5. No tenant's lease or tenancy will be adversely affected by this request.
6. No right of first refusal is implicated by this request.
7. We do not request a change to the length of the LURA.
8. Public hearing. A public hearing on the LURA amendment change is scheduled at the Complex on February 18, 2012. A sample notice of the hearing is attached for TDHCA review and approval and will be given to the following:
 - Crown Point Apartments residents
 - Senator Brian Birdwell³
 - Representative Rob Orr
 - Mayor Charlie Grimes, Venus, Texas
 - Allen M. Lambright , USDA-Rural Development
 - James Paglia, Boston Capital Partners.

Dated this 6th day of February, 2012.

Respectfully submitted,

Crown Point Partnership, Ltd.

By: _____



Murray A. Calhoun, Manager

² USDA-RD-TX approved 2012 operating budget is attached.

³ Copy of the sample notice is attached.

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BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
September 6, 2012

Presentation, Discussion, and Possible Action on a material amendment to the Land Use Restriction Agreement (LURA) for San Augustine Seniors Apartments.

RECOMMENDED ACTION

WHEREAS, San Augustine Seniors Partnership, Ltd. received Housing Tax Credits and HOME funds in 1997 for the new construction of 36 units of affordable housing in San Augustine, Texas, and the Land Use Restriction Agreement requires that a local tax exempt organization named Palo Pinto Community Service provide social services to the residents that include emergency food/utilities, miscellaneous elderly assistance-meds, and transportation, and

WHEREAS, at the time of application, the owner agreed to provide these services but has requested to amend the LURA to revise the scope of the services and change the provider, and the owner has complied with the notification requirements under the Department's Material Amendment rule 10 TAC §60.130,

WHEREAS, good cause exists to amend the LURA, It is hereby

RESOLVED, that the Executive Director and his designees are hereby, authorized, directed, and empowered, for and on behalf of the Department, to amend the LURA for San Augustine Seniors Apartments as described below.

BACKGROUND

San Augustine Seniors Apartments was monitored in July 2010 and found to be in noncompliance for failure to provide required social services. The initial corrective action deadline was November 15, 2010 and, at the owner's request, was extended to February 12, 2011. Another monitoring visit was conducted in May 2011 and the previous noncompliance issue regarding supportive services remained uncorrected.

On March 22, 2011, the property owner was referred to the Administrative Penalties Committee for review. On July 19, 2012, prior to an informal conference, the owner requested this material amendment to the LURA. The owner has agreed to provide emergency food/utility assistance to the residents by setting aside \$5,000 annually. The assistance will be provided through an application process that is open to all residents of the property. Additionally, to replace the transportation requirement, home chore services consisting of valet trash removal, assistance with recycling, furniture movement and other home chores will be provided weekly. On-site social service activities will be provided twice monthly and include potluck dinners, game night, sing-a-longs, movie nights

and birthday parties. Miscellaneous elderly medical assistance will continue to be provided through several local community organizations.

The current LURA states:

“Throughout the Compliance Period, unless otherwise permitted by the Department, a Local Tax Exempt organization shall provide the following special supportive services that would not otherwise be available to the tenants: Emergency Food/Utilities, Misc. Elderly Assistance- Meds, Transportation.

At the time this Declaration is filed, the organization(s) providing these services is Palo Pinto Community Service. The Project Owner shall notify the Department (i) of any change in the status or role of such organization with respect to the Project and (ii) if such organization is proposed to be replaced by a different qualified Tax Exempt Organization.”

San Augustine Seniors Apartments requests that the LURA be amended to read:

Throughout the Compliance Period, ~~unless otherwise permitted by the Department, a Local Tax Exempt organization~~ the Project Owner shall provide the following special supportive services that would not otherwise be available to the tenants: Emergency Food/Utilities, Misc. Elderly Assistance- Meds, ~~Transportation~~, and Home Chores/Social Events Services (to include weekly home chores and twice monthly onsite social events).

At the time this Declaration is filed, ~~the organization(s) providing these services is Palo Pinto Community Service. The Project Owner shall notify the Department (i) of any change in the status or role of such organization with respect to the Project and (ii) if such organization is proposed to be replaced by a different qualified Tax Exempt Organization.”~~

The owner has complied with the material amendments policy adopted by the Board; given the appropriate notices to the tenants and elected officials and provided the opportunity for public input. The public hearing was held on August 20, 2012 at 10:00 a.m. at the property. There were no negative comments received.

Staff recommends approval of the requested LURA amendment.



MAC-RE, LLC
CORPORATE OFFICE
3224 26th STREET
METAIRIE, LA 70002

Phone (504) 561-1172 Fax (504) 561-1182

To: TDHCA Governing Board
From: San Augustine Seniors Partnership, Ltd., HTC #97128
Re: Request for Material Amendment to LURA to Exclude Transportation
Date: July 19, 2012

FACTS

In 2000 San Augustine Seniors Partnership, Ltd. (the "Project Owner"), through its former general partner, promised to provide Supportive Services to the residents of San Augustine Seniors Apartments (the "Complex").¹ On the other hand, Palo Pinto Community Service Corporation, who is no longer in business, agreed to provide all these services except transportation.² The Complex has operated for a decade with this mismatch between the LURA and the service provider agreement.

These promises were made a decade ago by persons who are gone or out of business and at a time before the economic landscape darkened in rural Texas. Today, a transportation amenity can best be described as a luxury that non-profit service providers are hard pressed to provide in an atmosphere of limited government funding. On the other hand, a small, rural Texas complex like San Augustine Seniors does not generate sufficient funds to run a jitney service.

The residents enjoy a broad range of on-site community services that are not beyond their reach due to inadequate transportation. A host of service providers provide these on-site services:

- Heart to Heart Hospice of Lufkin, LLC provides care on a daily basis for life end-stage issues
- Pineywoods Home Health Care, Inc. provides community events that include blood pressure and glucose testing which are popular with elderly residents
- San Augustine Seniors Nutrition Center provides meals-on-wheels to the residents every Monday through Friday
- Memorial Health System of East Texas provides "Home Care" to certain residents
- Texas Home Health, Inc. provides a Thanksgiving dinner
- Colonial Pines Healthcare Center provides cookouts
- Tri-County Community Action, Inc. provides energy assistance and medical referrals (this service is not provided at the site).

¹ Specifically "emergency food/utilities, miscellaneous elderly assistance, meals, transportation" as handwritten in the Declaration of Land Use Restrictive Covenants for Low-Income Housing Credits dated March 30, 2000 by and between the Project Owner and TDHCA. We stepped in as the new general partner in 2005.

² Supportive Service Agreement dated June 6, 1997, attached.



"This Institution is an Equal Opportunity Provider and Employer"



"Handicapped Units Available"

Deep East Texas Council of Governments & Economic Development District (covers 12 counties throughout East Texas) has conditionally committed to provide transportation services at the Complex. However, this commitment is wholly depend upon Texas Department of Transportation funding which may be available sometime during 2012.³

If the Deep East Texas Council is lucky enough to get funding, then the Complex will certainly use its services.

We request that the Board approve a limited amendment to the LURA that removes the transportation requirement at San Augustine Seniors and replaces it with Weekly Home Chores and Twice Monthly Onsite Social events. The residents enjoy a wide range of services at the site that are not dependent upon transportation. This LURA requirement is a promise that the Complex Owner cannot keep due to limited non-profit funding and inadequate funds for this small, rural apartment complex. We would like to request the wording in the current LURA "local Tax Exempt Organization shall provide emergency food/utilities, misc. elderly assistance- meds, and transportation" be removed and replaced with "the Project shall provide emergency food/ utilities" The misc. elderly assistance services are being provided at the property by several different community groups, they are listed above.

EVALUATION FACTORS

We address the factors that the Board has asked Staff to review in evaluating requests for LURA material amendments.

1. Good cause exists to amend the LURA to exclude the transportation component.
 - Although the LURA includes transportation as a Supportive Service, the original service provider never agreed to provide transportation as part of its services.
 - The residents enjoy substantial community on-site services from a variety of providers that are not dependent upon transportation.
 - A promise made by the Project Owner in 2000 to provide a luxury item like transportation into 2011 was overly optimistic given the limited funds available to non-profit service providers or this small rural Complex's ability to pay.
 - Deep East Texas Council of Governments & Economic Development District has agreed to provide transportation services if the Texas Department of Transportation decides to fund the program.
2. If the amendment is approved and implemented, the Complex Owner and Complex will remain continuously in compliance with all applicable state and federal laws as follows: IRC Section 42, The HOME Final Rule, the QAP, Tex. Gov't Code, Chapter 2306 and the Fair Housing Act.

³ Letter from Walter G. Diggles, Sr. dated April 7, 2011 attached.

3. The East Texas service providers in the San Augustine area do not have the funds to operate a transportation service. A small complex like this one with limited funds is incapable of making a \$100,000 outlay to buy and operate a van for the residents.⁴
4. The included budget shows the Complex operating projections.
5. No tenant's lease or tenancy will be adversely affected by this request.
6. No right of first refusal is implicated by this request.
7. We do not request a change to the length of the LURA.
8. Public hearing. A public hearing on the LURA amendment change is scheduled at the Complex on July 10, 2012. A sample of the notice of the hearing is attached for TDHCA review and approval and will be given to the following:
 - San Augustine Seniors Apartments residents
 - Senator Robert Nichols
 - Representative Wayne Christian
 - Mayor Leroy Hughes, San Augustine, Texas
 - Sabrina Glenn, USDA-Rural Development
 - James Paglia, Boston Capital Partners.⁵

Dated this 1st day of June, 2012.

Respectfully submitted,

San Augustine Seniors Partnership, Ltd.

By: 

Murray A. Calhoun, Manager

⁴ USDA-RD-TX approved 2012 operating budget is attached.

⁵ Sample of the notice is attached.

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BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
September 6, 2012

Presentation, Discussion, and Possible Action on a material amendment to the Land Use Restriction Agreement for Meadowbrook Square Apartments.

RECOMMENDED ACTION

WHEREAS, Meadowbrook Square Partnership, Ltd. received Housing Tax Credits in 1997 for the rehabilitation of 20 units of affordable housing in Godley, Texas, and the Land Use Restriction Agreement (LURA) requires a provision for the following supportive services: emergency food/utilities assistance, Job Training Partnership Act (JTPA), Comprehensive Energy Assistance Program (CEAP) through Palo Pinto Community Services, and

WHEREAS, at the time of application, the owner agreed to provide these services but now requests to amend the LURA to revise the scope of the services and change the provider, and the owner has complied with the notification requirements under the Department's Material Amendment rule, 10 TAC §60.130,

WHEREAS, good cause exists to amend the LURA, it is hereby

RESOLVED, that the Executive Director and his designees are hereby, authorized, directed, and empowered, for and on behalf of the Department, to amend the LURA for Meadowbrook Square Apartments as described below.

BACKGROUND

Meadowbrook Square Apartments was monitored in February 2011 and found to be in noncompliance for failure to provide required social services. The initial corrective action deadline was June 6, 2011.

On June 22, 2011, the property owner was referred to the Administrative Penalties Committee for review. On July 19, 2011, prior to an informal conference, the owner requested this material amendment to the LURA. The owner would like to remove the JTPA requirement and replace this with home chore services consisting of valet trash removal, assistance with recycling, furniture movement and other home chores will be provided weekly. On-site social service activities will be provided twice monthly and include potluck dinners, game night, sing-a-longs, movie nights and birthday parties. The owner would like to delete reference to Palo Pinto Community Services, who is no longer in business, and provide emergency food/utility assistance to the residents directly by

setting aside \$5,000 annually. The assistance will be provided through an application process that is open to all residents of the property.

The current LURA states:

“Throughout the Compliance Period, unless otherwise permitted by the Department, the Project shall provide the following services: Emergency Food/Utilities Assistance, JTPA, CEAP through Palo Pinto Community Services.”

Meadowbrook Square Apartments has requested that the LURA be amended to read:

Throughout the Compliance Period, unless otherwise permitted by the Department, the Project shall provide the following services: Emergency Food/Utilities Assistance, ~~JTPA, CEAP through Palo Pinto Community Services~~ Weekly Home Chores Services and Twice Monthly Onsite Social Events .

The owner has complied with the material amendments policy adopted by the Board; given the appropriate notices to the tenants and elected officials and provided the opportunity for public input. The public hearing was held on August 21, 2012, at 10:00 a.m. at the property.

Staff recommends approval of the requested LURA amendment, conditioned upon no negative public comment received as a result of the scheduled hearing.


MAC-RE, LLC
CORPORATE OFFICE
3224 26th STREET
METAIRIE, LA 70002

Phone (504) 561-1172 Fax (504) 561-1182

To: TDHCA Governing Board

From: Meadowbrook Square Apartments, Ltd., HTC #97002

Re: Request for Material Amendment to LURA to Exclude JTPA Services

Date: July 19, 2012

FACTS

In 1998, Meadowbrook Square Partnership, Ltd. (the "Project Owner"), through its former general partner, promised to provide Supportive Services to the residents of Meadowbrook Square Apartments (the "Complex").¹ On the other hand, Palo Pinto Community Service Corporation, who is no longer in business, agreed to provide all these services. The Complex has operated for over a decade with this mismatch between the LURA and the service provider agreement.

These promises were made over a decade ago by persons who are gone or out of business and at a time before the economic landscape darkened in rural Texas. Today, the services are just not feasible for the amount of space that is available at the property. There is nowhere for a community group or non-profit service provider to meet with tenants or provide services at the property. It is also hard pressed for organizations to provide individual services in an atmosphere of limited government funding. On the other hand, a small, rural Texas complex like Meadowbrook Square does not generate sufficient funds to run a jitney service, nor other off property services.

The residents have been giving in the past numerous referrals, recommendations and assistance in finding the service they were in need of. A host of service providers provide these services off site some the tenants have taken advantage of are:

- Helping Hands of Alvarado – Provided food pantry items
- Spirit House (Spirit of Sharing)- Provided Food items
- Godley Baptist Church – Utility Assistance

¹ Specifically "emergency food/utilities assistance, JTPA, CEAP through Palo Pinto Community Services" as handwritten in the Declaration of Land Use Restrictive Covenants for Low-Income Housing Credits dated July 16, 1998 by and between the Project Owner and TDHCA. We stepped in as the new general partner in 2005.



"This Institution is an Equal Opportunity Provider and Employer"



"Handicapped Units Available"

- Texas Neighborhood Services-provides one time emergency utility assistance for qualified applicants of Johnson county.

We request that the Board approve a limited amendment to the LURA that removes the JTPA requirement at Meadowbrook Square Apartments and replace it with Weekly Home Chore Services and Twice Monthly On-Site Social Events. CEAP requirements will be provided by owner. This LURA requirement is a promise that the Complex Owner cannot keep due to limited space and inadequate funds for this small, rural apartment complex. The residents would greatly enjoy the assistance provide by the Home chore services and the Monthly On-site social events. It would also benefit the residents we have due to 35% of our residents at this time are elderly, handicapped or disabled, 20% have employment and are earning wages, but due to low income, may not afford little extras. They would benefit from activities they could participate in, that would not disrupt their budget. It would also increase the morale of the community in a whole.

EVALUATION FACTORS

We address the factors that the Board has asked Staff to review in evaluating requests for LURA material amendments.

1. Good cause exists to amend the LURA to exclude the JTPA component.
 - Although the LURA includes JTPA as a Supportive Service, the original service provider no longer exists and therefore cannot provide this service.
 - There is no indoor area other than the management office, which is barely adequate to house the management office.
 - There is no funding in the budget of the complex to build a space that would be needed to provide the services required.
 - The services that are being proposed to replace will be a benefit to the residents. It will allow them to have some simple chores done for them, that they would not otherwise be able to do, which will increase the quality of life for the resident. It will also allow all residents to interact with one another in a socialized setting.
2. If the amendment is approved and implemented, the Complex Owner and Complex will remain continuously in compliance with all applicable state and federal laws as follows: IRC Section 42, The HOME Final Rule, the QAP, Tex. Gov't Code, Chapter 2306 and the Fair Housing Act.

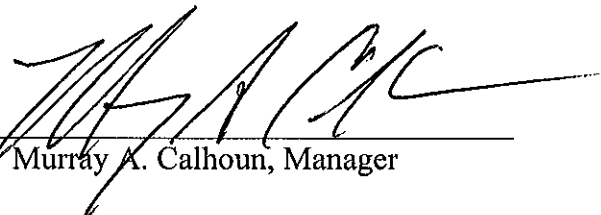
3. Meadowbrook Square Apartments does not have the resources it would take to build and adequate space for training or other such services that would require a classroom or meeting type setting.²
4. The included budget shows the Complex operating projections.
5. No tenant's lease or tenancy will be adversely affected by this request.
6. No right of first refusal is implicated by this request.
7. We do not request a change to the length of the LURA.
8. Public hearing. A public hearing on the LURA amendment change is scheduled at the Complex on February 17, 2012. A sample notice of the hearing is attached for TDHCA review and approval and will be given to the following:
 - Meadowbrook Square Apartments residents
 - Senator Brian Birdwell³
 - Representative Rob Orr
 - Mayor David Wallis, Godley, Texas
 - Allen M. Lambright, USDA-Rural Development
 - James Paglia, Boston Capital Partners.

Dated this 23rd day of January, 2012.

Respectfully submitted,

Meadowbrook Square Partnership, Ltd.

By:



Murray A. Calhoun, Manager

² USDA-RD-TX approved 2012 operating budget is attached.

³ Copy of the sample notice is attached.

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BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
September 6, 2012

Presentation, Discussion, and Possible Action on a Housing Tax Credit (HTC) application amendment and material amendment to the Land Use Restriction Agreement (LURA) for Mariposa at Ella Blvd Apartments

RECOMMENDED ACTION

WHEREAS, Mariposa Ella Blvd L.P. received Housing Tax Credits in the annual amount of \$1,995,551 and a TCAP Loan in the amount of \$3,556,213 in 2009 for the new construction of 180 units of affordable housing in Houston, Texas, and the Land Use Restriction Agreement requires restriction of 100% of the units at 60% of the area median gross income; and

WHEREAS, during the design and construction, the owner realized that the configuration of the buildings allowed space for two additional units for a total of 182 units, the owner agreed to maintain the approved applicable fraction and provide these units as low income units and needs to amend the application and LURA to reflect this change; and

WHEREAS, in order to change the number of low income units, Board approval is necessary and the owner has complied with the notification requirements under the Department's Material Amendment rule, 10 TAC §60.130,

WHEREAS, good cause exists to amend the LURA; it is hereby

RESOLVED, that the Executive Director and his designees are hereby, authorized, directed, and empowered, for and on behalf of the Department, to approve the HTC application amendment and amend the LURA for Mariposa at Ella Blvd Apartments as described below.

BACKGROUND

Mariposa at Ella Blvd Apartments requested an application and LURA amendment on August 16, 2012 to reflect a total of 182 tax credit units instead of the 180 originally indicated in the application. During the design and construction of the property it became apparent that they had additional space to accommodate a one bedroom/one bathroom unit (#1301) and a two bedroom/two bathroom unit (#1318). The construction of additional units was not foreseeable at the time of application because

the full engineering and architectural drawings had not been through the final design and permitting process. Initially, the owner considered the most efficient way to use this space (storage, supportive services, market, etc.) and decided to construct the units as residential space. The owner represented in their application that 100% of the units would be set aside for households with incomes at or below 60% of the area median gross income and, therefore, submitted the amendment request to include these units in this set aside. The units will add additional affordability to the community and will not cause harm to the existing neighbors or residents.

The owner has delivered substantially more amenities and rentable area than promised in the original application. This is an elderly development that provides onsite supportive services through a partnership with Apartment Life CARES Teams. These teams typically live onsite and provide daily supportive services to improve resident retention and relations. The owner has confirmed that units will not be set-aside from this specific group (thereby in noncompliance with the general public use requirement of the Internal Revenue Code) and, since this is a 100% tax credit property, the CARES team will only reside onsite if they are income qualified for the tax credit program.

The cost certification for this property has been submitted and reflects the total cost of the development, including the two additional units. The owner has complied with the material amendments policy adopted by the Board; given the appropriate notices to the tenants and elected officials and provided the opportunity for public input. The public hearing was held on August 27, 2012, at the property. There was no negative public comment received.

Staff recommends approval of the requested LURA amendment to increase the total units to 182 units.

August 16, 2012

Ms. Lucy Trevino
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: Mariposa at Ella Blvd, TDHCA #09280 & TCAP #09799

Dear Ms. Trevino,

I am sending you the following amendment request on behalf of Mariposa Ella Blvd LP. Mariposa Ella Blvd LP is the owner of Mariposa Apartment Homes at Ella Boulevard (MEB) in Houston, Texas. MEB has an opportunity to add two additional units, a one bedroom / one bath and a two bedroom / two bath, that would be used by our community as two additional affordable apartment homes rented at 60% of area median income.

During the design and construction of MEB it came to our attention that the configuration of the buildings allowed space for a 1/1 and a 2/2 unit should the owner opt to convert the areas from storage to livable spaces. The spaces are located in Building 1 on the third floor where the buildings intersect currently delineated as units 1302 and 1318 and were originally delineated as storage. As the construction process moved on there were internal discussions on what to do with the extra space. In the fall of 2011 the MEB management team decided to designate the spaces in Building 01 as units and move the storage areas to Building 04 to avoid any issues with the tagging of units in Building 01. The areas in Building 04 have been and will continue to be treated as storage until such time as the areas are approved for occupancy.

The addition of the units was not foreseeable at the time of application because the full engineering and architectural drawings had not been through the final design and permitting process. Building footprints, especially on large buildings such as these, often have changes resulting from the need to accommodate various site conditions including, but not limited to design requirements imposed by local jurisdiction (setbacks, parking, etc), ADA and fair housing standards. The final building footprints allowed for two additional areas that could either be storage or, in this case, converted to affordable housing. The addition of the two affordable units will not disrupt nor cause undue harm to the neighboring community or the existing residents.

MEB Proposes The Following

Allow the addition of the two affordable units. The units will add additional affordability to the community and will not cause harm to the existing neighbors or residents.

Items to Note

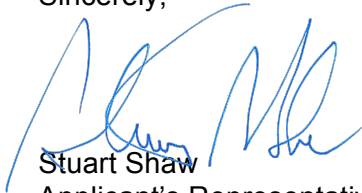
- The percentage of Low Income Units will not change. The property is still 100% affordable.
- MEB has delivered substantially more amenities and Net Rentable Area than promised in the LIHTC / TCAP application. See the attached schedule.
- MEB will conduct public a public hearing and will submit the appropriate documentation for

review and approval by the TDHCA under separate cover.

MEB is a first class community with a great amenities that is thoughtfully designed and managed with long term ownership in mind. The two additional units does not alter the footprint of the community and gives the MEB the opportunity to provide additional affordable housing. We respectfully request approval from the TDHCA to add the two additional affordable apartment homes.

Should you have any questions please contact Casey Bump in my office at 512-220-9902.

Sincerely,



Stuart Shaw
Applicant's Representative

Attachments: 1) Amenity Schedule

Mariposa at Ella Blvd - TDHCA 09280 TCAP 09799

2009 Allocation - Mariposa at Ella Blvd		Points Taken at Application	Points Delivered
Common Amenity Points (Threshold)		15	24
Green Building Points from Volume 4		6	6
Selection Criteria Points		14	18
Total		35	48

Net Rentable Area (Units from Application Compared to Units Constructed)	SF at Application	SF At Construction Completion	Increase (Decrease)
1 BR / 1 BA	760 SF	773 SF	13 SF
2 BR / 2 BA - Small	1,075 SF	1,093 SF	18 SF
2 BR / 2 BA - Large	1,190 SF	1,237 SF	47 SF



727.520.8181
www.aerophoto.com

Mariposa at Ella Boulevard

Image # 111020 6152
Date 10.20.11

Green Building Amenities from Volume 4	QAP Point Value	Points Taken at Application	Points Delivered
<ul style="list-style-type: none"> passive solar heating/cooling (3 point maximum) 			
A) the glazing area on the north- and south-facing walls of the building is at least 50% greater than the sum of the glazing area on the east- and west-facing walls; and the east-west axis of the building is within 15 degrees of due east-west	2	-	-
B) in addition to the above, the project utilizes a narrow floor plate (less than 40 feet) and single loaded corridors to optimize daylight penetration and passive ventilation; and solar screens or solar film on all East, West, and South Windows with building oriented to east-west axis within 15 degrees of due east-west, west-south axis within 15 degrees of due west-south, and south-east axis within 15 degrees of due south-east	1	-	-
<ul style="list-style-type: none"> water conserving features (2 point maximum) 			
A) Install high efficiency toilets using less than or equal to 1.28 gallons/flush or WaterSense certified; and/or	1	1	1
B) Install bathroom lavatory faucets and showerheads that do not exceed 2.0 gallons/minute and kitchen faucets that do not exceed 1.5 gallons/minute. Applies to all fixtures throughout the development. Rehab projects may choose to install compliant faucet aerators instead of replacing entire faucets	1	1	1
<ul style="list-style-type: none"> Provide solar water heaters designed to provide at least 25% of the average energy used to heat domestic water throughout the entire development. 	2	-	-
<ul style="list-style-type: none"> irrigation and landscaping (2 point maximum) 			
A) collected water (at least 50%) for irrigation purposes; and/or	1	-	-
B) selection of native trees and plants that are appropriate to the site's soils and microclimate	1	-	-
<ul style="list-style-type: none"> Sub-metered utility meters (2 points maximum) 			
A) Sub-metered utility meters on rehab project without existing sub-meters or new construction senior project	2	-	-
B) Sub-metered utility meters on new construction project (excluding new construction senior project)	1	-	-
<ul style="list-style-type: none"> Energy efficiency (4 points maximum) 			
A) development uses Energy-Star qualified windows and glass doors exclusively; insulation, and air barriers greater than or equal to Energy Star air barrier and insulation criteria; and HVAC, and domestic hot water heaters, or insulation that exceeds Energy Star standards; or	3	-	-
B) the project promotes energy efficiency by meeting the requirements of Energy Star for Homes by either complying with the appropriate builder option package or a HERS score of 85	4	-	-
<ul style="list-style-type: none"> Thermally and draft efficient doors (SHGC of 0.40 or lower and U-value specified by climate zone according to the 2006 IECC) 	2	2	2
<ul style="list-style-type: none"> Photovoltaic panels for electricity and design and wiring for the use of such panels (3 points maximum) 			
A) Photovoltaic panels that total 10 kW	1	-	-
B) Photovoltaic panels that total 20 kW	2	-	-
C) Photovoltaic panels that total 30 kW	3	-	-
<ul style="list-style-type: none"> Construction waste management to divert a minimum of 50% of construction waste from landfills 	1	-	-
<ul style="list-style-type: none"> Implementation of EPA's Best Management Practices for erosion and sedimentation control during construction 	1	1	1
<ul style="list-style-type: none"> Recycling service provided throughout the compliance period 	1	1	1
<ul style="list-style-type: none"> Water permeable paving and walkways (at least 20% of walkways and parking) 	1	-	-
<ul style="list-style-type: none"> Renewable materials, provide at least one of the following: bamboo flooring, wool carpet, linoleum flooring, straw board cabinetry, poplar OSB, or cotton batt insulation; 	1	-	-
<ul style="list-style-type: none"> Healthy flooring, provide at least one of the following for 50% of flooring: finished concrete or ceramic tile resilient flooring material that is Floor Score Certified, applied with a Floor Score Certified adhesive and comes with a minimum 7-year wear through warranty 	1	-	-
<ul style="list-style-type: none"> Healthy finish materials, use paints, stains, adhesives, and sealants consistent with the Green Seal 11 standard or other applicable Green Seal standards 	1	-	-
Subtotal Green Building Points from Volume 4		6	6

Selection Criteria Amenity List	QAP Point Value	Points Taken at Application	Points Delivered
Covered entries	1	1	1
Nine foot ceilings in living room and all bedrooms (at minimum)	1	1	1
Microwave ovens	1	-	1
Self-cleaning or continuous cleaning ovens	1	-	-
Ceiling fixtures in all rooms (light with ceiling fan in living area and all bedrooms)	1	1	1
Refrigerator with icemaker	1	1	1
Laundry connections	2	2	2
Storage room or closet, of approximately 9 square feet or greater, which does not include bedroom, entryway or linen closets – does not need to be in the Unit but must be on the property site	1	-	1
Laundry equipment (washers and dryers) for each individual unit including a front loading washer and dryer in required UFAS compliant Units	3	-	-
Thirty-year architectural shingle roofing	1	-	1
Covered patios or covered balconies	1	-	1
Covered parking (including garages) of at least one covered space per Unit	2	-	-
100% masonry on exterior, which can include stucco, cementitious board products, concrete brick and mortarless concrete masonry, but not EFIS synthetic stucco	3	3	3
Greater than 75% masonry on exterior, which can include stucco and cementitious board products, concrete brick and mortarless concrete masonry, but not EFIS synthetic stucco (May not select both 75% and 100% masonry)	1	-	-
Use of energy efficient alternative construction materials (for example, Structurally Insulated Panel construction) with wall insulation at a minimum of R-20	3	-	-
R-15 Walls / R-30 Ceilings (ratings of wall system)	3	3	3
14 SEER HVAC or evaporative coolers in dry climates for New Construction, Adaptive Reuse and Reconstruction or radiant barrier in the attic for Rehabilitation (excluding Reconstruction)	3	-	-
High Speed Internet Service to all Units at no cost to residents	2	-	-
Fire sprinklers in all Units	2	2	2
Total Selection Criteria Points		14	18

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BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
September 6, 2012

Presentation, Discussion, and Possible Action Regarding Housing Tax Credit Amendments

RECOMMENDED ACTION

WHEREAS, Eban Village II (#99022) received an award of 9% Housing Tax Credits in 2009 to construct 220 multifamily units on 11.1 acres;

WHEREAS, the development owner is requesting approval to reduce the size of the development site and release an unimproved 0.3134 acre tract of the site from the recorded Land Use Restriction Agreement (LURA);

WHEREAS, Board approval is required for a decrease in the site acreage of greater than 10% from the original site proposed at Application;

WHEREAS, Board approval is required for a modification to the residential density of the Development of at least 5%; and

WHEREAS, the reduction of the development site by 0.3134 acres does not materially alter the development in a negative manner and would not have affected the final credit amount already allocated to the development owner; therefore; it is hereby,

RESOLVED, that staff's recommendation to approve the amendment to Eban Village II, be and it hereby is approved as presented to this meeting.

BACKGROUND

Eban Village II was underwritten and approved for a 9% Housing Tax Credit allocation during the 1999 competitive cycle. The development was proposed as a combination of new construction and rehabilitation on a total of 11.1 acres. The development owner has requested approval to release a small, unimproved 0.3134 acre tract of the site from the recorded Land Use Restriction Agreement in order to donate that land to a local organization, SouthFair Community Development Corporation (CDC). The owner's amendment request explains that efforts to acquire a tract of land between the subject 0.3134 acres and the remainder of the development site proved unsuccessful. As a result, the subject 0.3134 acre tract of the site never became a functional part of the development.

The owner further explains that SouthFair CDC has expressed an interest in acquiring the unimproved tract of land in order to develop residential or a mix of residential and retail given the close proximity to the DART station. It is worth noting that SouthFair CDC was originally

50% co-general partner of the Development Owner. However, due to financial challenges, declining resource grants and lack of personnel this organization ceased being the development's consultant and provider of social services and left the partnership in the spring of 2011. After SouthFair CDC's exit, Tabono Partnership II, Ltd. was and continues to be the sole owner and general partner of Eban Village II, Ltd. Staff has confirmed that SouthFair CDC's exit does not violate the terms of the LURA. Finally, the owner has stated that Dallas Community Lighthouse currently serves as the supportive service provider for Eban Village II and the scope of services have not changed with this change. The owner has indicated that SouthFair CDC is currently attempting a recovery in sponsorship of single family homes and has expressed an interest in developing the small site to that end.

Staff has confirmed that the cost to acquire the 0.3134 acre tract was slightly over 1% of the cost to acquire the total development site. Staff does not believe this change would have a significant impact to the credit amount or materially alter the development in a negative manner. Staff recommends approval of the request.

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March 27, 2012

Valentin DeLeon
Multifamily Housing Specialist
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, TX 78701

Re: Eban Village II, Ltd. TDHCA# 99022
LURA Application Amendment
Land Donation of 0.3134 acre

Dear Mr. DeLeon;

Tabono Partnership II, Ltd. is the General Partner of Eban Village II, Ltd, the owner of Eban Village II Apartments, located in Dallas, Texas. The improved property encompasses 9.9598 acres of the 10.2732 acres described in the above referenced Land Use Restriction Agreement, with the remaining 0.3134 acre being a non-contiguous unimproved tract of land (subject property). This 0.3134 acre tract (subject site) was part of the original assemblage of land upon which to construct Eban Village II. Due to unsuccessful efforts to acquire an additional tract of land between the subject site and the final development site (9.9598 acres), the subject property has never been a functional part of the development.

This is a request for an amendment to LURA 99022 to release this 0.3134 acre tract from the LURA, and allow a donation of the land to SouthFair Community Development Company. In its' unimproved condition, the subject property provides no functional utility whatsoever to the development. City Dallas off-street parking requirements are fully achieved in the improved area of Eban Village II. We are not aware of development plans SouthFair CDC might have for the subject tract.

SouthFair CDC was formed in 1991 and incorporated as a 501(C)(3) nonprofit corporation in 1993 dedicated to the revitalization of the Jeffries-Meyers neighborhood. SouthFair has served thousands of clients, including residents of its primary target area of South Dallas and qualified low to moderate-income clients from all areas of the Dallas Metroplex in offering home ownership counseling and services as well as the social services required to assist prospective homeowners.

Tel: 214.209.1622

Bank of America, TX1-492-20-05
901 Main Street, 20th Floor, Dallas, TX 75202

Recycled Paper

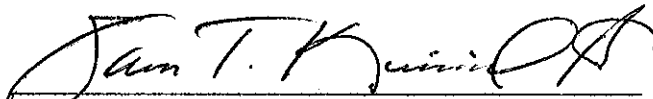
For your review, we have attached a land plat of both the developed area of Eban Village II and the subject property. Also enclosed is a check payable to the Texas Department of Housing and Community Affairs in the amount of \$2,500 representing the amendment fee.

If there are any questions or additional information required, please contact me.

Sincerely,

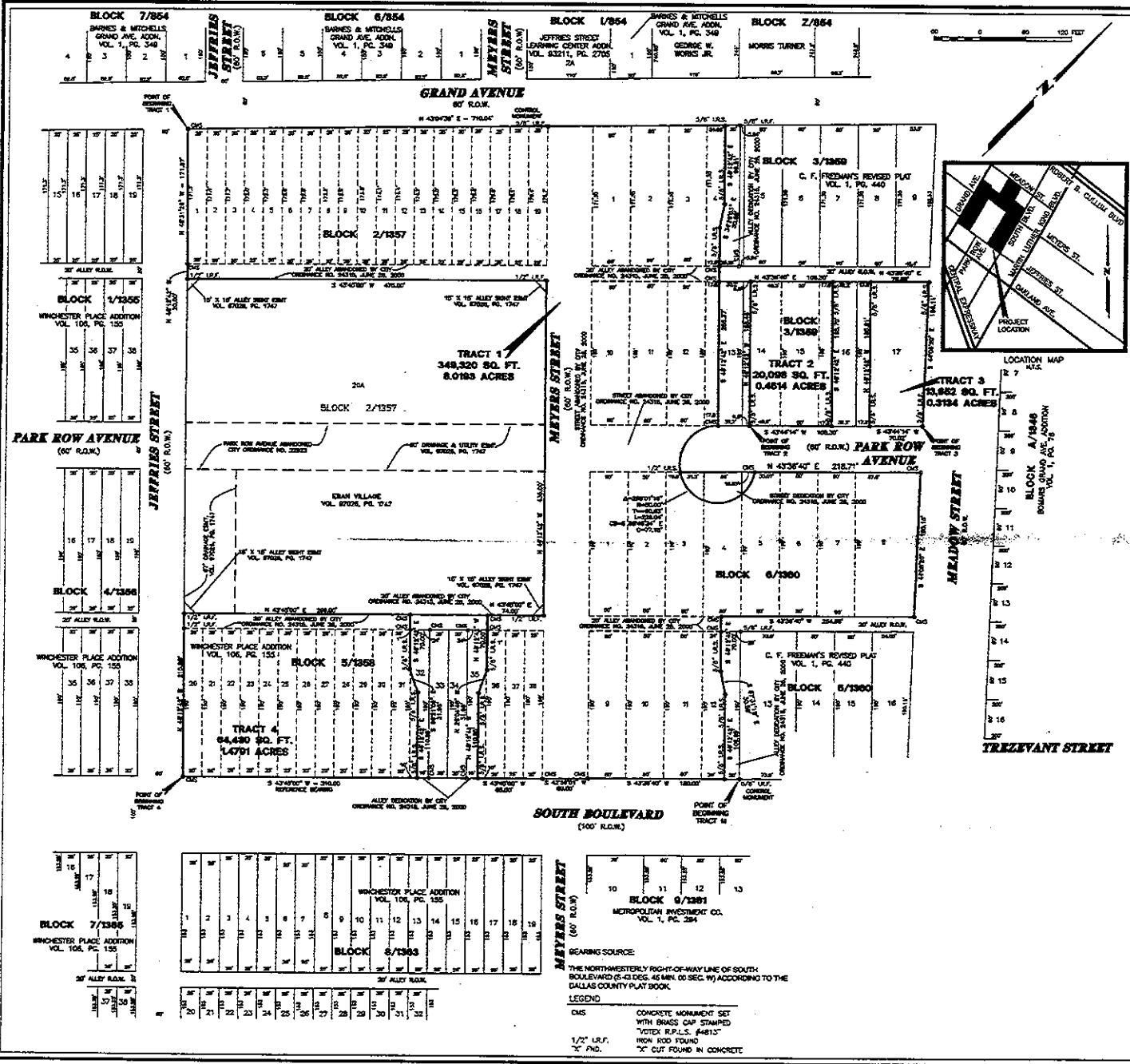
TABONO PARTNERSHIP II, LTD.
A Texas limited partnership

By: EBAN INCORPORATED
a Texas corporation

A handwritten signature in black ink, appearing to read "Sam T. Kincaid, II", written over a horizontal line.

By: Sam T. Kincaid, II CPM, Senior Vice President

Enclosures



SURVEYORS CERTIFICATION

STATE OF TEXAS 1
 COUNTY OF DALLAS 2
 I, DENNIS D. VOTE, Registered Professional Land Surveyor, hereby certify that on April 14, 2000, the

survey was made on the ground as per the field notes shown on this survey and is true, correct, and accurate as to the boundaries and areas of the subject property and the site, location and type of buildings and improvements thereon. If any, and as to the other matters shown hereon, and correctly shows the location of all visible easements and rights-of-way and of all rights-of-way, easements, and any other matters of record, or of which I have knowledge or have been advised, whether or not of record, affecting the subject property.

Except as shown on the survey, there are no encroachments upon the subject property by improvements on adjacent property, there are no encroachments on adjacent property, streets, or alleys by any improvements on the subject property and there are no conflicts or protrusions.

EXECUTED this 14th day of July, 2000.



Dennis D. Vote, Registered Professional Land Surveyor, 44812
 VOTEX SURVEYING COMPANY, 4548 Tuscany Drive
 Plano, Texas, 75093, (972) 964-0858

BOUNDARY SURVEY

TRACT 1 TRACT 2 TRACT 3 TRACT 4
3,8193 ACRES 0.4614 ACRES 0.3184 ACRES 1.4791 ACRES

BEING ALL OF
 LOTS 1-15, BLOCK 2/1357 LOTS 1-5 & PART OF LOT 4, BLOCK 5/1359
 LOTS 24-31 & LOTS 32-39, BLOCK 5/1358 LOTS 10-12 & PART OF 13, BLOCK 3/1359
 WINCHESTER PLACE ADDITION LOT 15 & PART OF LOTS 14, 16
 & 17, BLOCK 3/1359
 C. F. FREEMAN'S ADDITION

AND INCLUDING
 ABANDONMENTS OF PARK ROW & MEYERS STREET
 AND ALLEYS IN BLOCKS 2/1357, 5/1358, 5/1359 & 6/1360

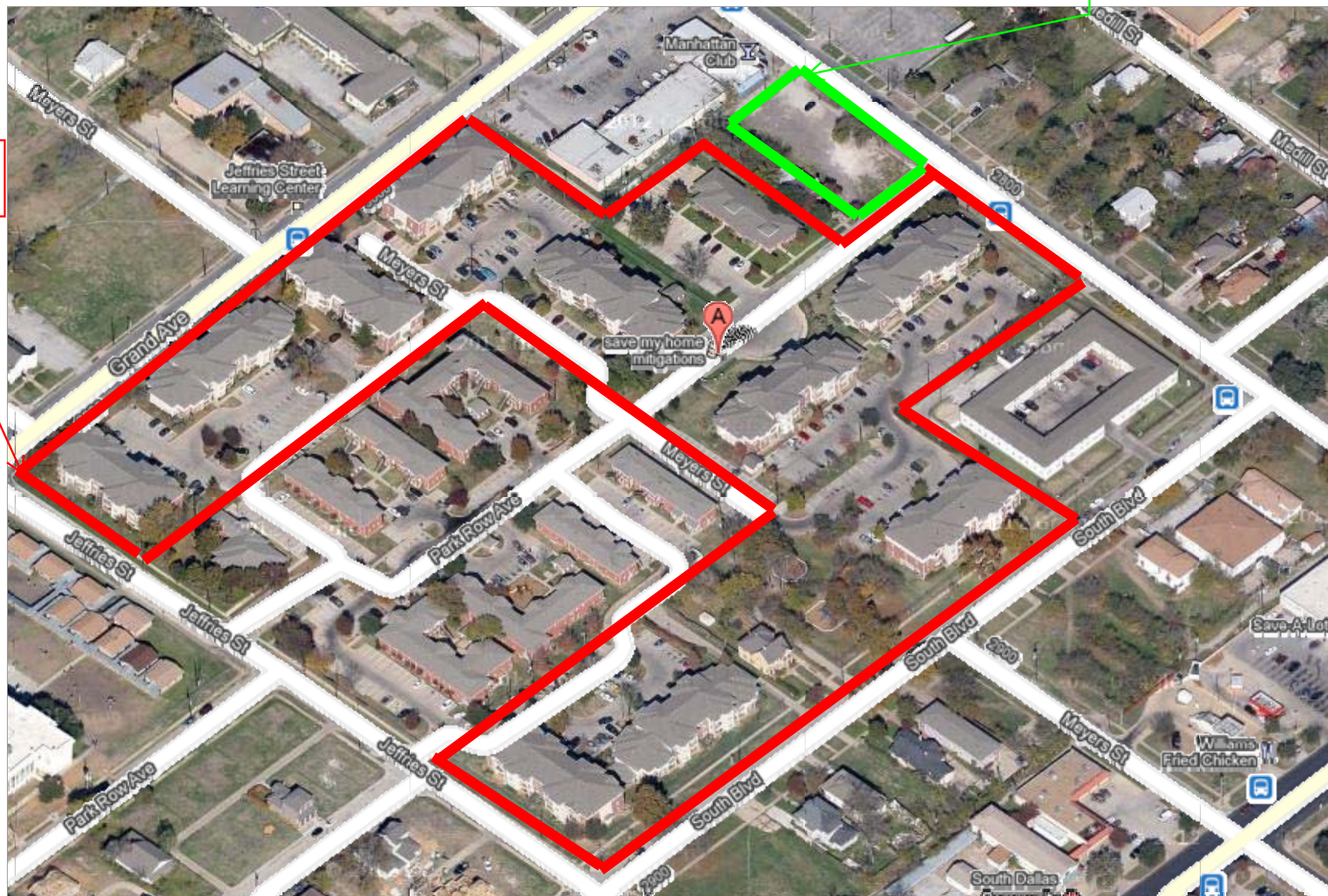
OUT OF THE
TOM LAGOW SURVEY, ABSTRACT NO. 759
CITY OF DALLAS, DALLAS COUNTY, TEXAS

SCALE: 1"=60' DATE: JULY 14, 2000



Subject Tract 3- 0.3134 acres to be released

Eban Village II site





TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Memorandum

To: Cari Garcia, Director of Asset Management
From: Raquel Morales, Senior Asset Manager
CC: File
Date: July 30, 2012
Subject: Amendment Request for Eban Village II, HTC #99022

Eban Village was submitted, underwritten and approved for a tax credit award during the 1999 competitive housing tax credit cycle. The owner submitted a letter dated March 27, 2012 requesting approval to release a 0.3134-acre portion of the development site, thereby reducing the site acreage of the development.

A review of the original proposal and site plan submitted in the 1999 application reveals that the owner intended to newly construct 202 units and rehabilitate an existing 18 units (for a total of 220 units) in a total of 15 residential buildings on what was expected to be 11.1 acres (19.8 units per acre). A letter from the development architect was provided in the application confirming that the abandonment of two streets and some alleys within the development site would result in a final 11.1 acres. Subsequent to the award the owner submitted an amendment request to the Department to change its development plan. The Department approved that request. The changes requested in the 2/22/2000 letter state simply that instead of the development consisting of new construction and rehabilitation, all 220 units would be newly constructed. The letter did not request a change to the number of residential buildings, the development acreage or any other of the development attributes. Likewise, staff was unable to confirm that any other changes were approved by the Department. Therefore, the number of units, residential buildings and density remained as originally proposed.

The Owner's amendment request included a copy of the final survey that reflects the total development site acreage to be 10.2732 acres. There are a total of four separate tracts that make up the development site (see attachment). Tract 1 consists of 8.0193 acres, Tract 2 is 0.4614 acres, Tract 3 is 0.3134 acres and Tract 4 is 1.4791 acres. The owner's request is to release the unimproved Tract 3 (0.3134 acres) from the LURA and donate this tract to SouthFair Community Development Corporation (CDC). The site plan submitted with the application originally represented that this small tract was expected to be the location of the community center for the development. However, it appears that the community center/leasing office was relocated to Tract 2. The owner explains that due to unsuccessful efforts to acquire a tract of land between the subject 0.3134 acre tract and the remainder of the development, Tract 3 has never been a functional part of the development.

SouthFair CDC's plans for the unimproved tract is to use the land to develop residential or a mix of residential and retail given the close proximity to the DART station just blocks away. It should be noted that SouthFair CDC was originally 50% co-owner of the general partner of Eban Village II. SouthFair CDC's role in the development was the community integration of the development and stewardship of the development's social service programs. However, the owner explains that over the

years SouthFair CDC has been subjected to financial challenges and declining resource grants. Due to the lack of personnel this organization ceased being the development's consultant and provider of social services and left the partnership in the spring of 2011. The exit of SouthFair CDC was not previously presented to or known by the Department prior to owner's current amendment request. The development owner also confirmed that after SouthFair CDC's exit, Tabono Partnership II, Ltd. remains as the sole owner and general partner of Eban Village II, Ltd. Staff has confirmed that the development's Land Use Restriction Agreement (LURA) did not restrict the property to have material participation by a Qualified Nonprofit Organization, so this exit does not violate the terms of the LURA in place. Finally, the owner has stated that Dallas Community Lighthouse currently serves as the supportive service provider for Eban Village II. The scope of services have not changed with the new supportive service provider. As for the owner's donation of the subject 0.3134 acre tract of land to SouthFair CDC, the owner has indicated that the CDC is currently attempting a recovery in sponsorship of single family homes and has expressed an interest in developing the small site to that end.

The owner requests results in a decrease in site acreage from 11.1 to 9.96, which is a difference of approximately 1.14 acres or 10.27% less than originally proposed. Likewise, original density for the development was proposed at 19.8 units per acre (220 units/11.1 acres); however, given the current request to release Tract 3 from the LURA, the final density for Eban Village II would be 22.1 units per acre (220 units/9.95 acres), or an increase of 11.6%. An increase or decrease in the site acreage of greater than 10% from the original site proposed at Application, as well as a modification to the residential density of the Development of at least 5% are considered material alterations which required TDHCA Board approval.

The cost certification for Eban Village II reflects total acquisition costs for the entire development site was \$1,181,725. Of this total, the owner indicates that Tract 3 of the site was acquired for \$13,500 or 1.14% of the total acquisition cost. This amount is minimal and would not have had a significant impact to the credit amount allocated to the development via IRS Forms 8609. Staff recommends approval of the requested amendment to release Tract 3 from the LURA for this development.

1w

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
September 6, 2012

Presentation, Discussion, and Possible Action Regarding Housing Tax Credit Amendments

RECOMMENDED ACTION

WHEREAS, RoseHill Ridge (#11097) was approved and received an award of 9% Housing Tax Credits in 2011 to re-construct 122 multifamily units on 9.725 acres;

WHEREAS, the development owner is requesting approval to correct the size of the development site, resulting in an increase to the acreage to 11.661 acres;

WHEREAS, Board approval is required for an increase in the site acreage of greater than 10% from the original site proposed at Application;

WHEREAS, Board approval is required for a modification to the residential density of the Development of at least 5%; and

WHEREAS, the increase in the development site by 1.936 acres and resulting decrease in residential density does not materially alter the development in a negative manner and would not have affected the final credit amount already allocated to the development owner; therefore

It is hereby,

RESOLVED, that staff's recommendation to approve the amendment to RoseHill Ridge, be and it hereby is approved as presented to this meeting.

BACKGROUND

RoseHill Ridge was underwritten and approved for a 9% Housing Tax Credit allocation during the 2011 competitive cycle. The development was proposed as a reconstruction on a total of 9.725 acres. The development owner has requested approval to correct the acreage which results in an increase of the site acreage to 11.661. The owner's amendment request explains that the original land owned by the Housing Authority of the City of Texarkana was 9.725 acres as identified in the initial Contract for Lease provided in the Application. However, a portion of the original site was located in the flood plain; therefore, additional land was acquired to ensure that the buildable area was not located in the flood plain which brought the total site acreage to 11.503.

The Owner has indicated that this additional land was transferred prior to the submission of the HTC Application as evidenced by the recorded Memorandum of Lease dated February 21, 2012. However, the Exhibit "A" of the Contract for Lease submitted in the Application was not correctly revised to reflect the 11.503 acres. Furthermore, the Application exhibits reflecting the site acreage were not revised to include the correct acreage. The owner further explains that the property was recently replatted for building permits and the City of Texarkana abandoned all internal streets and alleys creating a final site acreage of 11.661. Staff does not believe this change would have a significant impact to the credit amount or materially alter the development in a negative manner.

Staff recommends approval of the request with no adjustment to the credit amount at this time, and conditioned upon the receipt of a final legal description prior to the recording of the development's LURA.

Carleton Residential Properties

5485 Belt Line Road
Suite 300
Dallas, Texas 75254

(972) 980-9810
(972) 980-1559 Fax

August 2, 2012

Kent Bedell
Texas Dept. of Housing & Community Affairs
221 E. 11th Street
Austin, Texas 78701

RE: RoseHill Ridge TDHCA #: 11097 – Request for Amendment

Dear Mr. Bedell:


This letter is written on behalf of RoseHill Ridge, LP (“Owner”). We are writing to request an amendment to the application to correct the acreage of the development.

The acreage amount submitted in the application was inadvertently misstated. The amount of the land owned at the time of the application submission was 11.503 acres. The original lot owned by the housing authority was 9.725 acres of land and the initial Contract for Lease reflected that property. However, a portion of the original site was in a flood plain and additional land was acquired to assure that the buildable area was not located in the flood plain. This land was transferred on February 21, 2012 prior to the submission of the tax credit application on March 1, 2012. The amount of land after these acquisitions was 11.503 acres and the correct legal description was recorded in a Memorandum of Lease on February 21, 2012. However, the face of the Memo of Lease was not correctly revised and reflected the 9.725 acres although the legal description correctly reflects the full acreage (see attached Memo of Lease). After the property was re-platted for building permits, the City abandoned all internal streets and alleys which created a final site of 11.661 acres. No new or additional lots were added, but merely a correction of acreage created by the abandoned streets and alleyways.

Again, we request an amendment of the application to correct the original error to the acreage and include the abandoned streets and alleyways. This amendment does not materially alter the Project in a negative manner nor adversely affect the scoring of the application. Therefore, we request that the amendment be granted.

Thank you for your consideration of this request. If you have any questions, please do not hesitate to contact me.

Sincerely,



William Henderson

Cc: Naomi Byrne

Enclosure

**Recording Requested By
And When Recorded Mail to:**

Filed For Record In:
Bowie County, Texas
Denise Thornburg
County Clerk
On: Feb 21, 2012 at 03:01P

Antoinette M. Jackson
Coats, Rose, Yale, Ryman & Lee, PC
3 E. Greenway Plaza, Suite 2000
Houston, Texas 77046

CORRECTION MEMORANDUM OF GROUND LEASE

WHEREAS, ROSEHILL RIDGE, LP, a Texas limited partnership, and the HOUSING AUTHORITY OF THE CITY OF TEXARKANA, TEXAS, a public body corporate and politic, entered into a certain MEMORANDUM OF GROUND LEASE, recorded in the Official Records of Bowie County, Texas on February 21, 2012 under File No. 2200, Vol. 6185, Page 60;

WHEREAS, the legal description Exhibit "A" attached to the Memorandum of Ground Lease was inaccurate at the time of execution;

WHEREAS, a correction is therefore necessary to change the date of the Memorandum of Ground Lease to the current filing date;

WHEREAS, the Exhibit "A" attached hereto is true and correct as of the execution date;

This Correction Memorandum of Ground Lease is made as of February 21, 2012 by the HOUSING AUTHORITY OF THE CITY OF TEXARKANA, TEXAS, a public housing authority ("Landlord"), and ROSEHILL RIDGE, LP, a Texas limited partnership ("Tenant") with offices at 1611 N. Robison, Texas 75501.

1. The parties to the Lease are the Housing Authority of the City of Texarkana, Texas, as Lessor, and RoseHill Ridge, LP, as Lessee.

2. The leased premises consist of approximately 9.725 acres of land in the City of Texarkana, Texas, more particularly described on Exhibit "A" attached hereto and made a part hereof for all purposes (the "Leased Premises").

3. The term of the Lease commences as of February 20, 2012 (the "Commencement Date") and expires at 11:59 O'clock P.M. on the day immediately before the ninety-ninth anniversary of the first (1st) day of the first (1st) full calendar month following the Commencement Date, unless sooner terminated in accordance with the provisions of the Lease.

4. In the event of any conflict or any inconsistency between the terms and provisions of the Lease, on the one hand, and the terms and provisions of this Memorandum, on the other hand, the terms and provisions of the Lease shall control. Nothing contained in this Memorandum shall alter, modify or amend the provisions of the Lease, which remains in full force and effect according to all of the terms and provisions thereof.

5. Additional provisions are as set forth in the Lease, including, without limitations, provisions regarding ownership of improvements.

[Signatures on following page]

LANDLORD:

**HOUSING AUTHORITY OF THE CITY OF TEXARKANA,
TEXAS**, a public body corporate and politic

By: Naomi W. Byrne
Name: Naomi W. Byrne
Title: Executive Director

TENANT:

ROSEHILL RIDGE, LP, a Texas limited partnership

By: ROSEHILL RIDGE GP, LLC, a Texas limited liability company, as general partner

By: TEXARKANA PUBLIC FACILITY CORPORATION, its sole member

By: Naomi W. Byrne
Name: Naomi W. Byrne
Title: Secretary/Director

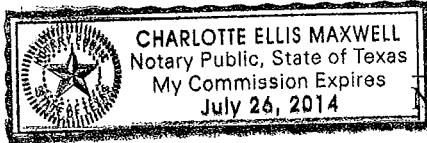
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STATE OF TEXAS

ss:

COUNTY OF BOWIE

This instrument was acknowledged before me on February 21, 2012 by Naomi W. Byrne, Executive Director of the HOUSING AUTHORITY OF THE CITY OF TEXARKANA, TEXAS, a public body corporate and politic.



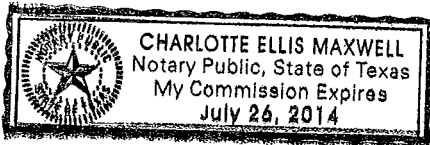
Charlotte Maxwell

Notary Public

STATE OF TEXAS

COUNTY OF BOWIE

This instrument was acknowledged before me on February 21, 2012, by Naomi W. Byrne, Secretary/Director of Texarkana Public Facility Corporation, a Texas public facility corporation, the sole member of RoseHill Ridge GP, LLC, a Texas limited liability company, the general partner of ROSEHILL RIDGE, LP, a Texas limited partnership, on behalf of said limited partnership.



Charlotte Maxwell

Notary Public

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EXHIBIT "A"

Legal Description

DESCRIPTION OF PROPERTY – TRACT I:

All that certain tract or parcel of land being a part of the M. E. P. & P. RAILWAY COMPANY SURVEY, A-433, Bowie County, Texas; the herein described tract of land being all of Lots Numbered Four (4) and Nine (9) through Twelve (12) in Block Numbered Fifteen (15), all of Lots Numbered One (1) through Four (4) and Nine (9) through Twelve (12) in Block Numbered Sixteen (16) and all of Lots Numbered One (1) through Four (4) and Lots Eleven (11) and Twelve (12) in Block Numbered Twenty-five (25); WEST TEXARKANA ADDITION to the City of Texarkana, Bowie County, Texas as per the map or plat recorded in Volume 18, Page 185 of the Deed Records of Bowie County, Texas; AND ALSO all of Lots Numbered Eight (8) through Thirteen (13) in Block Numbered One (1), all of Lots Numbered One (1) through Thirteen (13) in Block Numbered Two (2) and all of Lots Twelve (12) through Twenty-eight (28) in Block Numbered Four (4); LINCOLN ADDITION to the City of Texarkana, Bowie County, Texas as per the map or plat recorded in Volume 204, Page 261 of the Plat Records of Bowie County, Texas; the herein described tract of land also being a portion of the streets and alleys closed and abandoned by City of Texarkana, Texas Ordinance No. 34-53; the subject tract being more particularly described by metes and bounds as follows:

BEGINNING at a ½" steel pin in a concrete monument found in place at the Northeast corner of Lot 12 in Block 15 of West Texarkana Addition to the City of Texarkana, Bowie County, Texas as per the map or plat recorded in Volume 18, Page 185 of the Deed Records of Bowie County, Texas; said POINT OF BEGINNING being 237.9 ft. East and 905.2 ft. South of the Northwest corner of the M. E. P. & P. Railway Company Survey, A-433, Bowie County, Texas; said POINT OF BEGINNING also being on the West right-of-way line of a public street designated as Stuckey Street;

THENCE - S. 88° 36' 00" W., 200.00 ft. with the North boundary line of Lots 9 through 12 in the above mentioned Block 15 to a ½" reinf. steel set at the Northwest corner of Lot 9 in said Block 15; same being on the common boundary line between the above mentioned West Texarkana Addition and Lincoln Addition to the City of Texarkana, Bowie County, Texas as per the map or plat recorded in Volume 204, Page 261 of the Plat Records of Bowie County, Texas;

THENCE - N. 00° 00' 00" E., 6.00 ft. with the above mentioned common boundary line between West Texarkana Addition and Lincoln Addition to a ½" reinf. steel set at the Northwest corner of Lot 11 in Block 1 of said Lincoln Addition;

THENCE - N. 90° 00' 00" W., 125.00 ft. with the North boundary line of the above mentioned Lot 11 in Block 1 to a ½" reinf. steel set at the Northwest corner of said Lot 11 in Block 1;

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- THENCE - N. 78° 41' 00" W., 51.00 ft. crossing Lemon Street to a ½" reinf. steel set at the Northeast corner of Lot 12 in Block 4 of the above mentioned Lincoln Addition;
- THENCE - N. 90° 00' 00" W., with the North boundary line of the above mentioned Lot 12 in Block 4 passing at 125.00 ft. the Northwest corner of said Lot 12 in Block 4 and continuing 74.80 ft. for a total distance of 199.80 ft.;
- THENCE - S. 00° 28' 00" E., 870.05 ft.;
- THENCE - N. 90° 00' 00" E., at 67.70 ft. passing the Southwest corner of Lot 28 in Block 4 of the above mentioned Lincoln Addition and continuing 300.00 ft. with the South boundary line of Lot 28 and Lot 13 in said Block 4 for a total distance of 367.70 ft. to a concrete marker found in place at the Southeast corner of said Lot 13 in Block 4; same being on the common boundary line between said Lincoln Addition and the above mentioned West Texarkana Addition;
- THENCE - N. 00° 00' 00" W., 154.00 ft. with the above mentioned common boundary line between Lincoln Addition and West Texarkana Addition to a ½" reinf. steel set at the Southwest corner of Lot 4 in Block 25 of said West Texarkana Addition;
- THENCE - N. 88° 36' 00" E., 200.00 ft. with the South boundary line of Lots 1 through 4 of the above mentioned Block 25 to an "X" mark in concrete set at the Southeast corner of Lot 1 in said Block 25;
- THENCE - N. 00° 00' 00" E., 700.00 ft. with the above mentioned West right-of-way line of Stuckey Street and the East boundary line of Blocks 15, 16 and 25 of the above mentioned West Texarkana Addition to the POINT OF BEGINNING. The above described property being surveyed by Richard V. Hall, Jr. contains 10.593 acres of land, more or less.

DESCRIPTION OF PROPERTY – TRACT II:

All that certain tract or parcel of land being a part of the M. E. P. & P. RAILWAY COMPANY SURVEY, A-433, Bowie County, Texas; the herein described tract of land being all of Lots Numbered Eleven (11) and Twelve (12) in Block Numbered Twenty-five (25) of WEST TEXARKANA ADDITION to the City of Texarkana, Bowie County, Texas as per the map or plat recorded in Volume 18, Page 185 of the Deed Records of Bowie County, Texas; the subject tract being more particularly described by metes and bounds as follows:

BEGINNING at a ½" reinf. steel set for corner at the Southeast corner of Lot 12 in Block 25 of West Texarkana Addition to the City of Texarkana, Bowie County, Texas as per the map or plat recorded in Volume 18, Page 185 of the Deed Records of Bowie County, Texas; said POINT OF BEGINNING being on the West right-of-way line of a public street designated as Stuckey Street and the North right-of-way line of a public street designated as West 10th Street;

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- THENCE - S. 88° 27' 32" W., 99.68 ft. with the South boundary line of Lots 11 and 12 of the above mentioned Block 25 and the above mentioned North right-of-way line of West 10th Street to a 3/4" pipe found in place at the Southwest corner of said Lot 11 in Block 25;
- THENCE - N. 00° 03' 17" W., 139.99 ft. with the West boundary line of the above mentioned Lot 11 in Block 25 to a 1" pipe found in place at the Northwest corner of said Lot 11 in Block 25;
- THENCE - N. 88° 27' 25" E., 99.81 ft. with the North boundary line of the above mentioned Lots 11 and 12 in Block 25 to 1/2" reinf. steel set for corner at the Northeast corner of said Lot 12 in Block 25; same being on the West right-of-way line of the above mentioned Stuckey Street;
- THENCE - S. 00° 00' 01" E., 140.00 ft. with the East boundary line of the above mentioned Lot 12 in Block 25 and the above mentioned West right-of-way line of Stuckey Street to the POINT OF BEGINNING. The above described property being surveyed by Richard V. Hall, Jr. contains 0.320 acres of land, more or less.

DESCRIPTION OF PROPERTY – TRACT III:

All that certain tract or parcel of land being a part of the M. E. P. & P. RAILWAY COMPANY SURVEY, A-433, Bowie County, Texas; the herein described tract of land being all of Lot Numbered Four (4) in Block Numbered Fifteen (15) of WEST TEXARKANA ADDITION to the City of Texarkana, Bowie County, Texas as per the map or plat recorded in Volume 18, Page 185 of the Deed Records of Bowie County, Texas; AND ALSO all of Lots Numbered Eight (8) through Ten (10) in Block Numbered One (1) of LINCOLN ADDITION to the City of Texarkana, Bowie County, Texas as per the map or plat recorded in Volume 204, Page 261 of the Plat Records of Bowie County, Texas; the subject tract being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2" reinf. steel set for corner at the Northwest corner of Lot 8 in Block 1 of Lincoln Addition to the City of Texarkana, Bowie County, Texas as per the map or plat recorded in Volume 204, Page 261 of the Plat Records of Bowie County, Texas; said POINT OF BEGINNING being on the East right-of-way line of a public street designated as Lemon Street and the South said of a public street designated as West 13th Street;

THENCE - S. 89° 24' 54" E., 125.00 ft. with the North boundary line of Lot 8 in Block 1 of the above mentioned Lincoln Addition and South side of West 13th Street to a 1/2" reinf. steel set corner at the Northeast corner of said Lot 8 in Block 1;

THENCE - S. 00° 00' 14" W., 5.93 ft. with the East boundary line of the above mentioned Lot 8 in Block 1 to a 5/8" iron rod found in place on the North boundary line of Lot 4 in Block 15 of West Texarkana Addition to the City of Texarkana, Bowie County, Texas as per the map or plat recorded in Volume 18, Page 185 of the

Deed Records of Bowie County, Texas; same being the South right-of-way line of the above mentioned West 13th Street;

- THENCE - N. 88° 41' 14" E., 49.97 ft. with the above mentioned North boundary line of Lot 4 in Block 15 and South right-of-way line of West 13th Street to a ½" reinf. steel set for corner at the Northeast corner of said Lot 4 in Block 15;
- THENCE - S. 00° 06' 08" W., 139.38 ft. with the East boundary line of the above mentioned Lot 4 in Block 15 to a 1-½" pipe found in place at the Southeast corner of said Lot 4 in Block 15;
- THENCE - S. 87° 52' 59" W., 49.75 ft. with the South boundary line of the above mentioned Lot 4 in Block 15 to a ½" reinf. steel set for corner on the East boundary line of Lot 10 in Block 1 of the above mentioned Lincoln Addition;
- THENCE - S. 00° 00' 14" W., 4.00 ft. with the above mentioned East boundary line of Lot 10 in Block 1 to a ½" reinf. steel set for corner at the Southeast corner of said Lot 10 in Block 1;
- THENCE - N. 89° 24' 54" W., 125.00 ft. with the South boundary line of the above mentioned Lot 10 in Block 1 to a ½" reinf. steel set for corner at the Southwest corner of said Lot 10 in Block 1; same being on the above mentioned East right-of-way line of Lemon Street;
- THENCE - N. 00° 00' 12" E., 150.00 ft. with the West boundary line of Lots 8 through 10 in the above mentioned Block 1 and the above mentioned East right-of-way line of Lemon Street to the POINT OF BEGINNING. The above described property being surveyed by Richard V. Hall, Jr. contains 0.590 acres of land, more or less.

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Filed For Record In:
Bowie County, Texas
Denise Hornburr
County Clerk
On: Feb 21, 2012 at 03:01P

Housing Authority

[Handwritten signature]

1x

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
September 6, 2012

Presentation, Discussion, and Possible Action Regarding Housing Tax Credit Amendments

RECOMMENDED ACTION

WHEREAS, Sphinx at Fiji Seniors (#08193) received an award of 9% Housing Tax Credits in 2008 to construct 130 multifamily units targeted towards the elderly on 5.99 acres;

WHEREAS, the development owner is requesting approval for a reduction to the development site from 5.99 acres to 5.56 acres due to right of way requirements by the City of Dallas;

WHEREAS, Board approval is required for a modification to the residential density of the Development of at least 5%; and

WHEREAS, the reduction of the residential density by 7.74% does not materially alter the development in a negative manner and would not have affected the final credit amount already allocated to the development owner; therefore

It is hereby,

RESOLVED, that staff's recommendation to approve the amendment to Sphinx at Fiji Seniors, be and it hereby is approved as presented to this meeting.

BACKGROUND

Sphinx at Fiji Seniors was underwritten and approved for a 9% Housing Tax Credit allocation during the 2008 competitive cycle. The application proposed to construct 130 units of multifamily units targeted towards the elderly on a total of 5.99 acres. During the course of the Department's review of the cost certification for this development, it was revealed that the development site acreage was decreased to 5.56 acres.

The owner's amendment request explains that the subject development is part of a greater master development plan community which required a great deal of city involvement. As the project continued through the construction and platting process, the City of Dallas required additional dedication for street expansion and public improvements. A final plat was provided with the owner's amendment request, as well as confirmation by the owner that the change did not affect the original site plan or the number of units.

Staff has confirmed that the reduction in acreage described in the owner's amendment does not materially impact the funding award; however, it does modify the residential density by more than 5%. Staff has further confirmed that the reduction in residential density by approximately 7.74% would not negatively impact the development or the award of credits.

Staff recommends approval of the requested amendment.



April 15, 2012

Mr. Valentin DeLeon
Multifamily Housing Specialist
Texas Department of Housing and Community Affairs
221 East 11TH
Austin, TX 78701

04-20-12A10:04 RCVJ

Re: Sphinx at Fiji Senior TDHCA# 08193
Request for amendment on Sphinx at Fiji Senior acreage

Dear Sir,

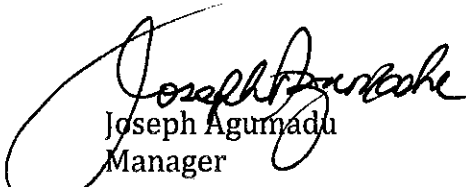
We are requesting an amendment on the acreage for Sphinx at Fiji Senior. The application approval was based on a schematic site plan illustration of the development at 5.99 acres which was later changed to 5.56 acres by the end of the construction documents. Sphinx at Fiji Senior is part of a greater (Sphinx at Fiji/Compton) master development plan community which required a great deal of city involvement. Based on initial information from due diligence gathered through the City of Dallas Development and Engineering Department, the calculated acreage was 5.99 acres as reflected in the underwriting. As the project progressed through the construction document, design process and final platting, the city requested additional dedication for street expansion and public improvements as shown in the exhibit below.

APPLICATION		FINAL INSPECTION/CONSTRUCTION
Acreage - Underwriting	Acreage dedicated to the City of Dallas	Final Acreage
5.99	0.43	5.56

The change in the acreage did not affect the original site plan or the number of units. The original 130 units for the elderly have been built and placed in service. Please note that the developer did not in any way benefit personally as a result of this change in acreage.

As a result of this unforeseen requirement from The City of Dallas, the original 5.99 acres were reduced to 5.56 acres. All options were reviewed to try to maintain the same number of acreage but due to site constraints and city request we fell short of the mark. We hereby request that you accept the development site acreage as 5.56 acres. A copy of the As Built Survey is attached for your review.

Sincerely,

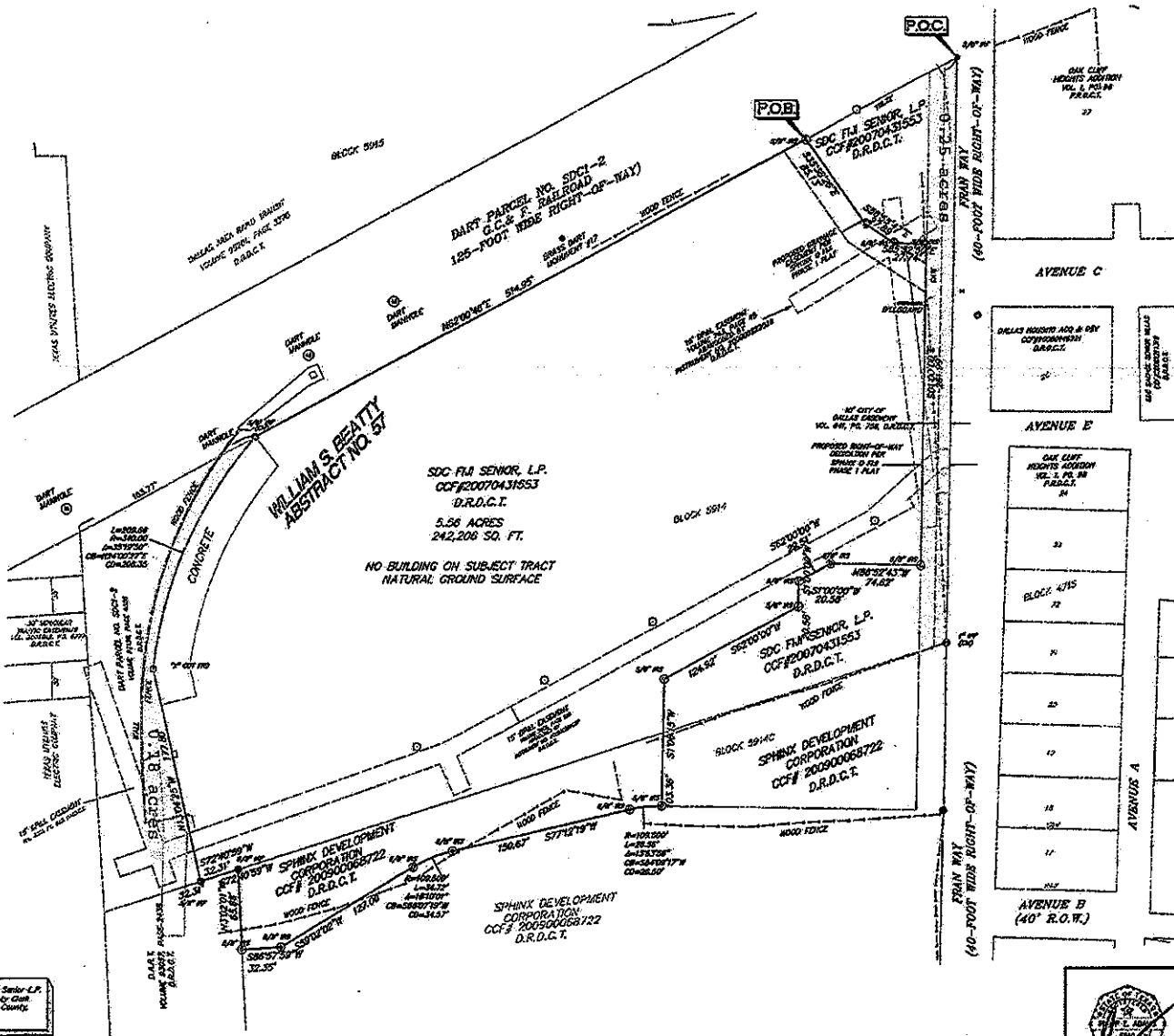

Joseph Agumadu
Manager



SYMBOLS

- CONCRETE PAVEMENT
- ASPHALT
- ▭ ASPHALT DRIVE
- ▭ ASPHALT DRIVE
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Port of location is the North line of SDC FJ Senior L.P. tract, being 0.000000, as recorded in County Clerk File No. 20070431553, Deed Records of Dallas County, Texas.



THE PURPOSE OF THIS SURVEY IS TO GIVE CLARITY TO THE OUT PARCEL AREA AND THE ADJACENT CORNER THE CORNER TO THE POINT OF BEGINNING AND THE FEET'S CALLS HAVE BEEN RECORDED, NO OTHER SURVEY HAS BEEN PERFORMED IN CONNECTION TO THIS SURVEY.

Surveyed by: [Signature] Ch. M.E. State of Texas No. 123456789 Date: 12-15-2011



ACT. DATE	FIELD DATE	RPLS.	DRY	FIELD	FIELD
SDC FJ SENIOR TRACT					
ENGINEERING ASSOCIATES, INC.					
12-15-2011					
12-15-2011	12-15-2011	12-15-2011	12-15-2011	12-15-2011	12-15-2011
ALTA/ACSM LAND TITLE SURVEY					
CITY OF DALLAS, DALLAS COUNTY, TX					

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BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
September 6, 2012

Presentation, Discussion, and Possible Action regarding a Housing Tax Credit Amendment for Zion Gardens Apartments.

RECOMMENDED ACTION

WHEREAS, Zion Gardens (#10035) received an award of 9% Housing Tax Credits in 2010 to construct 70 family units under the General Set-aside and the development owner is requesting approval to change amenities and architectural design of the development;

WHEREAS, the development owner has indicated that the modification of architectural design was a requirement of their Lender (City of Houston);

WHEREAS, Board approval is required for a significant modification of the site plan and architectural design of the development under Texas Government Code §2306.6712; and

WHEREAS, although significant change occurred, it does not appear to materially alter the development in a negative manner and would not have adversely affected the selection of the application in the application round; therefore,

It is hereby

RESOLVED, that staff's recommendation to approve the amendment to Zion Gardens, be and hereby is approved as presented to this Board.

BACKGROUND

The development owner is seeking approval to exchange common, unit and green building initiative amenities that would result in the same total points. The owner requests approval to eliminate the enclosed sun porch, thirty year architectural shingle roofing, energy efficient construction materials, high speed internet, energy star windows/glass doors, photovoltaic panels and greater than 75% masonry on exterior walls (total 13 points) and replace these with 100% masonry on exterior walls, fire sprinklers in all units, covered parking, native trees, sub-metered utility meters, thermally and draft efficient doors and water conserving features (total 13 points). The change in amenities was partly due to incorrect selection of scoring items at application by the previous Developer. Because the point structure is the same, there would be no adverse effect to other applicants during this cycle.

Furthermore, in conjunction with the above amendment request, the owner requires approval of the modified site plan. The original application provided a site plan showing one rectangular building with a front parking lot. The City of Houston invested \$1.3 million in HOME funds to this development and required a change in the building layout to a podium structure. Therefore, the revised site plan reconfigures the building into an L-shape structure with parking under the first level. The podium has 70 covered spaces and there is also adjacent parking consisting of 35 uncovered spaces. All parking is free to tenants. Because of the revised design, direct construction costs increased by \$1.2 million; of which, approximately \$900 thousand of this increase is in additional concrete costs for the parking facility.

Staff confirmed the original integrity of the Development has been maintained. The revised development cost schedule was underwritten and Department staff was able to arrive at a comparable total cost (within 5%) using a Marshall & Swift underwriting cost analysis.

Staff recommends approval of the amendment request.

Zion Gardens, Ltd.
3110 W. Southlake Blvd., Ste. 120
Southlake, Texas 76092
817.742.1851 817.742.1852 fax

March 8, 2012

Mr. Valentin DeLeon
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

RE: Zion Gardens (TDHCA #10035) -- Amendment Request

Dear Mr. DeLeon:

Please allow this letter to serve as an official request to amend the above referenced application in the following areas:

Common Amenities (All Programs Threshold)

- Elimination of Enclosed sun porch or covered community porch patio (-2 point)

Unit Amenities (All Programs Threshold)

- Elimination of Thirty-year architectural shingle roofing (-1 point)
- Elimination of Use of energy efficient alternative construction materials with wall insulation at a minimum of R-20 (-3 points)
- Elimination of High Speed Internet Service to all Units at no cost to residents (-2 points)
- Elimination of greater than 75% masonry on exterior walls (-1 point)
- Inclusion of 100% masonry on exterior walls (+3 points)
- Inclusion of Fire Sprinklers in all Units (+2 points)
- Inclusion of Covered parking of at least one covered space per unit (+2 points) *no extra charge*

Green Building Initiatives

- Elimination of Energy-Star qualified windows and glass doors (-3 points)
- Elimination of Photovoltaic panels that total 30kW (-3 points)
- Inclusion of Selection of native trees and plants (+1 point)
- Inclusion of Sub-metered utility meters (+1 point)
- Inclusion of Thermally and draft efficient doors (+2 points)
- Inclusion of Water Conserving features (+2 points)

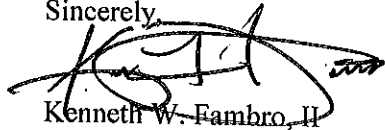
4-27-12 10:05

The common amenity item, enclosed sun porch or covered community porch patio above totaling two (2) points will be excluded, making the final threshold score of 19 points still being 5 points over the threshold maximum. Within Volume 3 Tab 1 Part D of the application, we will be swapping the use of energy efficient alternative construction materials with 100% masonry and swapping high speed internet service to all units at no cost with fire sprinklers in all units. Also, we will be eliminating thirty-year architectural shingle roofing and 75% masonry on the exterior walls while adding covered parking of at least one space per unit keeping the the point total of 26. Within Volume 4, Tab 16 titled Green Building Initiatives, we will be eliminating the Energy-Star qualified windows and glass doors, etc. totaling three (3) points and eliminating Photovoltaic panels that total 30kW totaling three (3) points. To balance out the items eliminated we will be including a selection of native trees and plants for one (1) point, sub-metered utility meters for one (1) point, thermally and draft efficient exterior doors for two (2) points and water conserving features for two (2) points keeping the point total of six (6) points.

Furthermore, in conjunction with the change in ownership, the site plan was modified to accommodate the City of Houston (who invested \$1,398,750 in HOME funds). This modification resulted in a change in the building layout to a podium structure. The podium has 70 covered spaces and we built an adjacent parking lot consisting of 35 uncovered spaces. All of the spaces are free to tenants thus at least one parking space is available for each unit.

Thank you in advance for your consideration of these amendments. Please let me know if any additional information is necessary.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Fambro, II', with a large, sweeping flourish extending to the right.

Kenneth W. Fambro, II
General Partner

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BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
September 6, 2012

Presentation, Discussion, and Possible Action regarding HOME Multifamily Development Program Commitments

RECOMMENDED ACTION

WHEREAS, the Department received two applications for HOME awards under the 2012-1 HOME Multifamily Development Program Notice of Funding Availability;

WHEREAS, the two applications, Villas of Brownwood II and Chandler Place Apartments, do not involve the use of 9% Housing Tax Credits;

WHEREAS, staff did not recommend the two applications for HOME awards at the July 26, 2012, Board meeting due to the volume of HOME applications layered with 9% Housing Tax Credits and the corresponding statutory deadlines and constraints on staff capacity to underwrite associated with the Board action on 9% tax credit transactions;

WHEREAS, appropriate Units of Local Government have expressed support for the two proposed developments;

WHEREAS, sufficient HOME Multifamily Development Program funding is available to award the subject applications under the General Set-Aside;

It is hereby,

RESOLVED, that the commitment for Villas of Brownwood II, in an amount not to exceed \$1,500,000, and the commitment for Chandler Place Apartments, in an amount not to exceed \$2,000,000, in HOME funding from the 2012-1 HOME Multifamily Development Program Notice of Funding Availability are hereby approved in the form presented at this meeting, and as amended by the Board.

FURTHER RESOLVED, that the Board's approval is conditioned upon completion of underwriting, all conditions of underwriting, and completion of any other reviews required to ensure compliance with the applicable rules and requirements for HOME Multifamily Development Program funds.

BACKGROUND

General Information: The two developments are both new construction, with Villas of Brownwood II consisting of 36 total units and Chandler Place Apartments consisting of 48 total units, both serving a general population.

Villas of Brownwood II, proposed to be located in Brownwood, Brown County, is the second phase of a development that was awarded funds under the Tax Credit Exchange Program in 2009. In addition to \$1,500,000 in HOME funds being requested, the developer has received a conditional commitment from Wells Fargo in the amount of \$1,524,846 and has pledged \$778,232 in cash equity.

Chandler Place Apartments, proposed to be located in Blanco, Blanco County, is the first affordable multifamily development in Blanco County since 1993. In addition to \$2,000,000 in HOME funds being requested, the developer has received a conditional commitment from Lancaster Pollard for a USDA \$538 Loan Guarantee in the amount of \$2,340,000 and a grant from the Federal Home Loan Bank of Dallas in the amount of \$480,000.

There is approximately \$19,171,721 in funding available from the 2012 Multifamily Development Program Notice of Funding Availability (NOFA), of which \$9,265,455 is available to applications under the General Set-Aside. The agenda today includes awards on those remaining funds under the General Set-Aside that are not layered with 9% housing tax credits.

Organizational structure and Compliance: The Borrower for Villas of Brownwood II is Villas of Brownwood II, LP, and the General Partner is Villas of Brownwood II GP, LLC. The Compliance Status Summary completed on August 13, 2012, reveals that the principals of the general partner for Villas of Brownwood II have received 77 multifamily awards.

The Borrower for Chandler Place Apartments is THF Chandler Place, Ltd. and the General Partner is THF Blanco Chandler Place, LLC. The Compliance Status Summary completed on August 13, 2012 reveals that the principals of the general partner for Chandler Place Apartments have received 14 multifamily awards.

Census Demographics: Villas of Brownwood II is proposed to be located at 4236 Highway 377 South in Brownwood. Demographics for the census tract (9513) include a population of 3,571; median household income of \$59,618; the percent of population that is minority is 27.1%; the percent of population that is below the poverty line is 5.3%; the percent of owner-occupied units is 81.6%; the percent of renter-occupied units is 18.4% and the percent of vacant units is 11.5% (Census information from datasets DP-1 and DP03 for 2010).

Chandler Place Apartments is proposed to be located at the corner of Chandler Street and Blanco Avenue in Blanco. Demographics for the census tract (9502) include a population

of 5,534; median household income of \$39,488; the percent of population that is minority is 23.5%; the percent of population that is below the poverty line is 7.6%; the percent of owner-occupied units is 80.2%; the percent of renter-occupied units is 19.8% and the percent of vacant units is 20.9% (Census information from datasets DP-1 and DP03 for 2010).

Public Comment: Other than the letters of support from the appropriate Units of General Local Government, the Department has not received any additional letters of support or opposition.

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**BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
September 6, 2012**

Presentation, Discussion, and Possible Action Regarding Modifications to Terms of HOME Multifamily Development Program Loans.

RECOMMENDED ACTION

WHEREAS, the TX LULAC Amistad Housing, L.P. was awarded a HOME Multifamily Development Program loan in August 2006;

WHEREAS, the Department has previously approved amendments to the existing Loan Contract (1000651);

WHEREAS, due to a dispute between the Owner and General Contractor regarding missing payroll records and subsequent Davis-Bacon labor standards compliance issues Department staff did not receive documents necessary to release retainage and close out the contract until this year.

WHEREAS, pursuant to 10 TAC §53.25(d), the Board may, on a case by case basis, approve amendments provided such approval would not cause a violation of the Department's rules or federal requirements;

WHEREAS, staff has determined that approval of this Fourth Amendment would not cause a violation of the Department's rules or federal requirements and would allow the Department to release retainage and close out the contract per HUD requirements.

It is hereby,

RESOLVED, that the Fourth Amendment to the contract end date relating to the HOME Multifamily Contract (1000651) and any associated loan documents to TX LULAC Amistad Housing, L.P. is amended to read September 30, 2012, and hereby approved in the form presented to this meeting.

BACKGROUND

Due to a dispute between the Owner and General Contractor regarding missing payroll records and subsequent Davis-Bacon labor standards matters, the property did not receive a fully executed Certificate of Substantial Completion (G704), Closed Final Inspection letter, and Final Wage Compliance Report until this year. Resolution of all outstanding issues and receipt of these items by Department staff, as well as an escrow agreement between the borrower and escrow agent, is necessary prior to releasing retainage. Staff expects to receive these items prior to September 30, 2012, and is prepared to release retainage and close out the contract per HUD requirements.

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BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
September 6, 2012

Presentation, Discussion, and Possible Action of a Qualified Investment Banking Firm to provide Underwriting or Remarketing Agent Services for Multifamily Bond Transactions.

Recommended Action

WHEREAS, the Department maintains a list of approved underwriters for its multifamily bond transactions; and

WHEREAS, each underwriter must submit to the Department its Request for Qualifications to be approved and included on such list;

WHEREAS, each firm must submit to the Department its Request for Qualifications every two years in order to remain on the list; and

WHEREAS, in response to the Request for Qualifications received from Raymond James | Morgan Keegan; therefore,

It is hereby,

RESOLVED, that Raymond James | Morgan Keegan is approved to be included on the Department's Multifamily Approved Bond Underwriters list for a period of two years until such time their qualifications are required to be renewed.

Background

General Information: The Department currently has an open Request for Qualifications (RFQ) published on its website. The underwriters are approved on a two year basis. For multifamily bond transactions, the Applicant selects an underwriter from an approved list published by the Department. The underwriter will develop the financial structure (*i.e.* fixed rate or variable, bond maturities, etc.), prepare cash flows, and sell the bonds. If the transaction is privately placed, the placement agent will negotiate the sale to private investors.

After reviewing the qualifications of Raymond James | Morgan Keegan, the Department staff recommends that the investment banking firm be added to the Multifamily Bond Approved Underwriters List. The personnel assigned to the Department's account represent over 20 years of experience in municipal finance and demonstrates the capability to structure and underwrite multifamily bonds issued by the Department.

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BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
September 6, 2012

Presentation, Discussion, and Possible Action regarding Inducement Resolution No. 13-008 for Multifamily Housing Revenue Bonds and an Authorization for Filing Applications for Private Activity Bond Authority – 2012 Waiting List.

RECOMMENDED ACTION

WHEREAS, the Board approval of the inducement resolution is the first step for the Board in the application process for a multifamily bond issuance; and

WHEREAS, the inducement allows staff to submit an application to the Bond Review Board (BRB) to await a Certificate of Reservation; and

WHEREAS, the Executive Award and Review Advisory Committee recommends the issuance of the Inducement Resolution; therefore,

It is hereby,

RESOLVED, that Inducement Resolution 13-008 to proceed with the application submission to the Bond Review Board for possible receipt of State Volume Cap issuance authority from the 2012 Private Activity Bond Program for Park Creek Manor (#12606) is hereby approved in the form presented to this meeting.

BACKGROUND

The Texas Bond Review Board (BRB) administers the state's annual bond authority for the State of Texas. The Department is an issuer of Private Activity Bonds and each issuer's Board is required to induce an application for bonds prior to the submission to the BRB. Approval of the inducement resolution does not constitute approval of the Development, but merely allows the Applicant the opportunity to move into the full application phase of the process. Once the application receives a reservation of allocation, the Applicant has 150 days to close on the private activity bond transaction.

During the 150 day process, the Department will review the Applicant's complete application for threshold and compliance with the Department's Rules; and underwrite the transaction in accordance with the Real Estate Analysis Rules. The Department will schedule and conduct a public hearing in the community of the proposed location of the development. The complete application including a transcript from the hearing will then be presented before the Board for a decision on the actual issuance of the bonds as well as the determination of housing tax credits.

Each year, the State of Texas is notified of the cap on the amount of private activity tax-exempt revenue bonds that may be issued within the state. Approximately \$536 million is set aside for multifamily until August 15th for the 2012 program year which includes the TDHCA set aside of approximately \$108 million. After August 15th, reservations are issued on a first-come first-served basis. Inducement Resolution 13-008 represents the third application submitted to the BRB for the 2012 program year and will reserve approximately \$30 million in state volume cap.

The Park Creek Manor proposed development is located at 2520 Coombs Creek St. in Dallas, Dallas County. The development is rehabilitation and consists of 322 total units serving the general population. This transaction is Priority 3 consisting entirely of low income units.

Demographics for the census tract (0064.02) include AMFI of \$36,564; the total population is 5,328; the percent of population that is minority is 95.91%; the percent of population that is below the poverty line is 22.75%; the number of owner occupied units is 651 and the number of renter units is 826. (Census information from FFIEC Geocoding for 2012).

Public Comment: The Department has not received any letters of support or opposition for this Development.

RESOLUTION NO. 13-008

RESOLUTION DECLARING INTENT TO ISSUE MULTIFAMILY REVENUE BONDS WITH RESPECT TO RESIDENTIAL RENTAL DEVELOPMENT; AUTHORIZING THE FILING OF APPLICATION FOR ALLOCATION OF PRIVATE ACTIVITY BONDS WITH THE TEXAS BOND REVIEW BOARD; AND AUTHORIZING OTHER ACTION RELATED THERETO

WHEREAS, the Texas Department of Housing and Community Affairs (the “Department”) has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended, (the “Act”) for the purpose, among others, of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe, and affordable living environments for persons and families of low, very low and extremely low income and families of moderate income (all as defined in the Act); and

WHEREAS, the Act authorizes the Department: (a) to make mortgage loans to housing sponsors to provide financing for multifamily residential rental housing in the State of Texas (the “State”) intended to be occupied by persons and families of low, very low and extremely low income and families of moderate income, as determined by the Department; (b) to issue its revenue bonds, for the purpose, among others, of obtaining funds to make such loans and provide financing, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such multifamily residential rental development loans, and to mortgage, pledge or grant security interests in such loans or other property of the Department in order to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, it is proposed that the Department issue its revenue bonds for the purpose of providing financing for the multifamily residential rental development (the “Development”) more fully described in Exhibit A attached hereto. The ownership of the Development as more fully described in Exhibit A will consist of the ownership entity and its principals or a related person (the “Owner”) within the meaning of the Internal Revenue Code of 1986, as amended (the “Code”); and

WHEREAS, the Owner has made not more than 60 days prior to the date hereof, payments with respect to the Development and expects to make additional payments in the future and desires that it be reimbursed for such payments and other costs associated with the Development from the proceeds of tax-exempt and taxable obligations to be issued by the Department subsequent to the date hereof; and

WHEREAS, the Owner has indicated its willingness to enter into contractual arrangements with the Department providing assurance satisfactory to the Department that 100 percent of the units of the Development will be occupied at all times by eligible tenants, as determined by the Board pursuant to the Act (“Eligible Tenants”), that the other requirements of the Act and the Department will be satisfied and that the Development will satisfy State law, Section 142(d) and other applicable Sections of the Code and Treasury Regulations; and

WHEREAS, the Department desires to reimburse the Owner for the costs associated with the Development listed on Exhibit A attached hereto, but solely from and to the extent, if any, of the proceeds of tax-exempt and taxable obligations to be issued in one or more series to be issued subsequent to the date hereof; and

WHEREAS, at the request of the Owner, the Department reasonably expects to incur debt in the

form of tax-exempt and taxable obligations for purposes of paying the costs of the Development described on Exhibit A attached hereto; and

WHEREAS, in connection with the proposed issuance of the Bonds (defined below), the Department, as issuer of the Bonds, is required to submit for the Development an Application for Allocation of Private Activity Bonds (the “Application”) with the Texas Bond Review Board (the “Bond Review Board”) with respect to the tax-exempt Bonds to qualify for the Bond Review Board’s Allocation Program in connection with the Bond Review Board’s authority to administer the allocation of the authority of the state to issue private activity bonds; and

WHEREAS, the Board has determined to declare its intent to issue its multifamily revenue bonds for the purpose of providing funds to the Owner to finance the Development on the terms and conditions hereinafter set forth; NOW, THEREFORE,

BE IT RESOLVED BY THE BOARD THAT:

Section 1. Certain Findings. The Board finds that:

(a) the Development is necessary to provide decent, safe and sanitary housing at rentals that individuals or families of low and very low income and families of moderate income can afford;

(b) the Owner will supply, in its Development, well-planned and well-designed housing for individuals or families of low and very low income and families of moderate income;

(c) the Owner is financially responsible;

(d) the financing of the Development is a public purpose and will provide a public benefit; and

(e) the Development will be undertaken within the authority granted by the Act to the Department and the Owner.

Section 2. Authorization of Issue. The Department declares its intent to issue its Multifamily Housing Revenue Bonds (the “Bonds”) in amounts estimated to be sufficient to (a) fund a loan or loans to the Owner to provide financing for its Development in an aggregate principal amount not to exceed those amounts, corresponding to the Development, set forth in Exhibit A; (b) fund a reserve fund with respect to the Bonds if needed; and (c) pay certain costs incurred in connection with the issuance of the Bonds. Such Bonds will be issued as qualified residential rental development bonds. Final approval of the Department to issue the Bonds shall be subject to: (i) the review by the Department’s credit underwriters for financial feasibility; (ii) review by the Department’s staff and legal counsel of compliance with federal income tax regulations and state law requirements regarding tenancy in each Development; (iii) approval by the Bond Review Board, if required; (iv) approval by the Attorney General of the State of Texas (the “Attorney General”); (v) satisfaction of the Board that each Development meets the Department’s public policy criteria; and (vi) the ability of the Department to issue such Bonds in compliance with all federal and state laws applicable to the issuance of such Bonds.

Section 3. Terms of Bonds. The proposed Bonds shall be issuable only as fully registered bonds in authorized denominations to be determined by the Department; shall bear interest at a rate or rates to be determined by the Department; shall mature at a time to be determined by the Department but

in no event later than 40 years after the date of issuance; and shall be subject to prior redemption upon such terms and conditions as may be determined by the Department.

Section 4. Reimbursement. The Department reasonably expects to reimburse the Owner for all costs that have been or will be paid subsequent to the date that is 60 days prior to the date hereof in connection with the acquisition of real property and construction of its Development and listed on Exhibit A attached hereto (“Costs of the Development”) from the proceeds of the Bonds, in an amount which is reasonably estimated to be sufficient: (a) to fund a loan to provide financing for the acquisition and construction or rehabilitation of its Development, including reimbursing the Owner for all costs that have been or will be paid subsequent to the date that is 60 days prior to the date hereof in connection with the acquisition and construction or rehabilitation of the Development; (b) to fund any reserves that may be required for the benefit of the holders of the Bonds; and (c) to pay certain costs incurred in connection with the issuance of the Bonds.

Section 5. Principal Amount. Based on representations of the Owner, the Department reasonably expects that the maximum principal amount of debt issued to reimburse the Owner for the costs of the Development will not exceed the amount set forth in Exhibit A.

Section 6. Limited Obligations. The Owner may commence with the acquisition and construction or rehabilitation of the Development, which Development will be in furtherance of the public purposes of the Department as aforesaid. On or prior to the issuance of the Bonds, the Owner will enter into a loan agreement on an installment payment basis with the Department under which the Department will make a loan to the Owner for the purpose of reimbursing the Owner for the costs of the Development and the Owner will make installment payments sufficient to pay the principal of and any premium and interest on the applicable Bonds. The proposed Bonds shall be special, limited obligations of the Department payable solely by the Department from or in connection with its loan or loans to the Owner to provide financing for the Development, and from such other revenues, receipts and resources of the Department as may be expressly pledged by the Department to secure the payment of the Bonds.

Section 7. The Development. Substantially all of the proceeds of the Bonds shall be used to finance the Development, which is to be occupied entirely by Eligible Tenants, as determined by the Department, and which is to be occupied partially by persons and families of low income such that the requirements of Section 142(d) of the Code are met for the period required by the Code.

Section 8. Payment of Bonds. The payment of the principal of and any premium and interest on the Bonds shall be made solely from moneys realized from the loan of the proceeds of the Bonds to reimburse the Owner for costs of its Development.

Section 9. Costs of Development. The Costs of the Development may include any cost of acquiring, constructing, reconstructing, improving, installing and expanding the Development. Without limiting the generality of the foregoing, the Costs of the Development shall specifically include the cost of the acquisition of all land, rights-of-way, property rights, easements and interests, the cost of all machinery and equipment, financing charges, inventory, raw materials and other supplies, research and development costs, interest prior to and during construction and for one year after completion of construction whether or not capitalized, necessary reserve funds, the cost of estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenue, other expenses necessary or incident to determining the feasibility and practicability of acquiring, constructing, reconstructing, improving and expanding the Development, administrative expenses and such other expenses as may be necessary or incident to the acquisition, construction, reconstruction, improvement and expansion of the Development, the placing of the Development in operation and that satisfy the Code

and the Act. The Owner shall be responsible for and pay any costs of its Development incurred by it prior to issuance of the Bonds and will pay all costs of its Development which are not or cannot be paid or reimbursed from the proceeds of the Bonds.

Section 10. No Commitment to Issue Bonds. Neither the Owner nor any other party is entitled to rely on this Resolution as a commitment to issue the Bonds and to loan funds, and the Department reserves the right not to issue the Bonds either with or without cause and with or without notice, and in such event the Department shall not be subject to any liability or damages of any nature. Neither the Owner nor any one claiming by, through or under the Owner shall have any claim against the Department whatsoever as a result of any decision by the Department not to issue the Bonds.

Section 11. No Indebtedness of Certain Entities. The Board hereby finds, determines, recites and declares that the Bonds shall not constitute an indebtedness, liability, general, special or moral obligation or pledge or loan of the faith or credit or taxing power of the State, the Department or any other political subdivision or municipal or political corporation or governmental unit, nor shall the Bonds ever be deemed to be an obligation or agreement of any officer, director, agent or employee of the Department in his or her individual capacity, and none of such persons shall be subject to any personal liability by reason of the issuance of the Bonds.

Section 12. Conditions Precedent. The issuance of the Bonds following final approval by the Board shall be further subject to, among other things: (a) the execution by the Owner and the Department of contractual arrangements providing assurance satisfactory to the Department that 100 percent of the units for each Development will be occupied at all times by Eligible Tenants, that all other requirements of the Act will be satisfied and that each Development will satisfy the requirements of Section 142(d) of the Code (except for portions to be financed with taxable bonds); (b) the receipt of an opinion from Bracewell & Giuliani LLP or other nationally recognized bond counsel acceptable to the Department, substantially to the effect that the interest on the tax-exempt Bonds is excludable from gross income for federal income tax purposes under existing law; and (c) receipt of the approval of the Bond Review Board, if required, and the Attorney General.

Section 13. Certain Findings. The Board hereby finds, determines, recites and declares that the issuance of the Bonds to provide financing for the Development will promote the public purposes set forth in the Act, including, without limitation, assisting persons and families of low and very low income and families of moderate income to obtain decent, safe and sanitary housing at rentals they can afford.

Section 14. Authorization to Proceed. The Board hereby authorizes staff, Bond Counsel and other consultants to proceed with preparation of the Development's necessary review and legal documentation for the filing of an Application for the 2012 program year and the issuance of the Bonds, subject to satisfaction of the conditions specified in Section 2(i) and (ii) hereof. The Board further authorizes staff, Bond Counsel and other consultants to re-submit an Application that was withdrawn by an Owner so long as the Application is re-submitted within the current or following program year.

Section 15. Related Persons. The Department acknowledges that financing of all or any part of the Development may be undertaken by any company or partnership that is a "related person" to the respective Owner within the meaning of the Code and applicable regulations promulgated pursuant thereto, including any entity controlled by or affiliated with the Owner.

Section 16. Declaration of Official Intent. This Resolution constitutes the Department's official intent for expenditures on Costs of the Development which will be reimbursed out of the issuance of the Bonds within the meaning of Sections 1.142-4(b) and 1.150-2, Title 26, Code of Federal

Regulations, as amended, and applicable rulings of the Internal Revenue Service thereunder, to the end that the Bonds issued to reimburse Costs of the Development may qualify for the exemption provisions of Section 142 of the Code, and that the interest on the Bonds (except for any taxable Bonds) will therefore be excludable from the gross incomes of the holders thereof under the provisions of Section 103(a)(1) of the Code.

Section 17. Authorization of Certain Actions. The Department hereby authorizes the filing of and directs the filing of the Application in such form presented to the Board with the Bond Review Board and each director of the Board are hereby severally authorized and directed to execute the Application on behalf of the Department and to cause the same to be filed with the Bond Review Board.

Section 18. Books and Records. The Board hereby directs this Resolution to be made a part of the Department's books and records that are available for inspection by the general public.

Section 19. Notice of Meeting. This Resolution was considered and adopted at a meeting of the Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Board.

Section 20. Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

[Execution page follows]

PASSED AND APPROVED this 6th day of September, 2012.

[SEAL]

By: _____
Chairman, Governing Board

Attest: _____
Secretary to the Governing Board

EXHIBIT "A"

Description of the Owner and the Development

Project Name	Owner	Principals	Amount Not to Exceed
Park Creek Manor	Park Creek Manor, Ltd., a Texas limited partnership	The Co-General Partners are PCM Managing GP, LLC and Park Creek Manor I, LLC. The sole member of PCM Managing GP, LLC is Ruel Hamilton; the sole member of Park Creek Manor I, LLC is Rick J. Deyoe	\$30,000,000
<p>Costs: Rehabilitation construction of a 322 unit affordable, multifamily, rental community located on +/- 12.5218 acres of land located in South Dallas at 2520 Coombs Creek Drive, Dallas, TX 75211 (Dallas County).</p>			

1 dd

**BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
September 6, 2012**

Presentation, Discussion, and Possible Action regarding NSP-1 Multifamily Commitments.

RECOMMENDED ACTION

WHEREAS, the Department received an application under the Texas Neighborhood Stabilization Program 1 Program Income (“NSP1-PI”) REVISED Notice of Funding Availability;

WHEREAS, the applicant was approved as an NSP Reservation Participant under Application Number 2012-600 at the April 12, 2012, TDHCA Board Meeting;

WHEREAS, the application is for the partial funding of eight (8) units within a “Net Zero” energy efficient subdivision totaling 11 acres that will ultimately be comprised of at least 110 units;

WHEREAS, the proposed development is located in a census tract with an NSP Target Score of 17, which is well above the minimum Target Score of 12 that is required in the NOFA;

WHEREAS, sufficient NSP1-PI funding is available to award the subject application;

It is hereby,

RESOLVED, that the application for commitment of funding from the Texas Neighborhood Stabilization Program 1 Program Income (“NSP1-PI”) REVISED Notice of Funding Availability for Guadalupe Neighborhood Development Corporation is hereby approved in the form presented at this meeting;

FURTHER RESOLVED, that the Board’s approval is conditioned upon completion of underwriting in an amount not to exceed \$281,000, all conditions thereof and completion of any other reviews required to ensure compliance with the applicable rules and requirements for NSP1-PI funds.

BACKGROUND

General Information: Guadalupe Neighborhood Development Corporation is proposing new construction for the Guadalupe-Saldana Net Zero Subdivision, to be located in Austin, Travis County, which will consist of 8 units partially funded with NSP-1 PI funds within an overall development consisting of at least 110 units serving the general population. The 8 units will be in the form of 4 duplexes, which will be net-zero homes, producing as much energy as they consume over the year resulting in a projected net-zero dollar energy bill.

These 8 units will be the first of several phases of a development that has secured over \$3 million from several City of Austin agencies, as well as \$205,000 from nonprofits.

There is approximately \$5,602,760 in funding available from the Texas Neighborhood Stabilization Program 1 Program Income (“NSP1-PI”) REVISED Notice of Funding Availability.

Organizational structure and Compliance: The Borrower for Guadalupe Neighborhood Development Corporation is Guadalupe-Saldana Affordable Homes, LP and the General Partner is GNDC GP, LLC. The Compliance Status Summary completed on August 13, 2012 reveals that the principals of the general partner for Guadalupe Neighborhood Development Corporation have received 1 multifamily award and 1 single-family award.

Census Demographics: Guadalupe Neighborhood Development Corporation is located at the corner of Webberville Road and Goodwin Avenue in Austin, between Austin Community College Eastview Campus and Oak Springs Elementary School. Demographics for the census tract (8.01) include a population of 1,498; median household income of \$36,034; the percent of population that is minority is 83.4%; the percent of population that is below the poverty line is 5.2%; the percent of owner-occupied units is 56.4%; the percent of renter-occupied units is 43.6% and the percent of vacant units is 7.6% (Census information from datasets DP-1 and DP03 for 2010).

Public Comment: The Department has not received any letters of support or opposition for this Development.

R1

BOARD REPORT ITEM

OFFICE OF RECOVERY ACT ACCOUNTABILITY AND OVERSIGHT

September 6, 2012

Report Item

Report on the Implementation of the American Recovery and Reinvestment Act of 2009 (Recovery Act). This item provides an update on the status of the activity relating to each of the Recovery Act programs as well as a summary of the quarterly Section 1512 jobs reporting submitted for April 1, 2012, through June 30, 2012.

Recovery Act Program Summary

Program	Activities	Program Status	Total Funding Expended to Date* Percent Expended	Served to Date**	1512 Reported Data Reported Program Expenditures^^ Jobs Created or Retained^	Timeline / Contract Period
Weatherization Assistance Program	Minor home repair to increase energy efficiency, maximum \$6,500 per household. Households at or below 200% of poverty.	<ul style="list-style-type: none"> Contracts executed for 100% of funds, subrecipients drawing funds. As of May 31, 2012, only one subrecipient contract remains open; all other are closed. Subrecipients and TDHCA are now in the close-out phase of the grant. 	\$326,975,732 \$324,412,623 99.22%	55,661 households	\$321,322,808 66.8 jobs	<ul style="list-style-type: none"> Obligation required by September 30, 2010. (Achieved) Recipients were required to expend all funds within a two year contract period (August 31, 2011); subrecipients taking on additional funds were granted extensions. Federal funding expiration date was June 30, 2012. TDHCA is now within a 90 day close out period that ends September 30, 2012.
Homelessness Prevention and Rapid Re-Housing Program	Rental asst, housing search, credit repair, deposits, moving cost assistance, & case management. Persons at or below 50% AMI.	<ul style="list-style-type: none"> All contracts executed. All subrecipient contracts are now closed. Subrecipients and TDHCA are now in the close-out phase of the grant. 	\$41,472,772 \$41,406,690 99.84%	46,818 persons	\$41,406,690 1.5 jobs	<ul style="list-style-type: none"> HUD requires 60% of funds expended in 2 years (Achieved Early); 100% in 3 years. All recipients' contracts are now closed. Federal funding expiration date is July 16, 2012, with a 90 day closeout period.

Program	Activities	Program Status	Total Funding Expended to Date* Percent Expended	Served to Date**	1512 Reported Data Reported Program Expenditures^^ Jobs Created or Retained^	Timeline / Contract Period
Community Services Block Grant Program	Assists existing network of Community Action Agencies with services including child care, job training, and poverty-related programs. Persons at or below 200% of poverty.	<ul style="list-style-type: none"> COMPLETE CSBG ARRA funds expired Sept 30, 2010 	\$48,109,133 \$48,108,280 99.92%	99,325 persons	\$48,108,280	<ul style="list-style-type: none"> Recipients were required to expend 100% of funds by Sept 30, 2010. 99.92% of funds were expended. Due to disallowed costs and one subrecipient's inability to fully expend, 0.08% of funds were unspent.
Tax Credit Assistance Program	Provides assistance for 2007, 2008 or 2009 Housing Tax Credit awarded developments. Households at or below 60% AMI.	<ul style="list-style-type: none"> COMPLETE Amount Awarded: \$148,354,769 (100%) Amount Drawn: \$148,354,769 (100%) 	\$148,354,769 \$148,354,769 100%	8,346 households	\$148,354,769	<ul style="list-style-type: none"> Owners were required to expend 100% of funds by February 17, 2012, which was achieved. All earlier program deadlines were also met.
Housing Tax Credit Exchange Program^^	Provides assistance to 2007, 2008 or 2009 Housing Tax Credit awarded developments. Households at or below 60% AMI.	<ul style="list-style-type: none"> COMPLETE Amount Awarded: \$594,091,929 (100%) Amount Closed: \$594,091,929 (100%) 	\$594,091,929 \$592,616,638 99.75%	8,015 households	\$592,616,638 9,351 jobs	<ul style="list-style-type: none"> Owners were required to expend 100% of funds by December 31, 2011. 99.75% of funds were expended. Due to overcommitment and time expiring for two contracts, 0.25% of funds were unspent. All earlier program deadlines were met.
Total			\$1,159,043,273 \$1,154,898,999 99.64%	146,143 persons 72,022 households	\$1,151,809,185 1512: 68.3 jobs this quarter Exchange: 9,351 jobs cumulatively	

*This table includes updated expenditure data as of 8/24-/2012.

**Total served data through 12/31/2011 for HPRP and 12/31/2010 for CSBG; 8/20/2012 for WAP, 2/2/2011 for TCAP; and 12/10/2010 for HTC Ex. For TCAP and HTC Ex, households represent closed transactions.

^Jobs created or retained between 4/1/2012 and 6/30/2012. Note that Section 1512 reporting is not required for HTC Exchange and the figure includes total estimated jobs to be created or retained as reported to the U.S. Department of Treasury for 12/31/2010.

^^ Program expenditures reported for each program includes subrecipient and TDHCA administrative expenses. Information is updated quarterly. Data was submitted to Recovery.gov for quarter ending 3/31/2012.

^^^ The Housing Tax Credit Exchange Program is not subject to 1512 reporting requirements.

R2

BOARD REPORT ITEM
COMPLIANCE DIVISION
SEPTEMBER 6, 2012

REPORT ITEM

Report on Roundtables Regarding the 2010 Americans with Disabilities Act Standards

BACKGROUND

At the March 6, 2012, Board Meeting, staff was directed to gather input from stakeholders to determine the applicability of the 2010 Americans with Disabilities Act standards. During the month of July, Roundtables were held in Austin, Laredo, Longview, and Sherman.

Approximately 20 members of the public attended the roundtables. There was no general consensus about how the changes to the accessibility standards apply to TDHCA programs. At the Austin roundtable, there was discussion regarding the possibility of TDHCA attempting to combine accessibility requirements from the Fair Housing Act, Section 504 and ADA into one standard. Attendees discouraged TDHCA from attempting this undertaking.

Staff is continuing to assess the Texas Administrative Code to determine if there are any necessary changes. Staff is also working with appropriate federal funding agencies and with the architectural and other affected communities to obtain clear guidance on these new regulations.

R3

BOARD REPORT ITEM

EXECUTIVE

September 6, 2012

Presentation and Discussion on Report to Board regarding administrative penalties for The Shire Apartments, HTC 02470 / CMTS 3273

REPORT ITEM

Consistent with direction from the Department's Administrative Penalties Committee and the requirements of TEX. GOV'T. CODE §2306.043, the Executive Director presents this report to the Board. Department staff will issue a Notice of Violation to The Shire Apartments and will do all things necessary to pursue the assessment of administrative penalties in the recommended amount of \$7,000, including, if necessary, a contested case hearing before an administrative law judge with the State Office of Administrative Hearings.

BACKGROUND

The Shire Apartments, a 310-unit apartment complex located in Port Arthur, Texas is subject to a Land Use Restriction Agreement (LURA) dated to be effective July 6, 2005, filed of record on November 2, 2005 under Document Number 2005039185 of the Official Public Records of Real Property of Jefferson County, Texas in consideration for an allocation of housing tax credits in the annual amount of Five Hundred Fifty Four Thousand Eight Hundred Thirty Seven Dollars (\$554,837) awarded by TDHCA.

An on-site monitoring review was conducted on January 18, 2011, to determine whether The Shire Apartments was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found the following violations of the LURA and TDHCA rules.

- a. The Shire failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 9-4120-203, 15-4000-131, 12-4080-216, 13-4040-123 and 3-4240-107, a violation of 10 TEX. ADMIN. CODE §60.108 and Section 4 of the LURA;
- b. The Shire failed to include required language in tenant leases, a violation of 10 TEX. ADMIN. CODE §60.110 which requires leases to include language prohibiting evictions or nonrenewal of leases for other than good cause.

Notification of noncompliance was sent on January 26, 2011. The corrective action submitted to the Department was not acceptable. The property was then referred for administrative penalties.

On October 25, 2011, representatives of The Shire met with the TDHCA Administrative Penalties Committee selected by the Executive Director of TDHCA. At the informal conference the owner provided the Department with a copy of the submitted corrective action files which they had labeled "bogus files." Representatives of The Shire alleged that a former property manager who worked at the property from January through April of 2011 had altered tenant records for units 3-4240-107, 12-4080-216 and 13-4040-123.

The Committee voted to send the compliance division to perform an additional on site file monitoring review to analyze the questioned files for unit 3-4240-107, 12-4080-216 and 13-4040-123 along with any other files, after which the committee would make a final decision based on those results.

On November 17, 2011, a monitoring review was performed and new violations were identified for units 6-4180-202, 8-4140-201, 18-3900-256, 19-3940-163, 19-3940-168 and 20-3980-273. Department staff sampled several tenant files and photocopied employment verification forms found in the resident files. Department staff then contacted the employers directly and obtained copies of the employment verification forms sent to The Shire. Several discrepancies were noted, including but not limited to:

- The employment verification form in the property's file for unit 8-4140-201 indicates an hourly wage of \$14.00, an overtime rate of \$21.00 per hour and that the applicant works 40 hours per week. Department staff contacted the employer and obtained a copy of the employment verification form that was sent to The Shire Apartments. The employer verified an hourly wage of \$21.50, an overtime rate of \$32.25 hourly and that the applicant works 48 hours per week. The annual income for this household, as verified by the employer, is \$58,136. The income limit was \$30,660.
- The employment verification form in the property's file for unit 19-3940-168 indicates an hourly wage of \$12.00 and that the applicant works 30 hours per week. Department staff contacted the employer and obtained a copy of the employment verification form that was sent to The Shire Apartments. The employer verified an hourly wage of \$15.00 and that the applicant works 40 hours per week. The annual income for this household, as verified by the employer, is \$31,200. The income limit was \$27,240.

Upon receipt of the new monitoring report based on the monitoring review done November 17, 2011, The Shire alleged that another employee who worked at the property from April through December of 2011 had falsified files as well.

The Shire has submitted satisfactory evidence that the identified issues of noncompliance have been resolved. However, The Shire remains subject to the Department's following its processes for the assessment of administrative penalties with regard to the above-referenced violations. Actions taken to resolve the violations may be taken into account in possible mitigation of the penalty.

R4

BOARD REPORT ITEM
HOUSING RESOURCE CENTER
September 6, 2012

REPORT ITEM

Report Item on the State of Texas Housing & Health Services Coordination Council's 2012-2013 Biennial Plan.

BACKGROUND

The purpose of the Housing & Health Services Coordination Council (the Council, HHSCC), as written in statute, is to increase state efforts to expand service-enriched housing through increased coordination of housing and health services. The Council seeks to improve interagency understanding of housing and services and increase the number of staff in state housing and state health services agencies who are conversant in both housing and health care policies. The Council is directed to deliver a report of its findings and recommendations to the Office of the Governor and the Legislative Budget Board (LBB) by August 1st of each even-numbered year.

2012-2013 Biennial Plan Overview

The 2012-2013 Biennial Plan (Plan) was submitted August 1, 2012 and is separated into four distinct sections. Additionally, within each chapter of the Plan, the Council sought to address a different statutory directive.

Section One addresses the current state of service-enriched housing in Texas and discusses what activities have been undertaken since the 2010-2011 Biennial Plan. In Chapter 1, the recommendations of the 2010-2011 Biennial Plan are reviewed for the progress made on each recommendation and necessary follow-up actions are highlighted. Chapter 2 reviews the impacts of the 82nd Texas Legislative Session on the state agencies represented on the Council and the funding sources that support affordable housing and community-based services for persons with disabilities, regardless of age.

Section Two of the Plan focuses on the research and information gathering efforts undertaken by Council staff to help inform the Council of methods for the implementation of service-enriched housing. Chapter 3 addresses the need to contextualize the issue of service-enriched housing by assessing the current need for such housing models amongst persons with disabilities and persons who are elderly. Next, Chapter 4 evaluates the existing capacity of local affordable housing providers and local community-based service providers to meet the needs of persons with disabilities and older adults and evaluates the current opportunities and challenges facing this existing provider network. Chapter 5 analyzes interviews with best practice service-enriched housing developers to highlight housing development models which maintain a project's financial feasibility. Within this analysis, staff provides a breakdown of each funding resource that is currently utilized by these organizations to build, operate, and maintain service-enriched housing. Finally, Chapter 6 looks at the on-going barriers to service-enriched housing which

have been identified by public stakeholders through an online discussion forum process. These barriers include those attributable to regulatory requirements, administrative limitations, funding constraints, and ineffective coordination. The online discussion forum process played an important role in informing the Council of the issues of critical importance to the public and also provided invaluable input as the Council began to craft their policy and funding recommendations.

Section Three of the Plan proposes recommendations to overcome the barriers identified in Section Two and to achieve the overarching goal of increasing state efforts to offer service-enriched housing. Chapter 7 provides policy and funding recommendations made by the Council's Housing Committee, with particular attention to how policies can be created or revised, and how funding sources can be utilized in a way that increases the creation of service-enriched housing for persons who are elderly and persons with disabilities. Chapter 8 then provides policy and funding resource information and, where appropriate, recommendations, made by the Council's Service Committee to the federal government, state legislature, relevant state agencies, and local providers. These recommendations look at improving the availability of and access to community-based services and supports for those persons with disabilities and persons who are elderly who desire to maintain independent living outside of institutional settings.

Section Four of the Plan looks ahead to the possible implementation of Council recommendations. Chapter 9 provides an overview of current efforts by the Texas Department of Housing & Community Affairs (TDHCA) and the Department of Aging and Disability Services (DADS) to link affordable housing with community-based services and supports for low-income persons with disabilities through grants from the Centers for Medicare and Medicaid Services (CMS) and the US Department of Housing & Urban Development (HUD). Chapter 10 concludes the Plan with a look at the future activities of the Council.

2012-2013 Biennial Plan Recommendations

The Council offers ten new housing recommendations and ten new service recommendations for increasing and promoting production of service-enriched housing. On the housing side, the Council identifies the need for critical funding to developers who seek to produce service-enriched housing, through both development financing and rental subsidy. Next, the Council seeks to incentivize applicants who seek to use multifamily rental housing funding sources to produce housing units for extremely low-income households and persons with disabilities. Third, the Council recommends requiring more extensive affirmative marketing efforts to persons with disabilities who are potential tenants of community-based affordable housing. Fourth, the Council recommends establishing formalized partnerships between housing providers and local service entities to ensure the on-going connection of tenants with disabilities to on-site and/or off-site services and supports and establishing criteria for measuring the strength of these connections. Also, the Council seeks to address the need for multiple funding sources that promote service-enriched housing, including multifamily mortgage revenue bonds and the Community Development Block Grant program.

In regards to health and human services recommendations, the Council first urges the state to recommend federal changes to the Medicaid 1915(c) waiver programs, including need determination criteria and definitions of qualified residence. Next, the Council seeks expansion and increased funding of those programs and services that have proven successful at assisting persons with disabilities and persons who are elderly to remain living independently in community-based settings. These include the Money Follows the Person Behavioral Health Pilot program, the Outpatient Competency Restoration (OCR) pilot program, the Recovery Oriented Systems of Care (ROSC) initiative, and the Assertive Community Treatment (ACT) service packages. Third, the Council recommends the use of existing programs and funding streams for the successful diversion of persons currently in institutions or at risk of institutionalization into stable community-based residential settings. These programs include the Projects for Assistance in Transition from Homelessness (PATH) program, the Benefits Counseling Program, the Options Counseling Program, and the Housing Navigators Program.

The 2012-2013 Biennial Plan can be found online at <http://www.tdhca.state.tx.us/hhsc>.

Next Steps of the Council

Given the statutory directives which guide the activities of the Council, the Council recommended that TDHCA utilize funding appropriated to Council activities for the release of a Request for Proposal (RFP) to hire a qualified outside vendor to conduct a Comprehensive Analysis of Service-Enriched Housing Financing Practices.

The Council intends to fulfill outstanding statutory tasks through this Request for Proposal (RFP), which will conduct the following activities:

1. Conduct a comprehensive study of nationwide best practices in service-enriched housing financing and development. This will involve evaluating the programmatic policies of other states which provide funding resources for service-enriched housing; identifying regulatory, administrative, and financial barriers which prevent or slow service-enriched housing efforts in Texas and providing methods and examples for the effective use of layered financing for service-enriched housing. This analysis will place particular emphasis on serving extremely low-income (ELI) households, which are households whose incomes are at or below 30% of Area Median Income (AMI).
2. Produce recommended actions for providing service-enriched housing in Texas. These recommended actions should address regulatory, administrative, and financial barriers to service-enriched housing in Texas.
3. Develop training materials to assist in financing and developing service-enriched housing for extremely low-income persons of all ages with disabilities. The Vendor will be responsible for developing two sets of training materials: the first set will be utilized by TDHCA to educate state housing and health services agency staff about the available funding sources to implement service-enriched housing, and the second set will be utilized by TDHCA to educate local entities interested in creating service-enriched housing in how to develop such housing.

TDHCA released this RFP in July 2012 and intends for the Comprehensive Analysis of Service-Enriched Housing Financing Practices Report to be released by summer 2013.

R5

BOARD REPORT ITEM
Program Report, HOME Division
September 6, 2012

Summary Report for July 2012 and Year-to-Date

Activity Type	<u>Funded/Awarded for July</u>		<u>Funded/Awarded for Year</u>		<u>Setups for July</u>		<u>Setups for Year</u>		<u>Draws for July</u>		<u>Draws for Year</u>	
	RSP	Contracts	RSP	Contracts	Amount	Number	Amount	Number	Amount	Number	Amount	Number
CFD	\$0	\$0	\$0	\$0	\$0	0	\$0	0	\$0	0	\$52,845	2
CHDO Operating	\$0	\$0	\$0	\$50,000	\$0	0	\$0	0	\$12,534	2	\$31,274	5
Dev SF	\$0	\$0	\$0	\$300,000	\$0	0	\$484,310	5	\$77,130	3	\$726,114	27
HBA/Rehab	\$337,070	\$0	\$1,518,593	\$334,500	\$383,819	19	\$2,057,640	113	\$339,813	26	\$2,193,186	163
HRA	\$1,260,012	\$0	\$6,974,676	\$16,423,000	\$3,146,375	38	\$15,246,283	188	\$1,483,850	83	\$7,821,538	403
MFD	\$0	\$18,048,553	\$0	\$23,751,586	\$2,900,000	2	\$11,684,687	12	\$5,121,751	9	\$14,676,130	37
TBRA	\$272,940	\$0	\$2,030,524	\$324,000	\$411,664	43	\$2,646,826	274	\$343,391	434	\$2,038,050	2,874
Sub Totals:	\$1,870,022	\$18,048,553	\$10,523,793	\$41,183,086	\$6,841,858	102	\$32,119,746	592	\$7,378,471	557	\$27,539,138	3,511
Totals:		\$19,918,575		\$51,706,879								

CFD - Contract For Deed

CHDO - Community Housing Development Organization

HRA - Homeowner Rehabilitation

HBA/Rehab - Homebuyer Assistance with Rehab

MFD - Rental Housing Development

RSP - Reservation System Participant

TBRA - Tenant Based Rental Assistance

R6

BOARD REPORT ITEM

RESERVATION SYSTEM FUNDING, HOME DIVISION

September 6, 2012

On September 9, 2010, the TDHCA Board approved the development of a reservation system and the 2010 Single Family Programs Reservation Notice of Funds Availability (NOFA), which made available funds under the reservation system approximately of \$10,000,000 in HOME funds to provide assistance to low-income households. The NOFA allowed Reservation System Participants (RSP) access to funds on a first come first served basis for eligible HOME program activities including Homeowner Rehabilitation Assistance (HRA), Homebuyer Assistance (HBA), Tenant Based Rental Assistance (TBRA), and Contract for Deed Conversion (CFD). The NOFA also made funds available under the Persons with Disabilities (PWD) set aside. The PWD set aside is reserved for qualified individuals for any of the above mentioned program activities. This original NOFA also contained funds set aside for Disaster Recovery and funds available for households requiring both rehabilitation and a need to refinance their current mortgage.

In July 2011 the 2010 Program Year HOME Allocation funds were added to the reservation system, increasing the system balance by an additional \$10,000,000. The NOFA was revised to extend the application deadline to June 30, 2012, and increased funding to the PWD set aside by \$1.4 million. The Board approved a revision to the RSP NOFA in September 2011. The approval included incorporation of approximately \$14 million of the 2011 Program Year HOME Allocation of funds into the Reservation System.

Assistance provided under the Reservation System has continued to grow. An average of \$1.5 million has been committed each month under the Reservation System, and monthly expenditures under the system average over \$500,000.

The provisions of the NOFA collapse the funds available for single family activities, making the funds available statewide for any activity. The collapse does not affect the PWD set aside; therefore those funds remain set aside and restricted.

As of August 22, 2012, the Reservation System balance is \$6.1 million. This balance includes approximately \$2.4 million in the Single Family PWD set aside, and \$1.2 in funds available for Disaster Recovery assistance. Approximately \$3.2 million is available as a result of the November 2011 collapse of funds. These funds are available to eligible households under the various HOME single family programs including HRA, HBA, CFD, and TBRA. At the October Board meeting, staff anticipates requesting approval to issue a new single family NOFA which will include the 2012 Program Year HOME allocation of funds.

R7

TDHCA Outreach Activities, July-August 2012

A compilation of activities designed to increase the awareness of TDHCA programs and services or increase the visibility of the Department among key stakeholder groups and the general public

Event	Location	Date	Division	Purpose
South Plains Association of Governments/HOME HRA Training	Lubbock	July 10	HOME	Training
2010 Americans with Disabilities Act Standards	Austin	July 11	Compliance	Roundtable Hearing
2013 Low Income Home Energy Assistance State Plan	Austin	July 12	Community Affairs	Public Hearing
Lender Training – Kleberg Bank, Envoy Mortgage, Starkey Mortgage	Corpus Christi	July 16-17	Home Ownership	Training
2010 Americans with Disabilities Act Standards	Laredo	July 17	Compliance	Roundtable Hearing
2010 Americans with Disabilities Act Standards	Longview	July 19	Compliance	Roundtable Hearing
Promoting Independence Advisory Committee	Austin	July 19	Housing Resource Center	Participant
2010 Americans with Disabilities Act Standards	Sherman	July 20	Compliance	Roundtable Hearing
2012 Texas Affiliation of Affordable Housing Providers Conference	Austin	July 23-25	Executive, Multifamily, Compliance	Panelist, Participant
2012 Rural Rental Housing Association of Texas Conference	San Antonio	July 24-27	Compliance	Presentation
National Housing Trust Fund Legislative Update Webinar	Austin	July 25	Housing Resource Center	Participant
Texas State Independent Living Council Quarterly Meeting	Lubbock	July 26-27	Housing Resource Center	Participant
2012 Lower Rio Grande Valley Colonia Summit	Harlingen	July 27	Office of Colonia Initiatives, External Affairs	Presentation, Participant
United Texas: Housing Initiatives that Work – Realtor Training	Austin	July 30	Home Ownership	Training
Emergency Solutions Grants Program Environmental Overview	Austin	July 31	Program Services, Community Affairs	Training
Texas Habitat for Humanity Leadership Conference	Austin	August 1-3	Office of Colonia Initiatives	Presentation, Participant
Fair Housing Focus Group	League City	August 7	Program Services	Roundtable Hearing
Concho Valley/HRA	Austin	August 8	HOME	Technical Assistance
New Braunfels Community Resources/TBRA	New Braunfels	Austin 8	HOME	Technical Assistance
United Texas: Housing Initiatives that Work – Realtor Training	Houston	August 9	Home Ownership	Training
Lender Training – Envoy Mortgage	Houston	August 10	Home Ownership	Training
Fair Housing Focus Group	Port Arthur	August 13	Program Services	Roundtable Hearing
Fair Housing Focus Group	Tyler	August 14	Program Services	Roundtable Hearing
Down Payment Seminar for Realtors – Starkey Mortgage	San Antonio	August 15	Home Ownership	Training
Fair Housing Focus Group	San Angelo	August 16	Program Services	Roundtable Hearing
South Texas Collaborative for Housing Development/Multifamily CHDO	Austin	August 16	HOME	Technical Assistance
Fair Housing Focus Group	Abilene	August 17	Program Services	Roundtable Hearing
HUD Ft. Worth Regional Staff Presentation	Fort Worth	August 20	Community Affairs, External Affairs, Housing Resource Center, Legal	Presentation, Participant

Event	Location	Date	Division	Purpose
HUD San Antonio Regional Staff Presentation	San Antonio	August 22	Community Affairs, Housing Resource Center, Legal	Presentation, Participant
Supportive Services Webinar	Austin	August 22	Compliance	Training
Bond, Down Payment, MCC Training – Wells Fargo Mortgage	Colleyville	August 23	Home Ownership	Training
Texas Statewide Homebuyer Education Program Training	Austin	August 27-31	Home Ownership	Training
2013 Uniform Multifamily Rules and QAP Workgroup	Austin	August 28	Multifamily Finance	Hearing
Proposed Single Family Program Rules Hearing	Austin	August 29	Single Family	Public Hearing
Texas Association of Counties Pre-Legislative Conference	Austin	August 29-30	Housing Resource Center	Exhibitor
Single Family and Emergency Solutions Grant, Environmental Clearance Training	Austin	August 30	Program Services	Training
Fair Housing Focus Group	Kerrville	August 31	Program Services	Roundtable Hearing

Internet Postings of Note, July-August 2012

A list of new or noteworthy documents posted to the Department's Web site

Strategic Plan for Fiscal Years 2013-2017 — *defining the Department's mission, philosophy, external/internal assessments, and goals and measures for the fiscal period of 2013-2017:*

www.tdhca.state.tx.us/housing-center/pubs.htm#stratplan

Housing and Health Services Coordination Council 2012-2013 Biennial Plan — *detailing findings and recommendations to expand service-enriched housing, increased coordination of housing and health services:*

www.tdhca.state.tx.us/hhsc/biennial-plans.htm

HTC Applicable Percentages and Calculation of Underwriting Rates — *used to determine the allocation amount of the credits, as defined in Section 42(b) of the Internal Revenue Code:*

www.tdhca.state.tx.us/rea/index.htm

2012-1 HOME Multifamily Development Program - Application Log — *listing applications seeking funding through HOME rental housing funds and the status of each:*

www.tdhca.state.tx.us/home-division/mf-rental.htm

Agreed Final Order – Community Action Council of South Texas — *outlining action taken against nonprofit for failing to timely correct tenant file and safety, sanitary and repair violations with respect to specific properties:*

www.tdhca.state.tx.us/board/agreed-final-orders.htm

Proposed Texas Administrative Code (TAC) Rule Amendments — *seeking public comment on specific proposed changes to the Texas Administrative Code:*

www.tdhca.state.tx.us/community-affairs/announcements.htm

Status Log of 2012 Competitive Housing Tax Credit Challenges — *summarizing the status of challenges to applications in the 2012 9 percent tax credit cycle:*

www.tdhca.state.tx.us/multifamily/htc/index.htm

FY2013 Operating Budget — *detailing Department funding and use by a variety of metrics:*

www.tdhca.state.tx.us/finan.htm

Competitive Housing Tax Credit Allocation Process Clarifications — *clarifying impact of nonprofit set-aside and potential regional shortfall of credits in 2012 9 percent Housing Tax Credit Program cycle:*
www.tdhca.state.tx.us/multifamily/htc/index.htm

Request for Proposals: Comprehensive Analysis of Service-Enriched Housing Financing Practices — *to identify a qualified vendor to provide a comprehensive study of nationwide best practices in service-enriched housing financing and development (links to Comptroller's Web site):*
http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=101479

July 20 Housing Tax Credit Award and Waiting List Recommendations — *listing staff recommendations for applications seeking 9 percent tax credits and subsequent waiting list:*
www.tdhca.state.tx.us/multifamily/htc/index.htm

Determination of Public Housing Authority's Annual Plan Consistency with the State of Texas Consolidated Plan — *relating to HUD Certifications for which TDHCA serves as the certifying official:*
www.tdhca.state.tx.us/housing-center/pubs.htm#consolidated

2nd Quarter, 2012 NSP Quarterly Reports — *providing an analysis of the performance of the Neighborhood Stabilization Program for NSP1 and NSP3 during the second quarter of 2012:*
www.tdhca.state.tx.us/nsp/index.htm

Jurisdictional Analyses of Impediments to Fair Housing Choice (AI) in Texas — *data set and supporting material regarding data sources used to identify impediments to fair housing:*
www.tdhca.state.tx.us/program-services/fair-housing/analysis-impediments-2010-2.htm

2012 Audit Report on the Housing Choice Voucher Program — *detailing recommendations for making the program more efficient and financially self-supporting:*
www.tdhca.state.tx.us/internal-audit.htm

Fair Housing Focus Group Schedule — *listing times/locations for ten focus groups planned to better understand the varying perspectives on housing choice in the state:*
www.tdhca.state.tx.us/program-services/fair-housing/analysis-impediments.htm

2012 State of Texas Consolidated Plan Annual Performance Report: Reporting on Program Year 2011 — *evaluating the state's performance in administering HOME, CDBG, ESGP, and HOPWA programs:*
www.tdhca.state.tx.us/housing-center/pubs.htm#consolidated

Amendment to Supplement the 2012-2013 Housing Trust Fund Plan — *detailing an amended use of funds to include additional amounts for HHSP and Bootstrap, reduction of amounts for match, HBA activities:*
www.tdhca.state.tx.us/htf/background.htm

2012 Competitive Housing Tax Credit Awards and Waiting List — *listing applications receiving an allocation of 9 percent tax credits and subsequent waiting list:*
www.tdhca.state.tx.us/multifamily/htc/index.htm

Schedule of Tasks and Research Approach – Analysis of Impediments — *detailing required subtasks, timeframes and milestone dates, and progress made as of June 30, 2012, toward completing this analysis:*
www.tdhca.state.tx.us/program-services/fair-housing/analysis-impediments-2010-2.htm

NSP3 Substantial Amendment 3 — *outlining amendments to the Federal FY 2010 Action Plan affecting the expected distribution and use of funds through the Neighborhood Stabilization Program:*
www.tdhca.state.tx.us/nsp/index.htm

Judgment and Memorandum Opinion and Order Regarding Remedial Plan — *issued by the US Court for the Northern District of Texas relating to TDHCA's proposed Remedial Plan:*
www.tdhca.state.tx.us/multifamily/htc/index.htm

2013 Multifamily Rules Discussion Forum — *providing stakeholders the opportunity to submit comment on scoring criteria, development size, maximum unit percentages, and others specific aspects of 2013 rules:*
www.tdhca.state.tx.us/multifamily/htc/index.htm

Proposed Single Family Program Rules Hearing Schedule — *listing time and location for public hearing to accept comment regarding consolidated program rules for single family activities:*
www.tdhca.state.tx.us/single-family-reorganization.htm

2013 Regional Allocation Formula Recalibration Forum — *providing stakeholders the opportunity to submit comment on proposed funding allocations and criteria used in developing the formula:*
<https://tdhca.websitetoolbox.com/>

Summary of Major Differences between URA & 104(d) Relocation Assistance for Displaced Residential Tenants — *comparing protections and assistance for people affected by the acquisition, rehabilitation, or demolition of real property for Federal or federally funded projects:*
www.tdhca.state.tx.us/program-services/ura/index.htm

HUD-CPD Real Estate Acquisition and Relocation, Laws and Regulations — *detailing federal laws affecting the displacement, relocation, acquisition, and replacement of housing under HOME, CDBG, and NSP:*
www.tdhca.state.tx.us/program-services/ura/laws-rules.htm

Pathways Home: A Framework for Coordinating State Administered Programs with Continuum of Care Planning to Address Homelessness in Texas — *examining the coordination of employment and health service resources with local housing programs to prevent and end homelessness:*
www.tdhca.state.tx.us/tich/pathways-home.htm

2

**INTERNAL AUDIT
BOARD REPORT ITEM
SEPTEMBER 6, 2012**

Report from the Audit Committee Meeting.

REPORT ITEM

Verbal report.

3

BOARD ACTION REQUEST

BOND FINANCE DIVISION

September 6, 2012

Presentation, Discussion, and Possible Action on Resolution No. 13-003 authorizing a Taxable Mortgage Program (TMP) for homebuyers (Program 79) along with related program documents to be administered by the Texas Department of Housing and Community Affairs

RECOMMENDED ACTION

WHEREAS, the provisions of Chapter 2306 of the Texas Government Code authorize the Department to (a) purchase notes and other obligations evidencing loans or interest in loans for individuals and families of low and very low income and families of moderate income and (b) to sell, at public or private sale, with or without public bidding, a mortgage or other obligation held by the Department; and

WHEREAS, the tax-exempt bond market does not allow the Department to achieve competitive rates with mortgage revenue bond issuance; and

WHEREAS, only housing finance agencies or 501(c)(3) organizations are able to provide such related down payment assistance to government insured loans; therefore, it is hereby

RESOLVED, that as approved and presented at the TDHCA Board meeting, the Department is hereby authorized to create a TMP along with all related documents; and

FURTHER RESOLVED, Resolution No. 13-003 is hereby adopted in the form presented to this meeting.

BACKGROUND

TDHCA has historically funded the First Time Homebuyer Program through the issuance of mortgage revenue bonds (MRBs). Because the interest income from the bonds is exempt from federal income taxes, investors have historically been willing to purchase the bonds at lower interest rates. These lower borrowing costs have allowed TDHCA to use bond proceeds to make

loans at below-market interest rates. However, the current MRB spread is negative, meaning mortgage rates are lower than tax-exempt bond rates, and TDHCA's cost of borrowing in the tax-exempt bond market is higher than the rate at which we could competitively offer and originate mortgage loans. As a result, TDHCA would like to create a non-bond mortgage-backed security (MBS) Program or Taxable Mortgage Program (TMP) through the To-Be-Announced (TBA) market to fulfill the mission of providing affordable home ownership. Please see the attached Bond Buyer article for a more extensive discussion on the evolution of the market place for tax-exempt bonds over the past 5 years.

The TBA market facilitates the forward trading of MBSs. In a TBA trade, the seller and buyer agree to the type of security, coupon, face value, price, and settlement date at the time of the trade, but do not specify the actual pools to be traded. The securities are "to be announced" two business days prior to the trade settlement.

By offering down payment and closing costs assistance (DPA) and a first lien mortgage rate that is slightly above market mortgage rates, TDHCA can create a MBS to be sold for a premium in the TBA Market.

The TMP will allow TDHCA to offer competitively priced mortgage loans with DPA. Program advantages include:

- DPA is self funded. TDHCA will initially advance DPA and will receive reimbursement through MBS premium thereby, creating a "self reimbursement" revolving DPA fund.
- TMP not subject to the same federal tax rules as the MRB Program.
 - No first time homebuyer requirement. TDHCA will retain its first time homebuyer requirement.
 - No purchase price or income limits. However, staff is recommending these requirements be kept the same as Program 77.
 - No Targeted Area Requirement. However, staff is recommending continuing to allow increased purchase price and income limits in economically distressed areas.
- Can be used with the Mortgage Credit Certificate (MCC) Program.
- Reduced up-front costs – no cost of issuance to the Department and no negative arbitrage.
- Does not use private activity bond authority.
- TBA Purchaser assumes market risk.

Today, staff is seeking approval of the TMP Program and all related documents including but not limited to the Master Trade Agreement, Escrow Agreements, Servicing Agreement, Master Mortgage Origination Agreement and Program Guidelines. The Escrow Agreements will be funded with cash and securities initially of \$4 million, with a not-to-exceed total of \$6 million to be funded from the Department's bond costs of issuance account.

Bond Buyer Article on evolving HFA Business Model

Some HFAs Change Their Business Models for MRBs

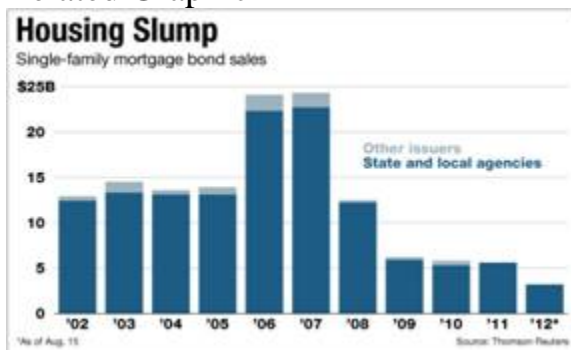
by: [Jennifer DePaul](#)

Sunday, August 19, 2012

WASHINGTON — Despite several turbulent years and the gloomy outlook for single-family housing bonds, municipal bond housing experts are optimistic about the future of housing finance agencies.

Some housing experts, as well as a high-level Treasury Department official, say the HFA business model for mortgage revenue bonds is temporarily broken and out-of-date in the current low interest rate environment.

Related Graphic



Mary Miller, the Treasury’s undersecretary of domestic finance, told housing officials meeting here earlier this year, “We face the question of whether the current outlook for HFAs still represents a temporary disruption, or a new equilibrium that will require HFAs to change their business model.”

“The old model is not right for today,” agreed John Murphy, executive director of the National Association of Local Housing Finance Agencies. “I don’t think the model is broken or out-of-date on the multifamily side,” he added.

However, experts are hopeful that with new sources of revenue, HFAs will rebound and continue to be a leading force in issuing single-family housing bonds for affordable housing.

“We think the agencies continue to play a very important and unique role in the marketplace,” said Barbara Thompson, executive director of the National Council of State Housing Agencies.

“They continue to be a key provider of affordable mortgages to low- and moderate-income people, particularly first-time home buyers, an area where they truly specialize.”

Thompson added that HFAs offer a prudent approach to their lending, which involves not only low-cost financing but other services such as a down payment, closing costs and counseling assistance.

Despite their prominent role in the housing market, the forecast doesn't bode well for HFAs.

The outlook for state HFAs remains negative in 2012, for the fourth straight year, Moody's Investors Service said in a February report that focused on the fundamental credit conditions in the sector over the next 12 to 18 months.

Moody's said six primary factors will drive the negative outlook through at least mid-2013. They are low conventional mortgage rates, low interest rates on investments, deterioration of counterparty credit quality, high unemployment, high liquidity fees for variable-rate debt and new strategies for financing loan origination.

Standard & Poor's doesn't have the entire housing sector on watch, but some HFAs, which have seen consistent drops in profitability over the past few years, have been downgraded.

In 2011, Standard & Poor's lowered the ratings on 1,300 affordable housing issues and put 226 others on credit watch with negative implications, mostly because their mortgages were guaranteed by the Federal Housing Administration.

The ratings were directly linked to the sovereign credit rating of the United States and they were lowered in the wake of the first U.S. credit downgrade last August.

The rating agency said demand for multifamily housing will continue to rise, but the market for single-family affordable housing has stagnated despite pent-up demand.

Single-family housing bond issuance is likely to remain low because of low interest rates and the unsettled market for credit enhancements, it said.

Traditionally, HFAs have financed their mortgage lending business by issuing tax-exempt bonds and using the proceeds to offer affordable mortgage loans for first-time, low-income home buyers.

This method has allowed them to issue debt approximately 50 to 100 basis points lower than conventional mortgage rates, according to Charles Giordano, senior director in the tax-exempt housing group at Fitch Ratings.

MORTGAGE RATES

However, with the slow economic recovery and the Federal Reserve Board's monetary policy aimed at maintaining low interest rates, conventional mortgage interest rates have generally been

lower than those that can be achieved through the issuance of bonds. As a result, tax-exempt bond financing does not provide a cost of funds low enough to offer competitive mortgage rates, experts said.

The 30-year fixed-rate mortgage interest rate has hovered around 3.5% during the past few months, making it nearly impossible for HFAs to offer competitive mortgage loans. By comparison, in 2006 and 2007 when conventional mortgage rates reached 7%, HFAs could issue bonds at 5% and offer mortgage loans at 6%.

HFAs were heavily competing with the subprime market and issuing good loans in 2006 and 2007, housing experts said. But in 2008, issuance started to dwindle, and in 2009, it became clear HFAs couldn't make mortgage loans with tax-exempts.

"The whole way of their programs has changed because of the limitations of mortgage interest rates, but they are still performing their mission," Giordano said.

Single-family housing bond issuance plummeted since its peak in 2007, when volume totaled \$22.74 billion in 567 deals, according to data from Thomson Reuters.

In 2011, issuance only reached \$5.58 billion in 153 deals, a 75.46% plunge from 2007. As of Aug. 15 this year, issuance was only \$3.24 billion in 63 deals. When the financial crisis hit in 2008, issuance plummeted to \$12.24 billion from the previous year, a 46.2% decline.

"Interest rates went down so dramatically that we couldn't issue bonds because of negative arbitrage," Murphy said. "That drove virtually everyone out of the market."

In late 2009, the housing finance market received a jolt. The Treasury Department created the New Issue Bond Program to revitalize bond issuance among state and local HFAs.

Under the program, the Treasury agreed to buy \$15.3 billion of securities from Fannie Mae and Freddie Mac that were backed by new mortgage revenue bonds or multifamily housing bonds issued by the HFAs.

The NIBP and a temporary credit and liquidity program boosted struggling HFAs through the financial crisis and some experts say even leveled the playing field.

"These agencies have actually really held their own," said Florence Zeman, associate managing director at Moody's. "We haven't seen that many downgrades. A lot has to do with their financial positions back in 2008 when they started to face a lot of challenges."

Murphy called the NIBP a "highly successful program" and "the best-kept secret in town." He said it was a very important tool to expand homeownership for lower- to middle-income households.

Forty-seven local HFAs — almost half of NALHFA's members — participated in the NIBP and created nearly 17,000 affordable housing opportunities for first-time home buyers and low-

income renters, according to Murphy. About 97% of the purchases were first-time homebuyers, with average incomes of 78% of area median income, he said.

The NIBP expires at the end of 2012 and almost all of the bond issuance authority has been used.

Housing groups like NALHFA and the National Council of State Housing Agencies have been pressing the Treasury to launch another round of the NIBP.

Some issuers have capacity remaining to utilize the NIBP, but it's not as big a factor as it was a few years ago when the program first launched, said Bob Coleman, managing director of the national housing group with Raymond James | Morgan Keegan.

Currently, HFA issuance is largely dominated by refundings, Coleman said. Roughly 50% of all bond issuances in 2012 have had a refunding component. By comparison, refundings one year ago comprised of only 10% of the total issuance because the NIBP was an option for HFAs, Coleman said.

HFAs can current refund housing bonds and use the subsidies from the previous bond issues to create a more competitive mortgage product, he said. In a current refunding, all of the previously issued bonds must be redeemed with 90 days of the issuance of the refunding bonds. They cannot advance refund these bonds.

If interest rates rise back to 7%, then tax-exempts for housing could be viable again, Murphy said.

HFAs will likely not know if they can revert to issuing bonds until at least 2014 because interest rates are expected to remain low until then.

In the meantime, HFAs are re-evaluating their funding model and seeking alternative sources of revenue in order to survive in a low-interest rate environment.

BUSINESS MODEL

“The agencies are shifting their strategic business plan,” said Valerie White, senior director of corporate and government ratings at Standard & Poor's. “They are diversifying their business strategies to find other ways to supplement the revenue that they customarily only got from bond issuance in the past.”

Zeman said HFAs are “in essence becoming mortgage-backed securities lenders.”

Under the new business model, an HFA uses its own resources or even a warehouse line to fund mortgages that are pooled into Ginnie Mae, Fannie Mae or Freddie Mac mortgage-backed securities, which ultimately are sold in the market, according to Coleman.

Some may sell loans directly to Fannie or Freddie. but housing experts said it's more likely that they would sell them into the open market. Under this pool bond finance model, the collateral for the bonds is Ginnie Mae, Fannie Mae and-or Freddie Mac.

“If you can't beat it, join it,” Coleman said. “The good news is that it's pretty nimble of them to do that. It allows them to serve their constituencies and meld their mortgage products with other things that they bring to the table that have been such keys to their public purpose and success over many years.”

White agreed, saying, “If HFAs can adapt to this new model, they can be sustainable with “good strategic long-term planning, creativity and a good understanding of what the risks are.”

Thompson also said some HFAs “are looking to alternatives, and a key one is the mortgage-backed security market. Certainly there has been a movement to that execution, which makes sense. It's not the right environment for a really robust national bond program because of the rate situations.”

For those HFAs that haven't already adopted this model, virtually all of them are at least considering it, Coleman said.

John Craford, executive vice president of the Connecticut Housing Finance Authority, said his organization has been reviewing the mortgage banking model, in which they would just originate loans and sell them to Fannie Mae or Freddie Mac.

“We would continue to do what we are doing as long as we could make it work, but we are basically trying to open up this other avenue so we can keep the program going in a way that hopefully benefits as many people as we can,” he said.

In the past few years, the Connecticut HFA has predominantly refunded and restructured its debt to take advantage of the low interest rates and to try to compete in the market, Craford said.

“We are very aggressive and active in managing that outstanding debt and sort of optimizing what the arbitrage and tax rules allow us to do,” he said. “It's a matter of splicing and dicing and putting together the outstanding bonds so you can save with the outstanding mortgages and make money on the whole package.”

The Connecticut HFA has been making standard 30-year fixed-mortgage loans at 3% with down payment assistance.

Still, Craford said business has slowed considerably because it's difficult to compete with Fannie Mae and Freddie Mac. The HFA assists approximately 1,200 homeowners each year, compared with 1,700 from earlier years.

Until they adopt a new financing model, the agency plans to do another refunding this fall.

Howard Zucker, member of the management committee at Hawkins Delafield & Wood LLP and author of the book, “ABCs of Housing Bonds,” said, “This isn’t the first time HFAs have adapted to extreme changes in the market. HFAs have evolved dramatically since the early 1970s when they were first created.”

“Starting with the Nixon administration’s slashing of the Department of Housing and Urban Development budget to produce new housing, the HFAs have become, among other things, the delivery vehicle and administrator for many federal housing programs,” Zucker said. “Even with the diminution of housing bond issuance, the HFAs still play a critical role in the housing finance market.”

Thompson suggested that there is a silver lining to the HFAs’ current troubles.

“Ultimately, we’ll look back at this period as difficult as it has been, but I think there will be some good legacy,” she said. “That legacy will be that they have more tools in their arsenal that they can draw upon going forward.”

RESOLUTION NO. 13-003

RESOLUTION APPROVING A MASTER TRADE AGREEMENT, ESCROW AGREEMENTS, SERVICING AGREEMENT, PROGRAM GUIDELINES AND MASTER MORTGAGE ORIGINATION AGREEMENT IN CONNECTION WITH PROGRAM 79 A TAXABLE MORTGAGE PURCHASE PROGRAM DESIGNATED AS "PROGRAM 79"; AUTHORIZING THE EXECUTION OF DOCUMENTS AND INSTRUMENTS RELATING TO THE FOREGOING; MAKING CERTAIN FINDINGS AND DETERMINATIONS IN CONNECTION THEREWITH; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code (the "Act"), as amended from time to time, for the purpose of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe and sanitary housing for individuals and families of low and very low income and families of moderate income (as described in the Act as determined by the Governing Board of the Department (the "Governing Board") from time to time) at prices they can afford; and

WHEREAS, the Act authorizes the Department (a) to purchase notes and other obligations evidencing loans or interest in loans for individuals and families of low and very low income and families of moderate income and (b) to sell, at public or private sale, with or without public bidding, a mortgage or other obligation held by the Department; and

WHEREAS, the Governing Board desires to approve a taxable mortgage purchase program designated as "Program 79" (the "Program") to fund all or a portion of the Department's single family loan production; and

WHEREAS, the Governing Board desires to authorize the execution and delivery of a master trade confirmation in substantially the form attached hereto (the "Master Trade Agreement") with First Southwest Company; and

WHEREAS, the Governing Board desires to authorize the execution and delivery of an Escrow Agreement with the Texas Treasury Safekeeping Trust Company (the "Trust Company") and First Southwest Company as purchaser under the Master Trade Agreement, and an Escrow Agreement with the Trust Company and U.S. Bank National Association as master servicer under the hereinafter described Servicing Agreement (the "Servicer"), each in substantially the form attached hereto (collectively, the "Escrow Agreements"); and

WHEREAS, the Governing Board desires to authorize the execution and delivery of a Servicing Agreement in substantially the form attached hereto (the "Servicing Agreement") setting forth the terms under which the Servicer will review, acquire, package and service the mortgage loans to be originated under the Program (the "Mortgage Loans"); and

WHEREAS, the Governing Board desires to authorize the execution and delivery of Master Mortgage Origination Agreement in substantially the form attached hereto (the "Master MOA") in connection with the Program; and

WHEREAS, the Governing Board desires to approve the Program Guidelines in substantially the form attached hereto (the "Program Guidelines") setting forth the general terms of the Program and the Mortgage Loans; and

WHEREAS, the Governing Board desires to approve the forms of the Master Trade Agreement, the Escrow Agreements, the Warehousing Agreement, the Servicing Agreement, the Master MOA and the

Program Guidelines, the execution and delivery of such documents and the taking of such other actions as may be necessary or convenient to carry out the purposes of this Resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THAT:

ARTICLE 1

APPROVAL OF DOCUMENTS AND CERTAIN ACTIONS

Section 1.1 Approval, Execution and Delivery of Master Trade Agreement. The form and substance of the Master Trade Agreement are hereby approved and the Authorized Representatives (as defined herein) each are hereby authorized to execute, attest and affix the Department's seal to the Master Trade Agreement and to deliver the Master Trade Agreement to First Southwest Company; provided, however, that: (a) the principal amount of Mortgage Certificates that may be sold pursuant to the Master Trade Agreement shall not exceed \$600,000,000; (b) the Master Trade Agreement shall terminate no later than one year after its effective date, provided that the Master Trade Agreement may provide for the term to be extended for up to one additional year at the option of the Department; (c) the source of payment of the Department's obligations under the Master Trade Agreement shall be limited to the Collateral (as defined herein); and (d) the security for the Department's obligations under the Master Trade Agreement and the related Servicing Agreement shall be collateral consisting of cash and securities of up to \$6,000,000 on deposit under the Escrow Agreements (the "Collateral").

Section 1.2 Approval, Execution and Delivery of Escrow Agreements. The form and substance of the Escrow Agreements are hereby approved and the Authorized Representatives each are hereby authorized to execute, attest and affix the Department's seal to the Escrow Agreements and to deliver the Escrow Agreements to the Trust Company and the other parties thereto; provided that the maximum amount of cash and securities authorized for deposit under each of the Escrow Agreements is \$2,000,000 per agreement; provided that with respect to each Escrow Agreement, additional amounts up to \$1,000,000 per agreement may be deposited from time to time as required by the Master Trade Agreement or the Servicing Agreement.

Section 1.3 Approval, Execution and Delivery of Servicing Agreement. The form and substance of the Servicing Agreement are hereby approved and the Authorized Representatives each are hereby authorized to execute, attest and affix the Department's seal to the Servicing Agreement and to deliver the Servicing Agreement to the Servicer.

Section 1.4 Approval, Execution and Delivery of Master MOA. The form and substance of the Master MOA are hereby approved and the Authorized Representatives each are hereby authorized to execute, attest and affix the Department's seal to the Master MOA.

Section 1.5 Approval of Program Guidelines. The form and substance of the Program Guidelines are hereby approved and the Department is authorized to distribute the Program Guidelines to mortgage lenders; provided that the interest rate on Mortgage Loans originated under the Program shall be no less than 3.00% and no greater than 6.00%; and that down payment and closing cost assistance may not exceed 5.00% of the original principal amount of the related first lien Mortgage Loan.

Section 1.6 Execution and Delivery of Other Documents. The Authorized Representatives are each hereby authorized to execute and deliver all agreements, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, notices, written requests and other papers, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.7 Power to Revise Form of Documents. Notwithstanding any other provision of this Resolution, the authorized representatives of the Department named in this Resolution each are hereby authorized to make or approve such revisions in the form of the documents attached hereto as exhibits as, in the judgment of such authorized representative, and in the opinion of Bracewell & Giuliani LLP, Bond Counsel to the Department, may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, such approval to be evidenced by the execution of such documents by the authorized representatives of the Department named in this Resolution.

Section 1.8 Exhibits Incorporated Herein. All of the terms and provisions of each of the documents listed below as an exhibit shall be and are hereby incorporated into and made a part of this Resolution for all purposes:

- Exhibit A - Master Trade Agreement
- Exhibit B - Escrow Agreements
- Exhibit C - Servicing Agreement
- Exhibit D - Master MOA
- Exhibit E - Program Guidelines

Section 1.9 Authorized Representatives. The following persons are hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Governing Board, the Executive Director of the Department, the Chief of Agency Administration of the Department, the Director of Bond Finance of the Department, and the Secretary or any Assistant Secretary to the Governing Board. Such persons are referred to herein collectively as the "Authorized Representatives."

Section 1.10 Ratifying Other Actions. All other actions taken or to be taken by the Executive Director and the Department's staff in connection with the Program are hereby ratified and confirmed.

Section 1.11 Approval of Rules. Implementation of Program 79 is subject to approval by the Governing Board of the rules for the Department's Taxable Mortgage Program.

ARTICLE 2

GENERAL PROVISIONS

Section 2.1 Notice of Meeting. This Resolution was considered and adopted at a meeting of the Governing Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Governing Board.

Section 2.2 Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

PASSED AND APPROVED this 6th day of September, 2012.

Chair, Governing Board

ATTEST:

Secretary to the Governing Board

(SEAL)

4

BOARD REPORT
PROGRAM SERVICES
September 6, 2012

Report Item

Presentation by BBC on the Status of the Preparation of the State of Texas Plan for Fair Housing Choice: Analysis of Impediments.

Background

BBC Research & Consulting, Inc. (BBC) is the vendor selected to complete the State of Texas Plan for Fair Housing Choice: Analysis of Impediments (AI). Staff submits monthly Board updates on the progress of the AI based on BBC status reports and staff activities.

Heidi Aggeler with BBC will provide an update for the Board on recent progress and activities planned during the next few months. Highlights of activities since June include:

- Completed administration of the resident and stakeholder surveys. The resident surveys total 586 through telephone and 345 supplemental (online) surveys. The resident survey matches the demographics of state residents overall very well. Stakeholder surveys total 597. Have completed preliminary analysis of the resident survey; in process of finalizing analysis of both surveys.
- Continued analysis of housing market data, including Fair Market Rents.
- Completed interviews with stakeholders and completed analysis of complaint and hate crime data.
- Launched online stakeholder focus groups and in-person focus groups across the state. As of August 31, completed 6 of the 10 online stakeholder groups and 6 of the 10 in person focus groups. The in person focus group locations are League City, Port Arthur, Tyler, Weslaco, San Angelo, Abilene, Tulia, El Paso, Kerrville, and Carrizo Springs. Times and locations for upcoming focus groups are posted on the TDHCA website.
- Incorporated information from demographics and housing market analysis from Phase 1 into the Phase 2 report.
- Continued researching areas of further inquiry and preliminary impediments based on quantitative and qualitative findings.

Activities planned for the next few months include:

- Completion of draft findings, impediments and action steps.
- Submission of draft report to TDHCA in October.
- Public hearings across the state on the draft report in November.
- Submission of the final report by the end of December.

State of Texas Plan for Fair Housing Choice: Analysis of Impediments

Preliminary Findings: Resident Survey

Figure 1.
Number of Surveys

	Number
General Market	400
Oversample	186
Total Number of Surveys	586
Total Surveys by Subsample (including oversample)	
	Percent
Low Income	41%
Disability	25%
Non-white	43%

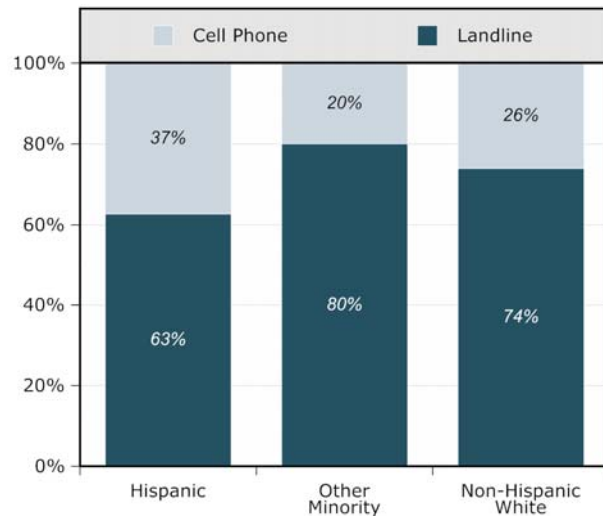
Note: "Oversample" survey calls were conducted to build adequately sized low income, disability and non-white samples.

Figure 2.
Low Income, Disability and Minority representation in the General Market Sample compared to Texas demographics (2010 Census/ACS)

	General Market Sample (n=400)	State of Texas (2010 Census/ACS)
Low Income (<\$36,000)	28%	26%
African American	7%	12%
Hispanic	25%	38%
Disability*	17%	12%

Note: *BBC survey question is "do you or any member of your family have a disability?" Census reports percent of population with a disability.

Figure 3.
Land Lines and Cell Phones by Race and Ethnicity

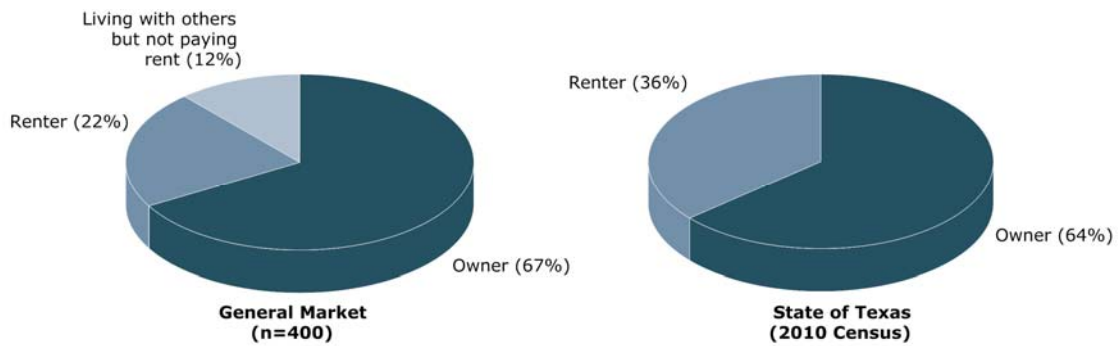


Note: n= 580.

Figure 4.
Regional Coverage of Survey Compared to 2010 Census

	General Market Sample (n=400)	All Survey Respondents (n=582)	State of Texas Population (2010 Census)
Region 1	3%	3%	3%
Region 2	2%	2%	2%
Region 3	33%	27%	27%
Region 4	7%	7%	4%
Region 5	2%	4%	3%
Region 6	23%	22%	24%
Region 7	7%	7%	7%
Region 8	6%	5%	4%
Region 9	7%	7%	9%
Region 10	2%	2%	3%
Region 11	5%	8%	7%
Region 12	1%	2%	2%
Region 13	1%	4%	3%
Total	100%	100%	100%

Figure 5.
Tenure of Respondents Compared to 2010 Census



Housing Satisfaction

Figure 6.
On a scale from 0 to 9, where 0 is extremely unsatisfied and 9 is extremely satisfied, how satisfied are you with your housing situation?

	General Market Sample (n=400)	Low Income Subsample (n=243)	Disability Subsample (n=147)	Non-white Subsample (n=254)
<i>Extremely Unsatisfied</i> 0	1%	4%	2%	2%
1	0%	2%	1%	2%
2	1%	2%	2%	0%
3	1%	2%	2%	1%
4	2%	4%	3%	4%
5	5%	5%	5%	6%
6	5%	5%	10%	6%
7	17%	18%	12%	16%
8	21%	21%	16%	20%
<i>Extremely Satisfied</i> 9	48%	38%	48%	43%

Within the general market subsample, among those who responded with a rating of 0 to 4 (n=16), the top 3 reasons given for being unsatisfied were:

- Home/apartment needs repairs that I can't afford (25%)
- Crime in neighborhood (12%)
- Don't like the neighborhood (12%)

**Figure 7.
Top 5 Important Factors in
Housing Choice**

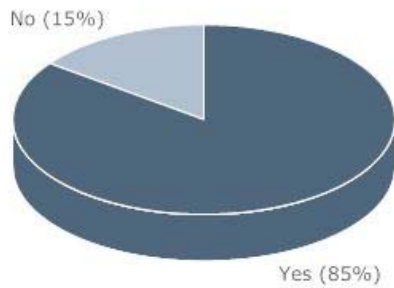
Notes:

When asked "What factors were most important to you in choosing your current home or apartment?" the top five answers were the same across all subsamples but the order of importance differed.

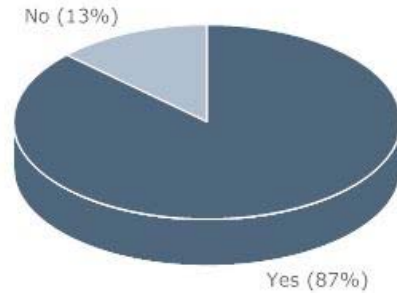
Numbers may add to greater than 100 percent due to multiple responses.

	General Market Sample (n=400)	Low Income Subsample (n=243)	Disability Subsample (n=147)	Non-white Subsample (n=254)
Cost/I could afford it	22%	26%	24%	24%
Close to work/job opportunities	19%	14%	12%	14%
Close to family/friends	9%	16%	12%	13%
Close to quality public schools/School district	22%	10%	12%	18%
Liked the neighborhood	22%	17%	13%	21%

**Figure 8.
Does your home meet
your family's
accessibility needs?**



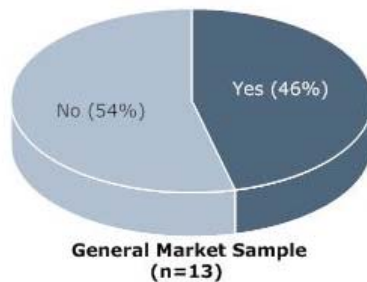
General Market Sample



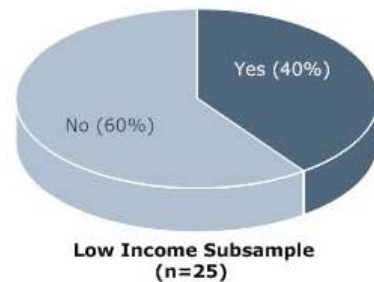
Disability Subsample

Transportation

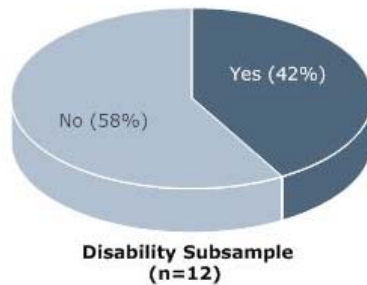
**Figure 9.
Does not having a car limit
where you can live?**



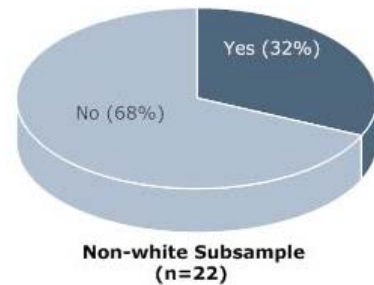
**General Market Sample
(n=13)**



**Low Income Subsample
(n=25)**



**Disability Subsample
(n=12)**



**Non-white Subsample
(n=22)**

Figure 10.
Does not having a car limit your job opportunities?

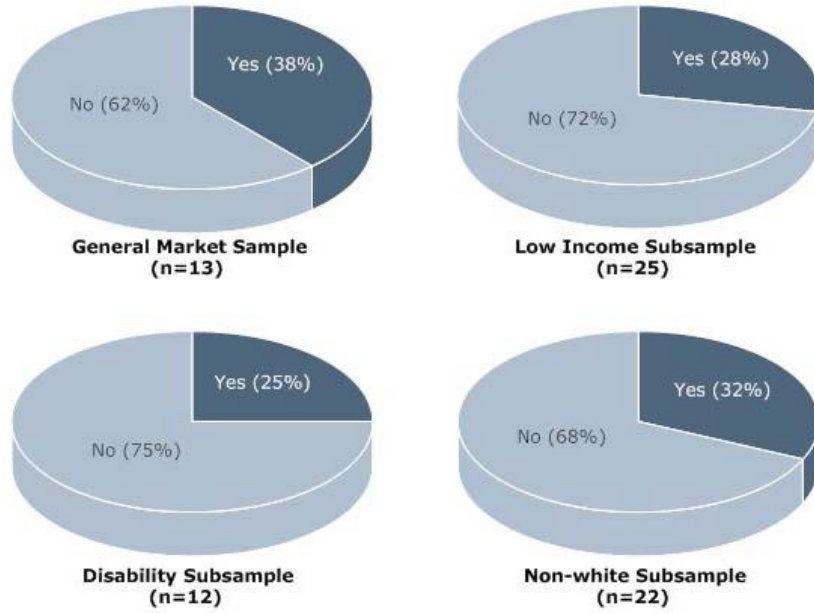
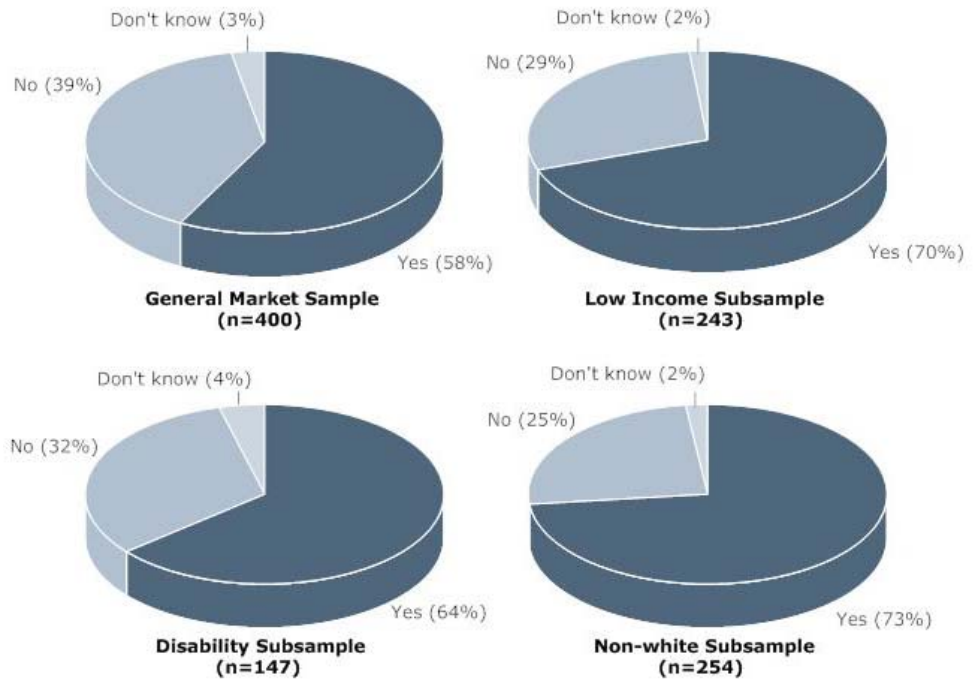


Figure 11.
If public transit were available to you, would you use it?



Fair Housing

Figure 12.

On a scale from 0 to 9, where 0 means Not a Problem, and 9 means a Serious Problem, please rate whether or not the following issues have been a problem for you or your family when trying to rent or purchase a home

	General Market Sample (n=400)	Low Income Subsample (n=243)	Disability Subsample (n=147)	Non-white Subsample (n=254)
My landlord refused to make an accommodation for my disability.	1.0	1.8	2.6	1.6
I did not get information about private mortgage insurance.	0.9	1.7	1.5	1.4
I was given a subprime loan.	0.6	0.6	0.9	0.7
My lender did not give me an appraisal of my home or property.	0.9	1.1	1.4	1.4
My lender told me to use a specific appraisal or hazard insurance company.	0.9	1.2	1.2	1.7
Owners of my mobile home park charged fees I didn't know about.	1.1	1.9	1.2	1.8
Real estate agents showed me housing I could afford only in certain neighborhoods.	1.3	1.8	1.6	2.1
The HOA in my neighborhood wouldn't let me make changes to my house or property for my disability.	0.8	1.9	2.0	1.7
I have Section 8 and it is hard to find a place to live.	2.2	2.8	3.0	2.7
I have not been able to get homeowner's insurance.	0.6	1.5	1.1	1.2
Housing I can afford is in unsafe or high crime areas.	1.8	3.2	2.6	2.8

Note: The mean rating for each issue is displayed.

Figure 13.
When you looked for housing,
did you ever feel you were
discriminated against?

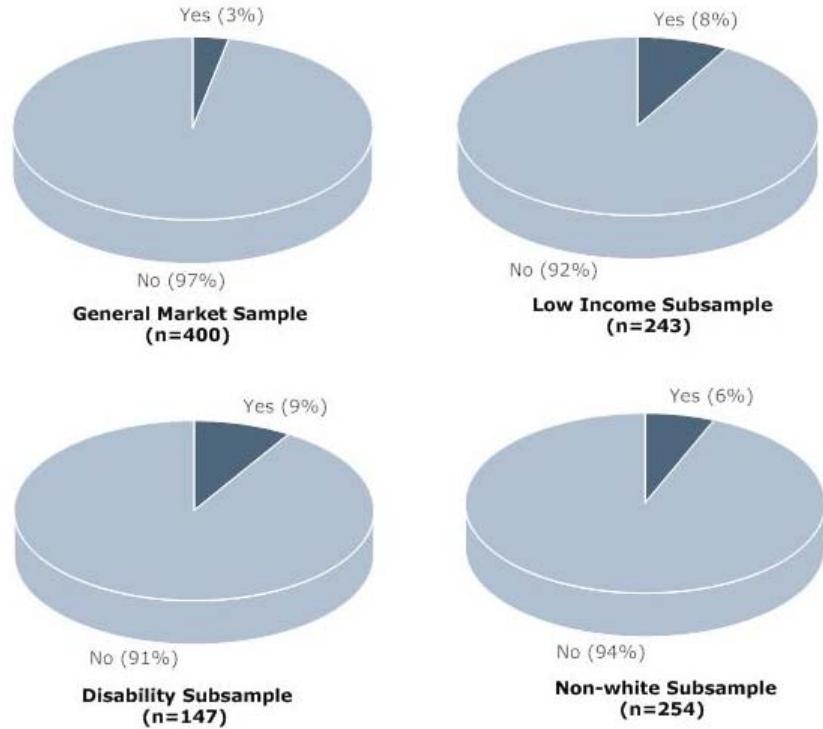


Figure 14.
When did the
discrimination occur?

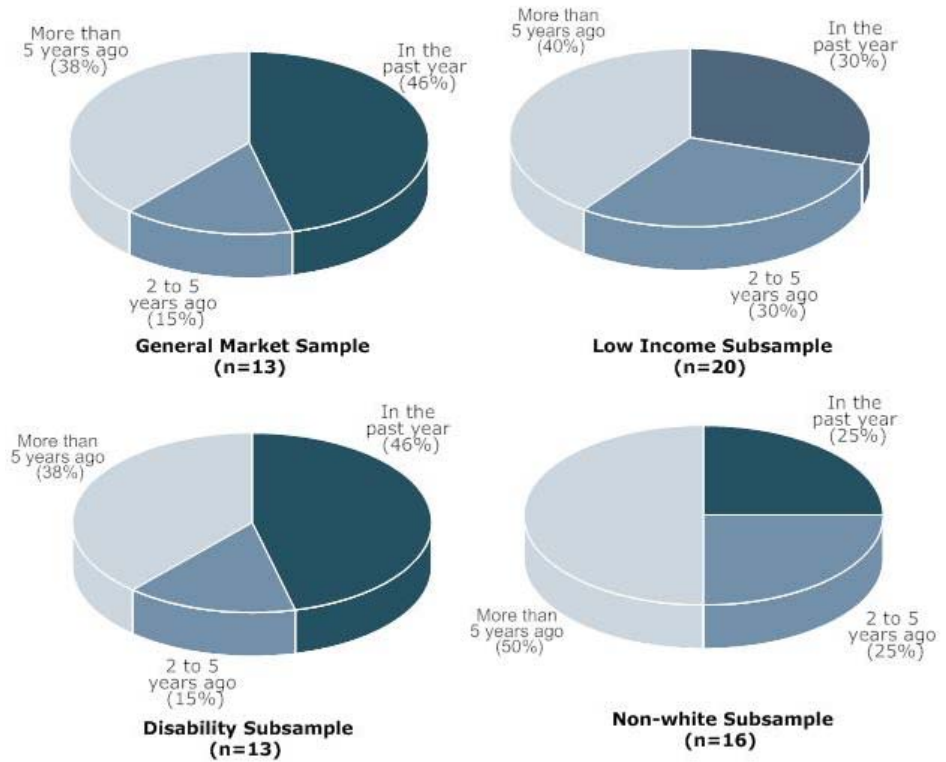


Figure 15.
If you felt you or someone you knew were discriminated against when looking for housing, what would you do?

	General Market Sample (n=400)	Low Income Subsample (n=243)	Disability Subsample (n=147)	Non-White Subsample (n=254)
Look for help on the Internet	4%	4%	4%	4%
Contact a lawyer/ACLU	6%	4%	5%	6%
Contact HUD	4%	3%	3%	3%
Contact a Fair Housing Organization	7%	6%	8%	9%
Contact a Civil Rights group	1%	0%	0%	1%
Contact a Human Rights group	1%	0%	0%	1%
Contact City government/elected officials	12%	13%	14%	15%
Contact the Better Business Bureau	2%	2%	3%	1%
Contact the Housing Authority	1%	1%	1%	0%
Contact the media	1%	1%	0%	1%
Contact the police	1%	1%	1%	1%
Look for a different property/realtor	10%	9%	8%	10%
Contact supervisor, property owner/ manager, corporate office, etc.	3%	3%	1%	2%
I don't know what to do	7%	11%	14%	6%
Contact someone (not sure who)	10%	7%	6%	7%
Contact the board of realtors	1%	0%	0%	0%
Confront the person who discriminated	1%	0%	1%	1%
Other	7%	7%	10%	7%
Nothing	27%	32%	25%	30%

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Item 5

#12379 Sunrise Terrace
Board Action Request

**REAL ESTATE ANALYSIS DIVISION
BOARD ACTION REQUEST
September 6, 2012**

Requested Action

Deny the Applicant's appeal of the underwriting recommendations for Application #12379, Sunrise Terrace.

WHEREAS, the Applicant applied for an allocation tax credits out of the 2012 allocation round and also requested \$2,000,000 in TDHCA HOME funds, structured as a loan, for development of Sunrise Terrace; and,

WHEREAS, the Applicant requested that the lien securing the HOME loan be subordinate, as a second lien, to the primary conventional mortgage in the amount of \$908,726; and,

WHEREAS, the HOME rules require that HOME loans have a deed of trust with a lien position consistent with the principal amount of the loan in relation to the principal amounts of the other sources of financing; and,

WHEREAS, the requirement for a superior lien position prevents the extinguishment of the Department's lien through foreclosure of the Department's larger loan by a lender with less capital investment and typical removal of the affordability restriction;

WHEREAS, the underwriting report was completed pursuant to the HOME rule and provided to the Applicant on July 30, 2012 with a condition that the HOME loan be secured with a first lien pursuant to the policies of the Board as codified in the program rule; and,

WHEREAS on August 6, 2012, the Applicant filed an appeal with the Executive Director and through the appeal of the underwriting report requests a waiver of the lien position requirement; and,

WHEREAS, the Executive Director denied the appeal on August 16, 2012; therefore,

BE IT RESOLVED, that the Applicant's appeal of the underwriting condition and the requested waiver of the HOME loan lien requirement for Sunrise Terrace (#12370) is hereby denied.

Background

The Applicant is not asserting that the underwriting report itself is in error. The appeal is regarding an underwriting condition that TDHCA's lien position remains superior to any proposed third-party permanent debt of a lesser amount. Through the appeal mechanism for the underwriting report, the Applicant is requesting a waiver of 10 TAC §53.81(f)(4) which requires a lien position consistent with the principal amount of the loan in relation to the principal amounts of the other sources of financing.

As proposed in the application and as underwritten, TDHCA's \$2M HOME loan is substantially greater than the third-party conventional lender's permanent loan of \$908,726. The application itself, based on the term sheet from Wells Fargo requiring a first lien, did not conform to the HOME rules (10 TAC §53.81(f)(4)). By placing a condition in the underwriting recommendation, staff properly followed the policy of our Governing Board, as codified in rule, regarding the necessity for the Department to maintain a first lien position in these cases.

By requiring a superior lien position, the Department better protects its position and ensures that these limited resources are available for future developments also serving low income Texans. This loan policy prevents the extinguishment through foreclosure of TDHCA's larger debt by a lender with a smaller stake and is a prudent position. Although this fiduciary stance is for reasons no different than a conventional lender's loan policy, it is noted that in addition to the loss of principal, foreclosure generally removes the affordability restrictions.

The condition does not require an absolute first lien on the HOME loan. It does require a capital structure that meets the rules of the Department. While subordination by a conventional lender is rare, it has been proposed in other applications. Other capital structures may exist such as increasing the conventional loan amount or reducing the HOME loan principal and securing additional capital from other sources to fill the gap in sources. Any new capital structure must be underwritten by the Department.

A waiver of this rule is the only way staff's recommendation could be reversed. The waiver provision in the HOME Rule (10 TAC §53.81(f)(4)) only provides for waiver by the Governing Board.

Recommendation:

Staff recommends denial of the appeal of the underwriting condition and the requested waiver of the HOME lien requirement.

Item 5.1

Applicant Appeal Documentation



REAL ESTATE ANALYSIS
Appeal Election Form

Date Sent To TDHCA: 8/3/2012

12379 Sunrise Terrace

I am in receipt of my 2012 Underwriting Report Notice and have reviewed the Appeal Policy at 10TAC Section 50.10(c). I recognize that should I choose to file an appeal, I must file a formal appeal to the Executive Director within seven days from the date this Notice was issued and the Underwriting report was posted to the Department's website. I understand that my appeal documentation must identify my specific grounds for appeal.

- No appeal to the recommendations of the Department's underwriting report as published on the Department's website.
- Appeal to the Executive Director.

If my appeal is denied by the Executive Director:

- Appeal to the Board of Directors and request that the appeal is added to the next available Board of Directors' meeting agenda. I understand that my Board appeal documentation must still be submitted by 5:00 p.m., seven days prior to the next board meeting or three days prior if the Executive Director has not responded to my appeal in order to be included in the board book. I understand that if no documentation is submitted, the appeal documentation submitted to the Executive Director will be utilized.
- Wait to hear the Executive Director's response before deciding whether to appeal to the Board of Directors or not.

Signed: _____

Title: _____

Manager

Date: _____

8/3/2012

Please email to:
Pam Cloyde
pamela.cloyde@tdhca.state.tx.us

COATS | ROSE

A Professional Corporation

ANTOINETTE M. JACKSON

tjackson@coatsrose.com
Direct Dial
(713) 653-7392
Direct Fax
(713) 890-3928

August 6, 2012

RECEIVED
By pcloyde at 3:51 pm, Aug 06, 2012

VIA ELECTRONIC TRANSMITTAL

Texas Department of Housing and Community Affairs
221 East 11th Street,
Austin, Texas 78711-2410
Attn: Timothy Irvine, Executive Director

Re: Sunrise Terrace, TDHCA #12379
Underwriting Appeal

Dear Mr. Irvine:

This letter is written on behalf of Sunrise Terrace, LP (“Owner”). The Owner received an award for 2012 tax credits for Sunrise Terrace (the “Project”). The Project is a proposed 70-unit single family development located in La Feria, Texas. On July 30, 2012, the Owner received its Underwriting Report from the Department which reflected the conditions of its tax credit award. The Underwriting Report was conditioned on a revised financing structure that satisfies all TDHCA Rules and underwriting criteria. The Owner is writing to appeal this report and request a waiver of Section 53.81(4) of the Texas Administrative Code which requires a lien position consistent with the principal amount of the loan.

The Owner has requested and received a commitment of TDHCA HOME funds in the amount of \$2,000,000. The Owner has also received a loan commitment from Wells Fargo Bank in the amount of \$4,740,451 for the construction loan. However, the permanent loan is expected to be reduced to \$908,726. As a result of the permanent sources, the TDHCA HOME loan will be larger than the permanent loan. As reviewed and acknowledged in the Underwriting Report, Wells Fargo, the proposed Project lender, requires a first lien priority mortgage. This is a funding requirement that is standard in the industry for private lenders to hold a superior position over all other funding in order to provide the requested loan value. Please further note that this lien position will not interrupt the priority of any affordability restrictions. The Owner has also initiated discussions with PNC to serve as construction/permanent lender and they have provided the same condition on the funding. PNC has further reiterated its position in the letter that we have included as an attachment to this waiver request. See Attachment 1.

The Project is located in a jurisdiction that does not have sufficient governmental instrumentality funds and is therefore required to utilize TDHCA HOME funds for the transaction. The requirement for the HOME funds to hold a position consistent with the amounts

3 East Greenway Plaza, Suite 2000 Houston, Texas 77046-0307
Phone: 713-651-0111 Fax: 713-651-0220
Web: www.coatsrose.com

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Timothy Irvine
Texas Department of Housing and Community Affairs
August 6, 2012
Page 2

of the other sources is a rule set out for TDHCA but is not a requirement of HOME funding. Additionally, the rule set out by the Texas Administrative Code allows for a waiver and approval of an alternative lien priority.

The need for housing in the La Feria community is great and the proposed Sunrise Terrace with its single family configuration is expected to compete well in the market. The Underwriting Report supports the need for the housing and its impact on the community. Therefore, we believe that the need for the housing supports our request to waive the lien priority requirement and support approval of an alternative lien priority as proposed by the Owner.

Thank you for your attention to this matter. Please feel free to contact me should you require any additional information.

Very truly yours,



Antoinette M. Jackson
Counsel for Sunrise Terrace, LP

3 East Greenway Plaza, Suite 2000 Houston, Texas 77046-0307
Phone: 713-651-0111 Fax: 713-651-0220
Web: www.coatsrose.com



TAX CREDIT CAPITAL

August 5, 2012

Via Email – SKPhilip@adminclf.com

Mr. Sunny K. Philip
LFST-GP, LLC
115 E. Commercial Avenue
La Feria, Texas 78559

RE: Sunrise Terrace – La Feria, Texas

Dear Mr. Philip,

PNC Bank, NA as construction and permanent lender for the new construction development Sunrise Terrace requires a first lien position for these credit facilities. The bank's credit policy does not allow anything less. Without this position, PNC Bank, NA would not be able to provide construction and permanent financing.

Sincerely:

PNC Bank, National Association

A handwritten signature in black ink that reads "G. Ellis".

Gayle Manganello Ellis, Vice President

Date: **August 5, 2012**

Item 5.2

Executive Director Response



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Rick Perry
GOVERNOR

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Juan S. Muñoz, PhD
J. Mark McWatters

August 16, 2012

Antoinette M. Jackson
Coats Rose
3 East Greenway Plaza, Suite 2000
Houston, Texas 77046-0307

RE: SUNRISE TERRACE, TDHCA #12379

Dear Ms. Jackson:

I have reviewed your appeal dated August 6, 2012 regarding the Underwriting Report provided to your client on July 30, 2012 for the above referenced application. In the appeal, you are not asserting that the underwriting report itself is in error. Your appeal is regarding an underwriting condition that TDHCA's lien position remains superior to any proposed third-party permanent debt of a lesser amount. Through this appeal, you are requesting a waiver of 10 TAC §53.81(f)(4) which requires a lien position consistent with the principal amount of the loan in relation to the principal amounts of the other sources of financing.

As proposed in the application and as underwritten, TDHCA's \$2M HOME loan is substantially greater than the third-party conventional lender's permanent loan of \$908,726. The application itself, based on the term sheet from Wells Fargo requiring a first lien, did not conform to the HOME rules (10 TAC §53.81(f)(4)). By placing a condition in the underwriting recommendation, staff properly followed the policy of our Governing Board, as codified in rule, regarding the necessity for the Department to maintain a first lien position in these cases.

By requiring a superior lien position, the Department better protects its position and ensures that these limited resources are available for future developments also serving low income Texans. This loan policy prevents the extinguishment through foreclosure of TDHCA's larger debt by a lender with a smaller stake and is a prudent position. Although this fiduciary stance is for reasons no different than a conventional lender's loan policy, it is noted that in addition to the loss of principal, foreclosure generally removes the affordability restrictions.

The condition does not require an absolute first lien on the HOME loan. It does require a capital structure that meets the rules of the Department. While subordination by a conventional lender is rare, it has been proposed in other applications. Other capital structures may exist such as increasing the conventional loan amount or reducing the HOME loan principal and securing additional capital from



other sources to fill the gap in sources. Any new capital structure must be underwritten by the Department.

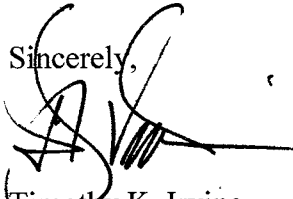
A waiver of this rule is the only way staff's recommendation could be reversed. The waiver provision in the HOME Rule (10 TAC §53.81(f)(4)) only provides for waiver by the Governing Board.

Appeal Determination

Your appeal is denied.

Pursuant to Section 50.10(c)(4) of the Qualified Allocation Plan, you have requested that your appeal, if denied by me, be filed with the Board and heard at its next regularly scheduled meeting. Thus if you wish for this appeal to be considered by the Board at the September 6, 2012 Board meeting you need to submit any material for your appeal to the Board before the seventh calendar day preceding the date of the board meeting.

If you have questions or comments, please call me or Brent Stewart, Director of our Real Estate Analysis Division at (512) 475-2973.

Sincerely,

Timothy K. Irvine
Executive Director

TKI : RBS

6a

**BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
September 6, 2012**

Presentation, Discussion, and Possible Action on a Determination Notice for Housing Tax Credits with another Issuer.

RECOMMENDED ACTION

WHEREAS, a Housing Tax Credit application for the Pine Club Apartments was submitted to the Department on April 13, 2012; and

WHEREAS, the proposed issuer of the bonds for the Pine Club Apartments is the Texas State Affordable Housing Corporation (TSAHC); and

WHEREAS, the reservation of allocation expires on January 18, 2013; and

WHEREAS, the Development is located in a municipality that has been identified as having twice the state average of units per capita supported by Housing Tax Credits or Private Activity Bonds; and

WHEREAS, the Unit of Local Government, the City of Beaumont, has voted specifically to approve the rehabilitation of the Development and to authorize an allocation of 4% Housing Tax Credits; and

WHEREAS, the Executive Award and Review Advisory Committee recommends the issuance of the Determination Notice; therefore,

It is hereby,

RESOLVED, that the issuance of a Determination Notice of \$650,946 in Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website for the Pine Club Apartments is hereby approved in the form presented to this meeting.

BACKGROUND

General Information: The development is an acquisition/rehabilitation and consists of 232 total units serving a general population. This transaction is a Priority 3 and all of the units are proposed to be restricted at 60% Area Median Family Income (AMFI). The development is located in Beaumont, Jefferson County, and the site is currently zoned for this type of development.

This development was previously awarded an allocation of competitive 9% housing tax credits in 1994. The initial Tax Credit Compliance Period expired on December 31, 2010; however, there is an extended use restriction agreement in place until December 31, 2025. On February 6, 2012, a letter was issued by the Department confirming that the Development has successfully undergone the Right of First Refusal process; allowing the sale of said property.

Organizational structure and Compliance: The Borrower is Dalcors Pine Club, Ltd., and the General Partner is Dalcors Pine Club GP, LLC. The Compliance Status Summary completed on August 14, 2012, reveals that the principals of the general partner have received no multifamily awards.

Census Demographics: The development is located at 5015 Pine Street in Beaumont. Demographics for the census tract (0001.03) include AMFI of \$21,862; the total population is 3,311; the percent of population that is minority is 93.20%; the percent of population that is below the poverty line is 54.85%; the number of owner occupied units is 389 and the number of renter units is 705. (Census information from FFIEC Geocoding for 2012).

Public Comment: The Department has received letters of support from City of Beaumont Mayor Becky Ames and City Manager Kyle Hayes. The Department has not received any letters of opposition for this Development.

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
September 6, 2012

Presentation, Discussion, and Possible Action on a Determination Notice for Housing Tax Credits with another Issuer.

RECOMMENDED ACTION

WHEREAS, a Housing Tax Credit application for the Saddlewood Club Apartments was submitted to the Department on April 13, 2012; and

WHEREAS, the proposed issuer of the bonds for the Saddlewood Apartments is the Texas State Affordable Housing Corporation (TSAHC); and

WHEREAS, the reservation of allocation expires on January 18, 2013; and

WHEREAS, the Executive Award and Review Advisory Committee recommends the issuance of the Determination Notice; therefore,

It is hereby,

RESOLVED, that the issuance of a Determination Notice in the amount of \$544, 596 in Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website for the Saddlewood Club Apartments is hereby approved in the form presented to this meeting.

BACKGROUND

General Information: The development is an acquisition/rehabilitation and consists of 232 total units serving a general population. This transaction is a Priority 3 and all of the units are proposed to be restricted at 60% Area Median Family Income (AMFI). The development is located in Bryan, Brazos County, and the site is currently zoned for this type of development.

This development was previously awarded an allocation of 9% housing tax credits in 1994. The initial Tax Credit Compliance Period expired on December 31, 2010; however there is an extended use restrictions agreement in place until December 31, 2025. On February 6, 2012, a letter was issued by the Department confirming that the Development has successfully undergone the Right of First Refusal process; allowing the sale of said property.

Organizational structure and Compliance: The Borrower is Dalcor Saddlewood, Ltd., and the General Partner is Dalcor Saddlewood GP, LLC. The Compliance Status Summary completed on August 14, 2012, reveals that the principals of the general partner have received no multifamily awards.

Census Demographics: The development is located at 3625 Wellborn in Bryan. Demographics for the census tract (0010.00) include AMFI of \$27,168; the total population is 7,867; the percent of population that is minority is 47.97%; the percent of population that is below the poverty line is 45.37%; the number of owner occupied units is 709 and the number of renter units is 2,094. (Census information from FFIEC Geocoding for 2012).

Public Comment: The Department has not received any letters of support or opposition for this Development.

**BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
September 6, 2012**

Presentation, Discussion, and Possible Action on a Determination Notice for Housing Tax Credits with another Issuer.

RECOMMENDED ACTION

WHEREAS, a Housing Tax Credit application for the Ridgewood West Apartments was submitted to the Department on April 13, 2012; and

WHEREAS, the proposed issuer of the bonds for the Ridgewood West Apartments is the Texas State Affordable Housing Corporation (TSAHC); and

WHEREAS, the reservation of allocation expires on January 18, 2013; and

WHEREAS, the Executive Award and Review Advisory Committee recommends the issuance of the Determination Notice; therefore,

It is hereby,

RESOLVED, that the issuance of a Determination Notice of \$563,135 in Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website for the Ridgewood West Apartments is hereby approved in the form presented to this meeting.

BACKGROUND

General Information: The development is an acquisition/rehabilitation and consists of 232 total units serving a general population. This transaction is a Priority 3 and all of the units are proposed to be restricted at 60% Area Median Family Income (AMFI). The development is located in Huntsville, Walker County, and the site is currently zoned for this type of development.

This development was previously awarded an allocation of competitive 9% housing tax credits in 1994. The initial Tax Credit Compliance Periods expired on December 31, 2011; however, there is an extended use restrictions agreement in place until December 31, 2026. On February 6, 2012, a letter was issued by the Department confirming that the Development has successfully undergone the Right of First Refusal process, allowing the sale of said property.

Organizational structure and Compliance: The Borrower is Dalcor Ridgewood, Ltd., and the General Partner is Dalcor Ridgewood GP, LLC. The Compliance Status Summary completed on August 14, 2012, reveals that the principals of the general partner have received no multifamily awards.

Census Demographics: The development is located at 2830 Lake Road in Huntsville. Demographics for the census tract (7908.00) include AMFI of \$35,240; the total population is 5,944; the percent of population that is minority is 39.82%; the percent of population that is below the poverty line is 37.61%; the number of owner occupied units is 155 and the number of renter units is 2,185. (Census information from FFIEC Geocoding for 2012).

Public Comment: The Department has received letters of support from Walker County Judge Danny Pierce and City of Huntsville Public Works Director Aron Kulhavy. The Department has not received any letters of opposition for this Development.

**BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
September 6, 2012**

Presentation, Discussion, and Possible Action on a Determination Notice for Housing Tax Credits with another Issuer.

RECOMMENDED ACTION

WHEREAS, a Housing Tax Credit application for the Woodglen Park Apartments was submitted to the Department on April 13, 2012; and

WHEREAS, the proposed issuer of the bonds for the Woodglen Park Apartments is the Texas State Affordable Housing Corporation (TSAHC); and

WHEREAS, the reservation of allocation expires on January 18, 2013; and

WHEREAS, the Executive Award and Review Advisory Committee recommends the issuance of the Determination Notice; therefore,

It is hereby,

RESOLVED, that the issuance of a Determination Notice in the amount of \$599,692 in Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website for the Woodglen Park Apartments is hereby approved in the form presented to this meeting.

BACKGROUND

General Information: The development is an acquisition/rehabilitation and consists of 232 total units serving a general population. This transaction is a Priority 3 and all of the units are proposed to be restricted at 60% Area Median Family Income (AMFI). The development is located in Dallas, Dallas County, and the site is currently zoned for this type of development.

This development was previously awarded an allocation of competitive 9% housing tax credits as two separate phases, the first in 1994 and the second in 1995. The initial Tax Credit Compliance Periods expired on December 31, 2009, and December 31, 2010, respectively; however, there are extended use restriction agreements in place on both properties until December 31, 2024, and December 31, 2025, respectively. On February 6, 2012, a letter was issued by the Department confirming that both Developments have successfully undergone the Right of First Refusal process; allowing the sale of said properties.

Organizational structure and Compliance: The Borrower is Dalcor Woodglen, Ltd., and the General Partner is Dalcor Woodglen GP, LLC. The Compliance Status Summary completed on August 14, 2012, reveals that the principals of the general partner have received no multifamily awards.

Census Demographics: The development is located at 6800 South Cockrell Hill Road. in Dallas. Demographics for the census tract (0109.03) include AMFI of \$29,596; the total population is 3,213; the percent of population that is minority is 95.92%; the percent of population that is below the poverty line is 27.72%; the number of owner occupied units is 325 and the number of renter units is 860. (Census information from FFIEC Geocoding for 2012).

Public Comment: The Department has received a letter of support from City of Dallas Housing Authority Vice President of Capital Programs Timothy Lott. The Department has not received any letters of opposition for this Development.

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
September 6, 2012

Presentation, Discussion, and Possible Action on a Determination Notice for Housing Tax Credits with another Issuer.

RECOMMENDED ACTION

WHEREAS, a Housing Tax Credit application for the Willow Green Apartments was submitted to the Department on April 13, 2012; and

WHEREAS, the proposed issuer of the bonds for the Willow Green Apartments is the Texas State Affordable Housing Corporation (TSAHC); and

WHEREAS, the reservation of allocation expires on January 18, 2013; and

WHEREAS, the Development is located in a municipality that has been identified as having twice the state average of units per capita supported by Housing Tax Credits or Private Activity Bonds; and

WHEREAS, the Unit of Local Government, the City of Houston, has voted specifically to approve the rehabilitation of the Development and to authorize an allocation of 4% Housing Tax Credits; and

WHEREAS, the Executive Award and Review Advisory Committee recommends the issuance of the Determination Notice; therefore,

It is hereby,

RESOLVED, that the issuance of a Determination Notice in the amount of \$779,348 in Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website for the Willow Green Apartments is hereby approved in the form presented to this meeting.

BACKGROUND

General Information: The development is an acquisition/rehabilitation and consists of 336 total units serving a general population. This transaction is a Priority 3 and all of the units are proposed to be restricted at 60% Area Median Family Income (AMFI). The development is located in Houston, Harris County; the city of Houston does not have a zoning ordinance.

This development was previously awarded an allocation of competitive 9% housing tax credits in 1993. The initial Tax Credit Compliance Period expired on December 31, 2010. There is an extended use restrictions agreement in place on both properties until December 31, 2025. On February 6, 2012, a letter was issued by the Department confirming that the Development has successfully undergone the Right of First Refusal process; allowing the sale of said property.

Organizational structure and Compliance: The Borrower is Dalcov Willow Green, Ltd., and the General Partner is Dalcov Willow Green GP, LLC. The Compliance Status Summary completed on August 14, 2012, reveals that the principals of the general partner have received no multifamily awards.

Census Demographics: The development is located at 8301 Willow Place North in Houston. Demographics for the census tract (5526.01) include AMFI of \$44,683; the total population is 5,339; the percent of population that is minority is 72.15%; the percent of population that is below the poverty line is 23.15%; the number of owner occupied units is 534 and the number of renter units is 969. (Census information from FFIEC Geocoding for 2012).

Public Comment: The Department has not received any letters of support or opposition for this Development.

**BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
September 6, 2012**

Presentation, Discussion, and Possible Action on a Determination Notice for Housing Tax Credits with another Issuer.

RECOMMENDED ACTION

WHEREAS, a Housing Tax Credit application for the Tealwood Place Apartments was submitted to the Department on April 13, 2012; and

WHEREAS, the proposed issuer of the bonds for the Tealwood Place Apartments is the Texas State Affordable Housing Corporation (TSAHC); and

WHEREAS, the reservation of allocation expires on January 18, 2013; and

WHEREAS, the Executive Award and Review Advisory Committee recommends the issuance of the Determination Notice; therefore,

It is hereby,

RESOLVED, that the issuance of a Determination Notice in the amount of \$456,477 in Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website for the Tealwood Place Apartments is hereby approved in the form presented to this meeting.

BACKGROUND

General Information: The development is an acquisition/rehabilitation and consists of 180 total units serving a general population. This transaction is a Priority 3 and all of the units are proposed to be restricted at 60% Area Median Family Income (AMFI). The development is located in Wichita Falls, Wichita County, and the site is currently zoned for this type of development.

This development was previously awarded an allocation of competitive 9% housing tax credits in 1993. The initial Tax Credit Compliance Period expired on December 31, 2011; however, there is an extended use restriction agreement in place on both properties until December 31, 2025. On February 6, 2012, a letter was issued by the Department confirming that the Development has successfully undergone the Right of First Refusal process; allowing the sale of said property.

Organizational structure and Compliance: The Borrower is Dalcor Tealwood, Ltd., and the General Partner is Dalcor Tealwood GP, LLC. The Compliance Status Summary completed on August 14, 2012, reveals that the principals of the general partner have received no multifamily awards.

Census Demographics: The development is located at 5300 Professional Drive in Wichita Falls. Demographics for the census tract (0122.00) include AMFI of \$62,591; the total population is 6,376; the percent of population that is minority is 22.84%; the percent of population that is below the poverty line is 18.58%; the number of owner occupied units is 1,731 and the number of renter units is 561. (Census information from FFIEC Geocoding for 2012).

Public Comment: The Department has received a letter of support from City of Wichita Falls Mayor Glenn Barham. The Department has not received any letters of opposition for this Development.

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**BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
SEPTEMBER 6, 2012**

Presentation, Discussion and Possible Action regarding Resolution No. 13-001 for the Second Supplemental Trust Indenture relating to the Multifamily Housing Revenue Bonds for Center Ridge Apartments, Series 2006.

RECOMMENDED ACTION

WHEREAS, the Department issued Series 2006 tax-exempt bonds in the aggregate principal amount of \$8,325,000 to the Center Ridge Apartments development in Duncanville, Texas to acquire and rehabilitate 224 units of affordable multifamily rental housing; and

WHEREAS, the Department previously approved a First Supplemental Trust Indenture in May 2009 that modified the definition of Interest Payment Date from semi-annual to monthly payments; and

WHEREAS, the bonds were not subject to optional redemption prior to May 1, 2021 pursuant to Section 3.2 of the Trust Indenture; and

WHEREAS, the owner has received a commitment from HUD for a §223(f) refinance loan that proposes to pay off the outstanding bonds in their entirety; therefore,

BE IT RESOLVED, that the Resolution #13-002 relating to the Second Supplemental Trust Indenture for Center Ridge Apartments is hereby approved as presented to this meeting, conditioned upon staff's satisfactory completion of its underwriting analysis relating to the issuance of IRS Form(s) 8609 and the bond refinancing in addition to a satisfactory resolution of any outstanding construction inspection issues.

BACKGROUND

Center Ridge Apartments, a 224 unit Development located in Duncanville was issued Series 2006 tax exempt bonds in the amount of \$8,325,000. The Owner has requested the Department's consent to redeem 100% of the bonds at the price of par plus accrued interest. The Owner received an amended firm commitment from HUD for a §223(f) refinance loan on June 29, 2012. The terms of the loan include a mortgage amount of \$8,913,000, amortized over 35 years with an interest rate of 2.81% which was rate locked on June 13, 2012. The HUD commitment noted critical repairs, of approximately \$30,000 that needed to be addressed prior to closing on the loan and approximately \$310,000 of non-critical repairs that would need to be addressed within 12 months of loan closing.

The Department awarded 4% housing tax credits in the amount of \$324,532 in July 2006. The bonds were originally issued with a fixed rate of 6.05%, an 18 year repayment term and 30 year amortization. The cost certification package was submitted to the Department in October 2009. After the submission of the cost certification documentation there were deficient items noted by staff during the final construction inspection. Of the 23 deficiencies noted it appears that the building plans submitted have addressed the majority of the issues; however, another final inspection is planned for this development upon completion of the repairs. Some of the items include the following: the owner did not provide self-cleaning ovens (as represented in their application), washer/dryer connections were only provided in the three bedroom units and not in the one and two bedroom units, the number of uncovered parking spaces varies from what was reflected in their application, documentation supporting the presence of window coverings were not submitted, accessibility issues relating to mailboxes and galley kitchen clearance.

Staff has resolved the parking space discrepancy since the number of parking spaces ultimately exceeds the local code requirements; self-cleaning ovens were purchased for every unit and the owner submitted an invoice to the Department that confirms the purchase. The owner plans installation of those ovens over the next few weeks. With regards to the washer/dryer connections, given the fact that this was originally a rehabilitation development, it is not possible to provide washer/dryer connections in the one and two bedroom units. There is a laundry facility onsite that includes a sufficient number of washers and dryers, including those that are ADA accessible. Staff's recommendation is conditioned upon satisfactory resolution of the remaining outstanding inspection items prior to the release of the Department's consent of the supplemental indenture.

The owner's original request to modify the terms in the Indenture is interrelated with the resolution of the final construction inspection items and the evaluation of the cost certification documentation and subsequent issuance of IRS Form(s) 8609. The extent to which the bonds are expected to be redeemed in full and replaced with a HUD loan with different financing terms requires a re-evaluation of underwriting to ensure the proposed debt amount and housing tax credits are sized appropriately.

The anticipated closing date is September 12, 2012 and the deadline for closing is September 28, 2012 due to the rate lock agreement that was executed. While staff has reached an acceptable resolution relating to the remaining items associated with the final construction inspection, staff has not completely finalized, as of the posting of these materials, the underwriting associated with the refinance and cost certification. Staff conditions the Board approval on the completion of this analysis prior to releasing its consent to the modifications to the Second Supplemental Trust Indenture.

In association with the Department's consent to allow the bonds to be redeemed prior to May 1, 2021 as stated in the Indenture, staff has negotiated a payout of the Department's administration fee in the amount of \$81,169. This amount is representative of what the Department would have received had the bonds remained outstanding.

RESOLUTION NO. 13-002

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A SECOND SUPPLEMENTAL TRUST INDENTURE IN CONNECTION WITH MULTIFAMILY HOUSING MORTGAGE REVENUE BONDS (CENTER RIDGE APARTMENTS) SERIES 2006; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Texas Department of Housing and Community Affairs (the "Issuer") has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended (the "Act"), for the purpose, among others, of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe, and affordable living environments for individuals and families of low, very low and extremely low income (as defined in the Act) and families of moderate income (as defined in the Act and determined by the Governing Board of the Issuer (the "Board") from time to time); and

WHEREAS, the Act authorizes the Department: (a) to make mortgage loans to housing sponsors to provide financing for multifamily residential rental housing in the State of Texas (the "State") intended to be occupied by individuals and families of low and very low income and families of moderate income, as determined by the Department; (b) to issue its revenue bonds, for the purpose, among others, of obtaining funds to make such loans and provide financing, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such multi-family residential rental project loans, and to mortgage, pledge or grant security interests in such loans or other property of the Department in order to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, the Act further authorizes the Department to issue its revenue bonds for the purpose of refunding any bonds theretofore issued by the Department under such terms, conditions and details as shall be determined by the Board; and

WHEREAS, the Issuer previously issued its Multifamily Housing Revenue Bonds (Center Ridge Apartments) Series 2006 in the original principal amount of \$8,325,000 (the "2006 Bonds") pursuant to the terms and provisions of that certain Trust Indenture dated as of September 1, 2006 (the "Indenture"), between the Issuer and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"); and

WHEREAS, the proceeds of the 2006 Bonds were loaned to Summit Center Ridge Apartments, Ltd. (the "Borrower") for the purpose of financing a portion of the costs of a 224-unit multifamily housing development known as Center Ridge Apartments and located in Duncanville, Dallas County, Texas (the "Project"), pursuant to that certain Financing Agreement dated as of September 1, 2006 (the "Financing Agreement") among the Issuer, the Borrower and the Trustee; and

WHEREAS, in order to assure compliance with Section 142(d) of the Internal Revenue Code of 1986, as amended (the "Code"), the Issuer required the Borrower to enter into a Regulatory and Land Use Restriction Agreement dated as of September 1, 2006 with the Issuer and the Trustee (the "Regulatory Agreement") with respect to the Project; and

WHEREAS, the Borrower's obligations under the Financing Agreement and the Multifamily Note dated as of September 1, 2006 in the original principal amount of \$8,325,000 (the "Note") were secured by a Multifamily Deed of Trust, Assignment of Rents Security Agreement and Fixture Filing (the "Deed of Trust") from the Borrower for the benefit of the Issuer; and

WHEREAS, the Borrower has requested that the Issuer enter into the Second Supplemental Trust Indenture (the "Supplement") to make certain modifications to the terms of the 2006 Bonds; and

WHEREAS, the 2006 Bonds will be redeemed in whole on or about the date of execution and delivery of the Supplement; and

WHEREAS, the Issuer's execution of the Supplement shall be subject to receipt of the consents, opinions, approvals or notices required by the Indenture; and

WHEREAS, the Issuer now desires to take certain actions with respect to the Supplement;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THAT:

ARTICLE 1

APPROVAL OF DOCUMENTS AND CERTAIN ACTIONS

Section 1.1 Approval, Execution and Delivery of Supplement. The Supplement, in substantially the form presented at this meeting, is hereby approved and adopted by the Issuer, and the Authorized Representatives are each hereby authorized and empowered to execute and deliver the Supplement on behalf of the Issuer, with such changes as may be approved by the Authorized Representative executing the same, such approval to be evidenced by such Authorized Representative's execution thereof.

Section 1.2 Execution and Delivery of Other Documents. The Authorized Representatives shall be and each is expressly authorized, empowered and directed from time to time and at any time to do and perform all acts and things and to execute, acknowledge and deliver in the name and under the corporate seal and on behalf of the Issuer all certificates, financing statements, instruments and other documents, whether or not herein mentioned, as they may determine to be necessary or desirable in order to carry out the terms and provisions of this resolution, as well as the terms and provisions of the Supplement, such determination to be conclusively evidenced by the performance of such acts and things and the execution of any such certificate, financing statement, instrument or other document.

Section 1.3 Consents and Approvals. The Issuer's execution of the Supplement is expressly subject to receipt of the consents, opinions, approvals or notices required by the Indenture.

Section 1.4 Authorized Representatives. The following persons are hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Governing Board, the Executive Director of the Department, the Chief of Agency Administration of the Department, the Director of Bond Finance or the Director of Multifamily Finance of the Department, and the Secretary or any Assistant Secretary to the Governing Board. Such persons are referred to herein collectively as the "Authorized Representatives."

ARTICLE 2

GENERAL PROVISIONS

Section 2.1 Notice of Meeting. This Resolution was considered and adopted at a meeting of the Governing Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Governing Board.

Section 2.2 Effective Date. This resolution shall be in full force and effect from and upon its adoption.

PASSED AND APPROVED this 6th day of September, 2012.

Chair, Governing Board

ATTEST:

Secretary to the Governing Board

(SEAL)

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BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
September 6, 2012

Presentation, Discussion, and Possible Action Regarding Resolution No. 13-001 for Modification to Terms of Previous TDHCA Issued Multifamily Mortgage Revenue Bonds, subject Bond Review Board Approval.

RECOMMENDED ACTION

WHEREAS, the private activity bonds for Providence at Mockingbird Apartments (#12604) were originally issued by the Department in July 2005;

WHEREAS, the property has encountered a series of operating and ownership issues and an application seeking modifications to the terms of the bonds was submitted to the Department on June 14, 2012;

WHEREAS, the owner indicates that the partial redemption and modifications to the terms will facilitate a more viable financing structure and reduce the ongoing operating deficits;

WHEREAS, the current limited partnership owner requests approval of a new general partner for the partnership;

WHEREAS, the additional state volume cap will not be used but the modifications necessitate a reissuance of bonds under state law and federal tax law; and

WHEREAS, the Executive Award and Review Advisory Committee recommends the approval of the reissuance of Multifamily Mortgage Revenue Bonds Series 2005 for the Providence at Mockingbird Apartments; therefore,

It is hereby,

RESOLVED, that modification to and reissuance of the Multifamily Housing Revenue Refunding Bonds Series 2005 for the Providence at Mockingbird Apartments is hereby approved in the form presented to this meeting; and

FURTHER RESOLVED, that staff is authorized, empowered, and directed, for and on behalf of the Department to execute and deliver such documents, instruments, and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

BACKGROUND

General Information: Providence at Mockingbird is a 251-unit intergenerational development located in Dallas. This development was the first and subsequently the only intergenerational development issued

multifamily housing revenue bonds through the Department. The development consists of one renovated eight-story building comprised of 155-units targeting the senior population and the new construction of four 3-story buildings comprising 96-units targeting the general population. The original Series 2005 Tax-Exempt bond amount was \$14,360,000. The original financing structure included privately placed bonds with Charter Municipal Mortgage Acceptance Company and as such were unrated with no credit enhancement. The initial interest rate was 6.40%.

The property placed in service in 2009 and the Department IRS Form(s) 8609 on March 31, 2009; however, the development was unable to lease up and reach stabilized operations within 24 months in accordance with the original terms in the bond documents. The developer has continuously funded deep operating deficits since the property placed in service and is now seeking modifications to the financing structure to significantly reduce future operating deficits and facilitate a viable long-term financing structure. An ownership transfer has been submitted as discussed further in the *Organizational Structure and Compliance* section, proposing the admission of a General Partner that is wholly owned by the City of Dallas Housing Finance Corporation (DHFC), a governmental instrumentality, thus allowing an exemption of ad valorem taxes. The Dallas County Appraisal District issued a preliminary approval regarding a total exemption on August 6, 2012.

The inclusion of DHFC as the new General Partner will allow the Development to be eligible for a 100% real estate tax exemption. DHFC will also provide 28 Continuum of Care vouchers with which the full maximum tax credit rents will be collected. The vouchers are funded through a grant issued by HUD and are specifically designated as supportive housing for the homeless. Supportive services that may be helpful to the voucher participants will be available. The DHFC will also fund an operating reserve of \$625,000, at the time of closing, to be used in accordance with the terms outlined in the Supplemental Trust Indenture and Modification Agreement. Moreover, the partnership will be making payments to the City of Dallas Housing Authority that will be used to support the continuing efforts of the housing authority in Dallas. These payments will be paid from cash flow and subordinated in priority to the hard interest payment; these payments are superior in priority to the soft interest accrual.

Through correspondence between the Department's bond counsel and the Office of the Attorney General, the modifications sought were determined to be extensive enough to constitute a reissuance under state law. As a result, the Board's approval of the modifications is necessary. However, the "reissuance" will not utilize any additional state volume cap. Moreover, the changes will effectively be implemented through a Supplemental Trust Indenture and Modification Agreement rather than through a completely new indenture and bond documents. In addition, due to the inclusion of the DHFC and proposed ground lease, there will also be an Amended and Restated Regulatory Agreement. The following chart summarizes the modifications that are being requested and subsequently recommended by staff.

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	Original Indenture	Modification to Indenture
Redemption	The original bonds were subject to mandatory redemption at the bondholder's direction in the amounts needed in order to achieve Stabilization, which is defined as 90% occupancy and a 1.10 to 1.00 debt coverage ratio (DCR) for six months by February 28, 2009.	The development will be deemed to have met Stabilization as of the date of execution of the modification agreement based on a DCR of 1.10 to 1.00.
Interest Rate	6.40% (tax exempt)	The interest rate on the bonds will be reduced to 5.40% with an annual accrual up to 6.40%, paid from available cash flow from the Development. Any amount accrued between the 5.40% and 6.40%, not able to be paid based upon available cash flow in any calendar year will not be carried forward.
Maturity and Sinking Fund Redemption Schedule	Maturity Date: August 1, 2045 Basis of Amortization: Level debt service over the term	Maturity Date: November 1, 2038 Basis of Amortization: Level debt service over the term

Other Information

Organizational Structure and Compliance: The current Borrower is Hines 68, L.P., the General Partner is Hines 68 GP, LLC which is comprised of MHH Holdings, LLC and LJB Financial, LP. The sole principal of MHH Holdings, LLC is Matt Harris. LJB Financial, LP is comprised of PRA Financial, Inc., of which Leon J. Backes is the sole principal. On May 30, 2012 a Request for Ownership Transfer was submitted to the Department. The Partnership will continue to own the Development; however, DHFC Providence at Mockingbird, LLC will be admitted as the new General Partner. In the proposed structure, the City of Dallas HFC will have 100% interest in the new General Partner.

The Compliance Status Summary completed on August 14, 2012 reveals that the principals of the current general partner have received 10 multifamily awards and the principals of the proposed general partner have received 4 multifamily awards. There are no identified issues relating to material noncompliance.

Public Hearing: The original bond maturity is being modified; however the weighted average maturity ("WAM") will not be extended; therefore, a TEFRA public hearing is not required.

Census Demographics: The site is located at 1853 West Mockingbird Lane, Dallas, Dallas County. Demographics for the census tract (0100.00) include AMFI of \$35,815; the total population is 11,780; the percent of the population that is minority is 69.19%; the number of owner occupied units is 235 and number of renter occupied units is 517. (Census Information from FFIEC Geocoding for 2012).

Public Comment: The Department has not received any letters of support or opposition for this Development.

Providence at Mockingbird

Estimated Sources & Uses of Funds

Sources of Funds

Series 2005 Tax-Exempt Bond Proceeds	\$ 11,000,000.00
Total Bond Redemption	\$ 2,895,443.24
Provident Contribution	142,000
September 1, 2012 Payment	\$ 8,894.23
Total Sources	\$ 14,046,337

Uses of Funds

UPB on Tax Exempt Bonds (October 1, 2012)	\$ 13,904,337.47
Direct Hard Construction Costs	-
Other Construction Costs (General Require, Overhead, Profit)	-
Developer Fees and Overhead	-
Direct Bond Related	142,000
Total Uses	\$ 14,046,337

Estimated Costs of Issuance of the Bonds

Direct Bond Related

TDHCA Issuance Fee (.50% of Issuance)	\$ 55,000
TDHCA Application Fee	5,000
TDHCA Bond Counsel and Direct Expenses (Note 1)	20,000
TDHCA Bond Co-Counsel and Direct Expenses	4,000
TDHCA Financial Advisor and Direct Expenses	35,000
Disclosure Counsel (\$5k Pub. Offered, \$2.5k Priv. Placed. See Note 1)	2,500
Trustee Fee (.10% of UPB)	11,000
Trustee's Counsel (Note 1)	-
Attorney General Transcript Fee	9,500
Texas Bond Review Board Application Fee	-
Texas Bond Review Board Issuance Fee (.025% of Reservation)	-
Bond Amortization Analysis	
Total Direct Bond Related	\$ 142,000

Estimated Total Costs of Issuance

\$ 142,000

Costs of issuance of up to two percent (2%) of the principal amount of the Bonds may be paid from Bond proceeds. Costs of issuance in excess of such two percent must be paid by an equity contribution of the Borrower.

Note 1: These estimates do not include direct, out-of-pocket expenses (i.e. travel). Actual Bond Counsel and Disclosure Counsel are based on an hourly rate and the above estimate does not include on-going administrative fees.

RESOLUTION NO. 13-001

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A SUPPLEMENTAL TRUST INDENTURE AND MODIFICATION AGREEMENT AND AN AMENDED AND RESTATED REGULATORY AND LAND USE RESTRICTION AGREEMENT IN CONNECTION WITH MULTIFAMILY HOUSING MORTGAGE REVENUE BONDS (PROVIDENCE MOCKINGBIRD APARTMENTS) SERIES 2005; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Texas Department of Housing and Community Affairs (the "Issuer") has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended (the "Act"), for the purpose, among others, of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe, and affordable living environments for individuals and families of low, very low and extremely low income (as defined in the Act) and families of moderate income (as defined in the Act and determined by the Governing Board of the Issuer (the "Board") from time to time); and

WHEREAS, the Act authorizes the Department: (a) to make mortgage loans to housing sponsors to provide financing for multifamily residential rental housing in the State of Texas (the "State") intended to be occupied by individuals and families of low and very low income and families of moderate income, as determined by the Department; (b) to issue its revenue bonds, for the purpose, among others, of obtaining funds to make such loans and provide financing, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such multi-family residential rental project loans, and to mortgage, pledge or grant security interests in such loans or other property of the Department in order to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, the Act further authorizes the Department to issue its revenue bonds for the purpose of refunding any bonds theretofore issued by the Department under such terms, conditions and details as shall be determined by the Board; and

WHEREAS, the Issuer previously issued its Multifamily Housing Mortgage Revenue Bonds (Providence Mockingbird Apartments) Series 2005 in the original principal amount of \$14,360,000 (the "2005 Bonds") pursuant to the terms and provisions of that certain Trust Indenture dated as of August 1, 2005 (the "Indenture"), between the Issuer and Wells Fargo Bank, National Association, as trustee (the "Trustee"); and

WHEREAS, the proceeds of the 2005 Bonds were loaned to Hines 68, LP (the "Borrower") for the purpose of financing a portion of the costs of a 251-unit multifamily housing development known as Providence Mockingbird Apartments and located in Dallas, Texas (the "Project"), pursuant to that certain Loan Agreement dated as of August 1, 2005 (the "Loan Agreement") among the Issuer, the Borrower and the Trustee; and

WHEREAS, in order to assure compliance with Section 142(d) of the Internal Revenue Code of 1986, as amended (the "Code"), the Issuer required the Borrower to enter into a Regulatory and Land Use Restriction Agreement dated as of August 1, 2005 with the Issuer and the Trustee (the "Regulatory Agreement") with respect to the Project; and

WHEREAS, the Borrower's obligations under the Loan Agreement and the Promissory Note dated August 1, 2005 in the original principal amount of \$14,360,000 (the "Note") were secured by a first lien Deed of Trust and Security Agreement (with Power of Sale) (the "Deed of Trust") from the Borrower for the benefit of the Issuer and the Trustee; and

WHEREAS, it has been proposed that the general partner's interest in the Borrower be transferred to an entity controlled by the City of Dallas Housing Finance Corporation and that fee simple title to the real property on which the Project is located (the "Land") be transferred by the Borrower to the City of Dallas Housing Finance Corporation, as fee owner (the "Fee Owner"), and that the Land be leased by the Borrower from the Fee Owner pursuant to a ground lease; and

WHEREAS, the Borrower and Centerline Mortgage Capital Inc. (the "Servicer") (on behalf of the holder of the 2005 Bonds) have requested that the Issuer enter into a supplemental trust indenture and modification agreement (the "Supplement") to make certain modifications to the terms of the 2005 Bonds and conforming changes to the Indenture and the Loan Agreement; and

WHEREAS, the 2005 Bonds will be redeemed on or about the date of execution and delivery of the Supplement so that the principal amount of the 2005 Bonds that remain outstanding after such redemption will be \$11,000,000 if the modifications set forth in the Supplement are implemented on or before October 1, 2012, or \$10,991,058.33 if the modifications are implemented after October 1, 2012; and

WHEREAS, the modifications to be implemented by the Supplement are expected to result in a reissuance under State law of the 2005 Bonds that remain outstanding after the redemption described above (the reissued 2005 Bonds are hereinafter referred to as the "Bonds"); and

WHEREAS, in connection with the transfer of fee simple title to the Land to the Fee Owner, the Issuer will require that the Borrower and the Fee Owner enter into an Amended and Restated Regulatory Agreement and Declaration of Restrictive Covenants (the "Amended Regulatory Agreement") with respect to the Project; and

WHEREAS, the Borrower's obligations under the Loan Agreement, as modified, and the Note will be secured by an Amended and Restated Deed of Trust and Security Agreement (with Power of Sale) (the "Amended Deed of Trust"), and the Issuer desires to accept such Amended Deed of Trust; and

WHEREAS, the Issuer's execution of the Supplement and the Amended Regulatory Agreement shall be subject to receipt of the consents, opinions, approvals or notices required by the Indenture; and

WHEREAS, the Issuer now desires to take certain actions with respect to the Supplement, the Amended Regulatory Agreement and the Amended Deed of Trust;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THAT:

ARTICLE 1

APPROVAL OF DOCUMENTS AND CERTAIN ACTIONS

Section 1.1 Approval, Execution and Delivery of Supplement. The Supplement, in substantially the form presented at this meeting, is hereby approved and adopted by the Issuer, and the Authorized Representatives are each hereby authorized and empowered to execute and deliver the Supplement on behalf of the Issuer, with such changes as may be approved by the Authorized Representative executing the same, such approval to be evidenced by such Authorized Representative's execution thereof.

Section 1.2 Approval of Bond Terms. The Bonds shall (a) bear interest at a rate of interest equal to (i) the base rate of 5.40% per annum plus (ii) the contingent rate of 1.00% per annum, payable from and to the extent of cash flow as more fully described in the Supplement, payable from the date of reissuance until paid on the maturity date or earlier redemption or acceleration thereof (subject to adjustment as provided in the Indenture; provided, however, that the default interest rate on the Bonds shall not exceed the maximum rate permitted by applicable law); (b) be reissued in the principal amount of \$11,000,000 following redemption of

2005 Bonds on or about the date of execution and delivery of the Supplement if the modifications set forth in the Supplement are implemented on or before October 1, 2012, or shall be reissued in the principal amount of \$10,991,058.33 if the modifications are implemented after October 1, 2012, and (c) have a final maturity date of August 1, 2040.

Section 1.3 Approval, Execution and Delivery of Amended Regulatory Agreement. The Amended Regulatory Agreement, in substantially the form presented at this meeting, is hereby approved and adopted by the Issuer, and the Authorized Representatives are each hereby authorized and empowered to execute and deliver the Amended Regulatory Agreement on behalf of the Issuer, with such changes as may be approved by the Authorized Representatives executing the same, such approval to be evidenced by such Authorized Representative's execution thereof.

Section 1.4 Approval and Acceptance of Amended Deed of Trust. The Amended Deed of Trust in substantially the form presented at this meeting is hereby accepted by the Issuer.

Section 1.5 Execution and Delivery of Other Documents. The Authorized Representatives shall be and each is expressly authorized, empowered and directed from time to time and at any time to do and perform all acts and things and to execute, acknowledge and deliver in the name and under the corporate seal and on behalf of the Issuer all certificates, financing statements, instruments and other documents, whether or not herein mentioned, as they may determine to be necessary or desirable in order to carry out the terms and provisions of this resolution, as well as the terms and provisions of the Supplement, the Amended Regulatory Agreement and the Amended Deed of Trust, such determination to be conclusively evidenced by the performance of such acts and things and the execution of any such certificate, financing statement, instrument or other document.

Section 1.6 Consents and Approvals. The Issuer's execution of the Supplement and the Amended Regulatory Agreement and acceptance of the Amended Deed of Trust are expressly subject to receipt of the consents, opinions, approvals or notices required by the Indenture.

Section 1.7 Ratifying Other Actions. The Board hereby ratifies the submission of the application for approval of state bonds to the Texas Bond Review Board on behalf of the Department in connection with the Bonds in accordance with Chapter 1231, Texas Government Code.

Section 1.8 Attorney General Submission. The Board hereby authorizes and approves the submission by the Department's Bond Counsel to the Attorney General of the State, for his approval, of a transcript of legal proceedings relating to the Bonds.

Section 1.9 Determination. The Board has determined that the proposed reissuance of the 2005 Bonds is in the best interest of the Department and will provide a potential savings in amounts payable by the Department from assets pledged under the Indenture.

Section 1.10 Authorized Representatives. The following persons are hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Governing Board, the Executive Director of the Department, the Chief of Agency Administration of the Department, the Director of Bond Finance or the Director of Multifamily Finance of the Department, and the Secretary or any Assistant Secretary to the Governing Board. Such persons are referred to herein collectively as the "Authorized Representatives."

ARTICLE 2

GENERAL PROVISIONS

Section 2.1 Notice of Meeting. This Resolution was considered and adopted at a meeting of the Governing Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Governing Board.

Section 2.2 Effective Date. This resolution shall be in full force and effect from and upon its adoption.

PASSED AND APPROVED this 6th day of September, 2012.

Chair, Governing Board

ATTEST:

Secretary to the Governing Board

(SEAL)

7a

**To Be Posted
three days
prior to the meeting**

7b

**To Be Posted
three days
prior to the meeting**

7c

**BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
SEPTEMBER 6, 2012**

Presentation, Discussion and Possible Action regarding the proposed repeal of 10 TAC Chapters 33 and 35, concerning 2011 and 2012 Multifamily Housing Revenue Bond Rules, and a proposed new 10 TAC Chapter 12, concerning 2013 Multifamily Housing Revenue Bond Rules for publication and public comment in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, the Texas Department of Housing and Community Affairs (the Department) is authorized to issue multifamily housing revenue bonds for the State of Texas, and;

WHEREAS, the Department developed the Multifamily Housing Revenue Bond Rules to establish the procedures and requirements relating to an issuance of bonds, therefore;

RESOLVED, that the proposed repeal of current 10 TAC Chapters 33 and 35 and proposed new 10 TAC Chapter 12, regarding the Multifamily Housing Revenue Bond Rules, is hereby ordered and it is approved, together with the preamble presented to this meeting, for publication in the Texas Register for public comment; and

FURTHER RESOLVED, that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to cause the draft Multifamily Housing Revenue Bond Rules, together with the preamble in the form presented to this meeting, to be published in the Texas Register for public comment and, in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

General Information: Attached behind this Board Action Request is the 2013 Draft Multifamily Housing Revenue Bond Rules (the “Bond Rules”) which reflect staff’s recommendations for the Board’s consideration. Changes to the draft rule make the Bond Rules consistent with other multifamily program rules and have been streamlined as a result of the consolidation of multifamily program activities in the Multifamily Finance division thereby creating efficiency and consistency. These rules contain language that mirrors both the 2013 Uniform Multifamily Rules and the Qualified Allocation Plan (QAP). To the extent there are changes made by the Board to these aforementioned rules that would coincide with the Bond program, the Uniform Multifamily Rules and QAP would take precedence over the 2013 Bond Rules as applicable.

Rule-Making Timeline: Upon Board approval, the draft Bond Rules will be posted to the Department’s website and published in the *Texas Register*. Public comment will be accepted via mail, email or facsimile between September 21st and October 22nd. There will also be consolidated public hearings during this time to receive public comment. The Bond Rules will be brought before the Board in November for final approval and will subsequently be published in the *Texas Register*.

Summary of Proposed Changes to the Bond Rules: This section outlines some of the more significant recommendations by staff. Citation and page references are indicated for ease of reference.

1. **§12.1 – General** (*Page 1 of 11*). This section includes a waiver of rules provision and requires that requests for waivers of program rules must be requested at the time of pre-application.
2. **§12.2 – Definitions** (*Page 2 of 11*). The changes to this section include removing some definitions that were no longer relevant to the program and also moved some definitions to the Uniform Multifamily Rules.
3. **§12.4 – Pre-application Process and Evaluation** (*Page 3 of 11*). This section includes the requirement for submission of a Pre-Inducement Questionnaire that is to be submitted prior to submission of a pre-application. The intent of the Questionnaire is so the Department can gain a better understanding of the proposed development and so the Department can communicate its objectives and policies regarding Bond developments. Additionally, this section modified the tie breakers to be consistent with those factors identified in the QAP as a result of the Remedial Plan filed by the Department and subsequent Memorandum Opinion and Order and Judgment entered by the court on August 7, 2012. Specifically, in the event pre-applications receive the same score, the tie breaker criteria shall mirror the QAP.
4. **§12.5 – Pre-application Threshold Requirements** (*Page 4 of 11*). New to this section is a requirement that development sites be located within a one mile radius, or two mile radius, if rural, of at least six (6) site characteristics/services. This was previously a scoring item; however, to maintain consistency with changes made to other multifamily rules it has been moved to threshold.
5. **§12.6 – Pre-application Scoring Criteria** (*Page 5 of 11*). Changes to some of the scoring criteria under this section include a simplified cost per square foot requirement identified as \$95 per square foot with no distinction between general or elderly developments. Moreover, the unit size requirements, extended affordability and underserved area scoring items have been modified to mirror similar changes made in the QAP.
6. **§12.8 – Refunding Application Process** (*Page 9 of 11*). This section has been created to identify the process for submitting a refunding application for those developments that were initially issued bonds by the Department.
7. **§12.9 – Regulatory and Land Use Restrictions** (*Page 10 of 12*). This section was streamlined to eliminate duplicative language regarding occupancy requirements that is currently reflected in the Uniform Multifamily Rules.
8. **§12.10 – Fees** (*Page 10 of 11*). This section was revised to reflect an increase in the Department's bond counsel fee at pre-application and Department discretion in the fees attributed to a multiple property portfolio. Moreover, the application and issuance fees associated with refunding applications have been identified as a separate item and reduced.

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter, §§12.1 – 12.9, concerning the 2013 Multifamily Housing Revenue Bond Rules. The purpose of the proposed new sections is to implement changes that will improve the 2013 Private Activity Bond Program.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections will be in effect, enforcing or administering the new sections do not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections will be in effect, the public benefit anticipated as a result of the new sections will be the adoption of new rules for multifamily housing revenue bonds; thereby enhancing the state’s ability to provide decent, safe and sanitary housing administered by the Department. There will not be any economic cost to any individuals required to comply with the new sections.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Shannon Roth, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1895. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 22, 2012.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed new sections affect no other code, article, or statute.

§12.1. GENERAL.

- (a) *Authority.* The rules in this chapter apply to the issuance of multifamily housing revenue bonds (Bonds) by the Texas Department of Housing and Community Affairs (the “Department”). The Department is authorized to issue such Bonds pursuant to Texas Government Code, Chapter 2306. Notwithstanding anything in this chapter to the contrary, Bonds which are issued to finance the Development of multifamily rental housing are subject to the requirements of the laws of the State of Texas, including but not limited to Texas Government Code, Chapters 1372 and 2306, and federal law pursuant to the requirements of Internal Revenue Code (the “Code”), §142.
- (b) *General.* The purpose of this chapter is to state the Department’s requirements for issuing Bonds, the procedures for applying for Bonds and the regulatory and land use restrictions imposed upon Bond financed Developments. The provisions contained in this chapter are separate from the rules relating to the Department’s administration of the Housing Tax Credit program. Applicant’s seeking a Housing Tax Credit Allocation should consult the Department’s Qualified Allocation Plan (QAP) and the Uniform Multifamily Rules for the

current program year. In general, the Applicant will be required to satisfy the requirements of the QAP in effect at the time the Certificate of Reservation is issued by the Texas Bond Review Board. If the applicable QAP contradicts rules set forth in this chapter, the applicable QAP will take precedence over the rules in this chapter. The Department encourages participation in the Bond program by working directly with Applicants, lenders, Bond Trustees, legal counsels, local and state officials and the general public to conduct business in an open, transparent and straightforward manner.

- (c) *Costs of Issuance.* The Applicant shall be responsible for payment of all costs associated with the preparation and submission of the pre-application and Application, including but not limited to, costs associated with the publication and posting of required public notices and all costs and expenses associated with the issuance of the Bonds, regardless of whether the Application is ultimately approved or whether Bonds are ultimately issued. At any stage during the process, the Applicant is solely responsible for determining whether to proceed with the Application and the Department disclaims any and all responsibility and liability in this regard.
- (d) *Taxable Bonds.* The Department may issue taxable Bonds and the requirements associated with such Bonds, including occupancy requirements, shall be determined by the Department on a case by case basis.
- (e) *Waivers.* Requests for waivers of program rules must be made in accordance with §10.207 of this title (relating to Waiver of Rules For Applications) and must be requested at the time the pre-application is submitted.

§12.2. DEFINITIONS.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Texas Government Code, Chapter 2306, 42 U.S.C. §§141, 142, and 145 of the Internal Revenue Code, and Chapter 10 of this title (relating to 2013 Uniform Multifamily Rules).

- (1) **Institutional Buyer**--Shall have the meaning prescribed under 17 CFR §230.501(a)), but excluding any natural person or any director or executive officer of the Department (17 CFR Texas Government Code, §230.501(a)(4) - (6)), or as defined by 17 CFR §230.144(A), promulgated under the Securities Act of 1935, as amended.
- (2) **Persons with Special Needs**--Shall have the meaning prescribed under Texas Government Code, §2306.511.
- (3) **Bond Trustee**--A financial institution, usually a trust company or the trust department in a commercial bank, that holds collateral for the benefit of the holders of municipal securities. The Bond Trustee's obligations and responsibilities are set forth in the Indenture.

§12.3. BOND RATING AND INVESTMENT LETTER.

- (a) *Bond Ratings.* All publicly offered Bonds issued by the Department to finance Developments shall have and be required to maintain a debt rating the equivalent of at least an "A" rating assigned to long-term obligations by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. or Moody's Investors Service, Inc. If such rating is based upon credit enhancement provided by an institution other than the Applicant or Development Owner, the form and substance of such credit enhancement shall be subject to approval by the Board, evidenced by a resolution authorizing the issuance of the credit enhanced Bonds. Remedies relating to failure to maintain appropriate credit ratings shall be provided in the financing documents relating to the Development.
- (b) *Investment Letters.* Bonds rated less than "A," or Bonds which are unrated must be placed with one or more Institutional Buyers and must be accompanied by an investor letter acceptable to the Department. Subsequent purchasers of such Bonds shall also be qualified as Institutional Buyers and shall sign and deliver to the Department an investor letter in a form acceptable to the Department. Bonds rated less than "A" and Bonds which are unrated shall be issued in physical form, in minimum denominations of one hundred thousand dollars (\$100,000), and shall carry a legend requiring any purchasers of the Bonds to sign and deliver to the Department an investor letter in a form acceptable to the Department.

§12.4. PRE-APPLICATION PROCESS AND EVALUATION.

- (a) *Pre-Inducement Questionnaire.* Prior to the filing of a pre-application, the Applicant shall submit the Pre-Inducement Questionnaire, in the form prescribed by the Department, so the Department can get a preliminary understanding of the proposed Development plan before a pre-application and corresponding fees are submitted. Information requested by the Department in the questionnaire includes, but is not limited to, the financing structure, borrower and key principals, previous housing tax credit or private activity bond experience, related party or identity of interest relationships and contemplated scope of work (if proposing Rehabilitation). After reviewing the pre-inducement questionnaire, Department staff will follow-up with the Applicant to discuss the next steps in the process and may schedule a pre-inducement conference call. Prior to the submission of a pre-application, it is important that the Department and Applicant communicate regarding the Department's objectives and policies in the development of affordable housing throughout the State using Bond financing. The acceptance of the questionnaire by the Department does not constitute a pre-application or Application and does not bind the Department for any formal action regarding an inducement resolution.
- (b) *Pre-Application Process.* An Applicant who intends to pursue Bond financing from the Department shall submit a pre-application by the corresponding pre-application submission deadline, as prescribed by the Department. The required pre-application fee as described in §12.10 of this chapter (relating to Fees) must be submitted with the pre-application in order for the pre-application to be accepted by the Department. Department review at of the pre-application is limited and not all issues of eligibility and documentation submission requirements pursuant to Chapter 10 of this title (relating to Uniform Multifamily Rules) are reviewed. The Department is not responsible for notifying an Applicant of potential areas of ineligibility or other deficiencies at the time of pre-application. If the Development meets

the Pre-Application Threshold Criteria as described in §12.5 of this chapter, the pre-application will be scored and ranked according to the selection criteria as described in §12.6 of this chapter (relating to Pre-Application Scoring Criteria).

- (c) *Scoring and Ranking.* The Department will rank the pre-application according to score within each priority defined by Texas Government Code, §1372.0321. All Priority 1 pre-applications will be ranked above all Priority 2 pre-applications which will be ranked above all Priority 3 pre-applications. This priority ranking will be used throughout the calendar year. The selection criteria, as further described in §12.6 of this chapter, reflect a structure which gives priority consideration to specific criteria as outlined in Texas Government Code, §2306.359. In the event two or more pre-applications receive the same score, the Department will use the following tie breaker factors in the order they are presented to determine which pre-application will receive preference in consideration of an inducement resolution.
- (1) Applications that meet any of the criteria under §11.9(c)(4) of this title (relating to Opportunity Index).
 - (2) Applications proposed to be located the greatest distance from the nearest Housing Tax Credit assisted Development.
- (d) *Inducement Resolution.* After the pre-applications have been scored and ranked, the pre-application and proposed financing structure will be presented to the Department's Board for consideration of an inducement resolution declaring the Department's initial intent to issue Bonds with respect to the Development. Approval of the inducement resolution does not guarantee final Board approval of the Bond Application. Department staff may recommend that the Board not approve an inducement resolution for a pre-application. Because each Development is unique, making the final determination to issue Bonds is often dependent on the issues presented at the time the full Application is presented to the Board.

§12.5. PRE-APPLICATION THRESHOLD REQUIREMENTS.

The threshold requirements of a pre-application include the criteria listed in paragraphs (1) – (10) of this section. As the Department reviews the pre-application the assumptions as reflected in Chapter 10, Subchapter D of this title (relating to 2013 Underwriting and Loan Policies) will be utilized even if not reflected by the Applicant in the pre-application.

- (1) Submission of the multifamily bond pre-application in the form prescribed by the Department;
- (2) Completed Bond Review Board Residential Rental Attachment for the current program year;
- (3) Site Control, evidenced by the documentation required under §10.204(9) of this title (relating to Required Documentation For Application Submission). The Site Control must be valid through the date of the Board meeting at which the inducement resolution is considered and must meet the requirements of §10.204(9) at the time of Application;
- (4) Zoning evidenced by the documentation required under §10.204(10) of this title;
- (5) Boundary Survey or Plat clearly identifying the location and boundaries of the subject Property;
- (6) Current market information (must support affordable rents);

- (7) Local area map that shows the location of the Development Site and the location of at least six (6) services within a one mile radius (two miles if in a Rural Area). The mandatory site characteristics are identified in §10.101(a)(2) of this title (relating to Site and Development Requirements and Restrictions);
- (8) Organization Chart showing the structure of the Development Owner and of any Developer or Guarantor, providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner or the Developer or Guarantor, as applicable;
- (9) Evidence of Entity Registration or Reservation with the Texas Office of the Secretary of State;
- (10) A certification, as provided in the pre-application, that the Applicant met the requirements and deadlines for public notifications as identified in §10.203 of this title (relating to Public Notifications). Notifications must not be older than three (3) months prior to the date of Application submission. Re-notification will be required by Applicants who have submitted a change in the Application, whether from pre-application to Application or as a result of an Administrative Deficiency that reflects a total Unit increase of greater than 10 percent.

§12.6. PRE-APPLICATION SCORING CRITERIA.

The section identifies the scoring criteria used in evaluating and ranking pre-applications. The criteria identified below include those items required under Texas Government Code, §2306.359 and other criteria considered important by the Department. Any scoring items that require supplemental information to substantiate points must be submitted in the pre-application, as further outlined in the Multifamily Bond Pre-Application Submission Procedures Manual. Applicant's proposing multiple sites will be required to submit a separate pre-application for each Development Site. Each Development Site will be scored on its own merits and the final score will be determined based on an average of all of the individual scores.

- (1) *Income and Rent Levels of the Tenants.* Pre-applications may qualify for up to (10 points) for this item.
 - (A) Priority 1 designation includes one of clauses (i) – (iii) of this subparagraph. (10 points)
 - (i) Set aside 50 percent of Units rent capped at 50 percent AMGI and the remaining 50 percent of units rents capped at 60 percent AMGI; or
 - (ii) Set aside 15 percent of units rent capped at 30 percent AMGI and the remaining 85percent of units rent capped at 60 percent AMGI; or
 - (iii) Set aside 100 percent of units rent capped at 60 percent AMGI for Developments located in a census tract with a median income that is higher than the median income of the county, MSA or PMSA in which the census tract is located; or
 - (B) Priority 2 designation requires the set aside of at least 80 percent of the Units capped at 60 percent AMGI. (7 points)
 - (C) Priority 3 designation. Includes any qualified residential rental development. Market rate units can be included under this priority. (5 points)
- (2) *Cost of the Development by Square Foot.* (1 point) For this item, costs shall be defined as construction costs, including Site Work, direct hard costs, contingency, contractor

profit, overhead and general requirements, as represented in the Development Cost Schedule. This calculation does not include indirect construction costs. Pre-applications that do not exceed \$95 per square foot of Net Rentable Area will receive one (1) point. Rehabilitation will automatically receive.

- (3) *Unit Sizes.* (5 points) The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction).
 - (A) five-hundred-fifty (550) square feet for an Efficiency Unit;
 - (B) six-hundred-fifty (650) square feet for a one Bedroom Unit;
 - (C) eight-hundred-fifty (850) square feet for a two Bedroom Unit;
 - (D) one-thousand-fifty (1,050) square feet for a three Bedroom Unit; and
 - (E) one-thousand, two-hundred-fifty (1,250) square feet for a four Bedroom Unit.
- (4) *Extended Affordability.* (2 points) A pre-application may qualify for points under this item for Development Owners that are willing to extend the Affordability Period for a Development to a total of thirty-five (35) years.
- (5) *Unit Amenities.* A minimum of (7 points) must be selected, as certified in the pre-application, for providing specific amenity and quality features in every Unit at no extra charge to the tenant. The amenities and corresponding point structure is provided in §10.101(b)(6)(B) of this title (relating to Site and Development Requirements and Restrictions). The amenities selected at pre-application may change at Application so long as the overall point structure remains the same. The points selected at pre-application and/or Application and corresponding list of amenities will be required to be identified in the LURA and the points selected must be maintained throughout the Compliance Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to receive points. Rehabilitation Developments will start with a base score of (3 points).
- (6) *Common Amenities.* Pre-applications must select at least the minimum threshold of points for common amenities based on the total number of Units in the Development as provided in subparagraph (A) – (G) of this paragraph. The amenities must be for the benefit of all tenants and made available throughout normal business hours. If fees in addition to rent are charged for amenities, then the amenity may not be included among those provided to satisfy the threshold requirement. All amenities must meet accessibility standards and spaces for activities must be sized appropriately to serve the proposed Target Population. Some amenities may be restricted to a specific Target Population. An amenity can only receive points once; therefore combined functions (a library which is part of a community room) only receive points under one category. The common amenities include those listed in §10.101(b)(5) of this title. Applications for non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the threshold test applied based on the number of Units per individual site, and will have to identify in the LURA which amenities are at each individual site.
 - (A) total Units equal 16 shall have (1 point);
 - (B) total Units are 17 to 40 shall have (4 points);
 - (C) total Units are 41 to 76 shall have (7 points);
 - (D) total Units are 77 to 99 shall have (10 points);
 - (E) total Units are 100 to 149 shall have (14 points);

- (F) total Units are 150 to 199 shall have (18 points); or
(G) total Units are 200 or more shall have (22 points).
- (7) *Tenant Services*. (8 points) By electing points, the Applicant certifies that the Development will provide supportive services, which are listed in §10.101(b)(7) of this title, appropriate for the proposed tenants and that there will be adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item.
- (8) *Underserved Area*. An Application may qualify to receive up to (2 points) for Developments located in a colonia, economically distressed area, or municipality, or if outside of the boundaries of any municipality, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation.
(A) General Developments (2 points); or
(B) Qualified Elderly Developments (1 point).
- (9) *Development Support/Opposition*. (Maximum +24 to -24 points) Each letter will receive a maximum of +3 to -3 and must be received ten (10) business days prior to the date of the Board meeting at which the pre-application will be considered. Letters must clearly state support or opposition to the specific Development. State Representatives or Senators as well as local elected officials to be considered are those in office at the time the pre-application is submitted and represent the district containing the proposed Development Site. Letters of support from State or local elected officials that do not represent the district containing the proposed Development Site will not qualify for points under this exhibit. Neutral letters, letters that do not specifically refer to the Development or do not explicitly state support will receive (zero (0) points). A letter that does not directly express support but expresses it indirectly by inference (i.e. a letter that says "the local jurisdiction supports the Development and I support the local jurisdiction" will be treated as a neutral letter).
(A) State Senator and State Representative;
(B) Mayor of the municipality;
(C) All elected members of the Governing Body of the municipality;
(D) Presiding officer of the Governing Body of the county;
(E) All elected members of the Governing Body of the county;
(F) Superintendent of the school district; and
(G) Presiding officer of the board of trustees of the school district.
- (10) *Preservation Initiative*. (10 points) Preservation Developments, including rehabilitation proposals on properties which are nearing expiration of an existing affordability requirement within the next two (2) years or for which there has been a rent restriction requirement in the past ten (10) years may qualify for points under this item. Evidence must be submitted in the pre-application.
- (11) *Declared Disaster Areas*. (7 points) If at the time the complete pre-application is submitted or at any time within the two-year period preceding the date of submission, the proposed Development Site is located in an area declared to be a disaster under

Texas Government Code, §418.014. This includes federal, state, and Governor declared disaster areas.

§12.7. FULL APPLICATION PROCESS.

- (a) *Application Submission.* Once the inducement resolution has been approved by the Board, an Applicant who elects to proceed with submitting a full Application to the Department must submit the complete tax credit Application pursuant to §10.201 of this title (relating to Procedural Requirements For Application Submission).
- (b) *Bond Trustee and Investment Banking Firm Selection.* The Applicant must select a Bond Trustee from the approved list on the Department's website and must also select from the approved list on the Department's website, an investment banking firm to serve as senior managing underwriter, co-managing underwriter or placement agent, as applicable.
- (c) *Eligibility Criteria.* The Department will evaluate the Application for eligibility and threshold at the time of full Application pursuant to Chapter 10 of this title (relating to 2013 Uniform Multifamily Rules). If there are changes to the Application at any point prior to closing that have an adverse affect on the score and ranking order and that would have resulted in the pre-application being placed below another pre-application in the ranking, the Department will terminate the Application and return the Certificate of Reservation to the Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). The Development and the Applicant must satisfy the requirements set forth in Chapter 11 (relating to 2013 Housing Tax Credit Program Qualified Allocation Plan) and Chapter 10 (relating to 2013 Uniform Multifamily Rules) in addition to Texas Government Code, Chapter 1372 and the proposed Development must meet the applicable requirements of Texas Government Code, Chapter 2306, and the Code.
- (d) *Bond Documents.* Once the Application has been submitted and the Applicant has deposited funds to pay costs, the Department's bond counsel shall draft Bond documents.
- (e) *Public Hearings.* For every Bond issuance, the Department will hold a public hearing in order to receive comments from the public pertaining to the Development and the issuance of the Bonds. The Applicant or member of the Development Team must be present at the public hearing and will be responsible for conducting a brief presentation on the proposed Development and providing handouts at the hearing that should contain at a minimum, a description of the Development, maximum rents and income restrictions. If the proposed Development is Rehabilitation then the presentation should include the proposed scope of work that is planned for the Development. All handouts must be submitted to the Department for review at least two (2) days prior to the public hearing. Publication of all notices required for the public hearing shall be at the sole expense of the Applicant.
- (f) *Approval of the Bonds.* Subject to the timely receipt and approval of commitments for financing, an acceptable evaluation for eligibility, the satisfactory negotiation of Bond documents, and the completion of a public hearing, the Board, upon presentation by

Department staff, will consider the approval of the final Bond resolution relating to the issuance, final Bond documents and in the instance of privately placed Bonds, the pricing, terms and interest rate of the Bonds. The process for appeals and grounds for appeals may be found under §1.7 of this title (relating to Staff Appeals Process) and §1.8 of this title (relating to Board Appeals Process). To the extent applicable to each specific bond issuance, the Department's conduit multifamily Bond transactions will be processed in accordance with 34 TAC Part 9, Chapter 181, Subchapter A (relating to Bond Review Rules) and Texas Government Code, Chapter 1372.

- (g) *Local Permits.* Prior to closing on the Bond financing, all necessary approvals, including building permits from local municipalities, counties, or other jurisdictions with authority over the Development Site must have been obtained or evidence that the permits are obtainable subject only to payment of certain fees must be submitted to the Department.

§12.8. REFUNDING APPLICATION PROCESS.

- (a) *Application Submission.* Owners who wish to refund or modify tax-exempt bonds that were previously issued by the Department must submit to the Department a summary of proposed refunding plan or modifications. To the extent such modifications constitute a re-issuance under state law the Applicant shall then be required to submit a refunding application in the form prescribed by the Department pursuant to the Bond Refunding Application Procedures Manual.
- (b) *Bond Documents.* Once the Department has received the refunding Application and the Applicant has deposited funds to pay costs, the Department's bond counsel will be drafting the required Bond documents.
- (c) *Public Hearings.* Depending on the proposed modifications to existing Bond covenants a public hearing may be required. Such hearing must take place prior to obtaining Board approval and must meet the requirements pursuant to §12.7(e) of this chapter (relating to Full Application Process) regarding the presence of a member of the Development Team and providing a summary of proposed Development changes.
- (d) *Rule Applicability.* Refunding Applications must meet the requirements pursuant to Chapter 11 (relating to 2013 Housing Tax Credit Program Qualified Allocation Plan) and Chapter 10 (relating to 2013 Uniform Multifamily Rules) with the exception of criteria stated therein specific to the Competitive Housing Tax Credit Program. At the time of the original award the Application would have been subject to eligibility and threshold requirements under the QAP in effect the year the Application was awarded. Therefore, it is anticipated the Refunding Application would not be subject to the site and development requirements and restrictions pursuant to §10.101 of this title (relating to Site and Development Requirements And Restrictions). The circumstances surrounding a refunding Application are unique to each Development; therefore, upon evaluation of the refunding Application, the Department is authorized to utilize its discretion in the applicability of the Department's rules as it deems appropriate.

§12.9. REGULATORY AND LAND USE RESTRICTIONS.

(a) *Filing and Term of Regulatory Agreement.* A Bond Regulatory and Land Use Restriction Agreement will be filed in the property records of the county in which the Development is located for each Development financed from the proceeds of Bonds issued by the Department. The term of the Regulatory Agreement will be based on the criteria as described in paragraphs (1) – (4) of this subsection, as applicable:

- (1) the longer of thirty (30) years, from the date the Development Owner takes legal possession of the Development;
- (2) the end of the remaining term of the existing federal government assistance pursuant to Texas Government Code, §2306.185; or
- (3) the period required by the Code.

(b) *Federal Set Aside Requirements.*

(1) Developments which are financed from the proceeds of Private Activity Bonds must be restricted under one of the two minimum set-asides as described in subparagraphs (A) and (B) of this paragraph:

(A) at least 20 percent of the Units within the Development shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 50 percent of the area median income; or

(B) at least 40 percent of the Units within the Development shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 60 percent of the area median income.

(2) The Development Owner must designate at the time of Application which of the two set-asides will apply to the Development and must also designate the selected priority for the Development in accordance with Texas Government Code, §1372.0321. Units intended to satisfy set-aside requirements must be distributed evenly throughout the Development, and must include a reasonably proportionate amount of each type of Unit available in the Development.

(3) No tenant qualifying under either of the set-asides shall be denied continued occupancy of a Unit in the Development because, after commencement of such occupancy, such tenant's income increases to exceed the qualifying limit; provided, however, that should a tenant's income, as of the most recent determination thereof, exceed 140 percent of the applicable income limit and such tenant constitutes a portion of the set-aside requirement of this section, then such tenant shall only continue to qualify for so long as no Unit of comparable or smaller size is rented to a tenant that does not qualify as a Low-Income Tenant.

§12.10. FEES.

(a) *Pre-Application Fees.* The Applicant is required to submit, at the time of pre-application, the following fees: \$1,000 (payable to TDHCA), \$2,500 (payable to Bracewell & Giuliani, the Department's bond counsel) and \$5,000 (payable to the Texas Bond Review Board (BRB) pursuant to Texas Government Code, §1372.006(a)). These fees cover the costs of pre-application review by the Department, its bond counsel and filing fees to the BRB.

- (b) *Application Fees.* At the time of Application the Applicant is required to submit a tax credit application fee of \$30/unit and \$10,000 for the bond application fee (for multiple site Applications the application fee shall be \$10,000 or \$30/unit, whichever is greater). Such fees cover the costs associated with Application review and the Department's expenses in connection with providing financing for a Development. For Developments proposed to be structured as part of a portfolio such application fees may be reduced on a case by case basis at the discretion of the Executive Director.
- (c) *Closing Fees.* The closing fee for Bonds, other than refunding Bonds is equal to 50 basis points (0.005) of the issued principal amount of the Bonds. The Applicant will also be required to pay at closing of the Bonds the first two years of the administration fee equal to 20 basis points (0.002) of the issued principal amount of the Bonds and a Bond compliance fee equal to \$25/unit.
- (d) *Application and Issuance Fees for Refunding Applications.* For refunding Applications the application fee will be \$10,000 unless the refunding is not required to have a public hearing, in which case the fee will be \$5,000. The closing fee for Refunding Bonds is equal to 25 basis points (0.0025) of the issued principal amount of the Refunding Bonds. If applicable, administration and compliance fees due at closing may be prorated based on the current billing period of such fees. If additional volume cap is being requested other fees may be required as further described in the Bond Refunding Applications Procedures Manual.
- (c) *Administration Fee.* The annual administration fee is equal to 10 basis points (0.001) of the outstanding bond amount on its date of calculation and is paid as long as the Bonds are outstanding.
- (d) *Bond Compliance Fee.* The Bond compliance monitoring fee is equal to \$25/Unit.

Attachment B: Preamble and Proposed Repeal Chapter 33

The Texas Department of Housing and Community Affairs (the “Department”) proposes to repeal 10 TAC Chapter 33, §§33.1 – 33.9, concerning the 2012 Multifamily Housing Revenue Bond Rules. The purpose of this proposed repeal is to enact new sections. The proposed new Chapter 12, concerning the 2013 Multifamily Housing Revenue Bond Rules is published concurrently with this repeal in this issue of the *Texas Register*.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal will be in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repealed rule will be in effect, the public benefit anticipated as a result of the repeal will be the adoption of new rules for multifamily housing revenue bonds; thereby enhancing the state’s ability to provide decent, safe and sanitary housing administered by the Department. There will not be any economic cost to any individuals required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012 to receive input on the repealed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Shannon Roth, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1895. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 22, 2012.**

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed repeal affects no other code, article, or statute.

§33.1. Introduction.

§33.2. Authority.

§33.3. Definitions.

§33.4. Bond Rating and Investment Letter.

§33.5. Application Procedures, Evaluation and Approval.

§33.6. Regulatory and Land Use Restrictions.

§33.7. Fees.

§33.8. Waiver of Rules.

§33.9. No Discrimination.

Attachment C: Preamble and Proposed Repeal Chapter 35

The Texas Department of Housing and Community Affairs (the “Department”) proposes to repeal 10 TAC Chapter 35, §§35.1 – 35.9, concerning the 2011 Multifamily Housing Revenue Bond Rules. The purpose of this proposed repeal is to enact new sections. The proposed new Chapter 12, concerning the 2013 Multifamily Housing Revenue Bond Rules is published concurrently with this repeal in this issue of the *Texas Register*.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal will be in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repealed rule will be in effect, the public benefit anticipated as a result of the repeal will be the adoption of new rules for multifamily housing revenue bonds; thereby enhancing the state’s ability to provide decent, safe and sanitary housing administered by the Department. There will not be any economic cost to any individuals required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012 to receive input on the repealed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Shannon Roth, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1895. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 22, 2012.**

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed repeal affects no other code, article, or statute.

§35.1. Introduction.

§35.2. Authority.

§35.3. Definitions.

§35.4. Bond Rating and Investment Letter.

§35.5. Application Procedures, Evaluation and Approval.

§35.6. Regulatory and Land Use Restrictions.

§35.7. Fees.

§35.8. Waiver of Rules.

§35.9. No Discrimination.

7d

**To Be Posted
three days
prior to the meeting**

7e

BOARD ACTION REQUEST
REAL ESTATE ANALYSIS
SEPTEMBER 6, 2012

Presentation, Discussion, and Possible Action regarding the proposed repeal of 10 TAC Chapter 1, Subchapter B, concerning 2012 Real Estate Analysis Rules and Guidelines and a proposed new 10 TAC Chapter 10, Subchapter D, concerning 2013 Underwriting and Loan Policies, for public comment and publication in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, pursuant to Chapter 2306 of the Texas Government Code, the Department is provided the authority to adopt rules governing the administration of the Department and its programs;

WHEREAS, Department staff has identified the need to reorganize and consolidate rules to implement processes that increase efficiency and consistency within the Department's multifamily programs and therefore proposes to move and amend the existing rules into 10 TAC Chapter 10, Subchapter D, §§10.301 – 10.307 titled Underwriting and Loan Policies under the new consolidated multifamily rules;

WHEREAS, the existing rules in §1.37 regarding Reserve for Replacement Rules and Guidelines are more logically placed within Subchapter E of the consolidated multifamily rule pertaining to Post Award Activities and Asset Management functions;

RESOLVED, that the proposed repeal of existing rules for the Real Estate Analysis Division, 10 TAC, Chapter 1, Subchapter B, §§1.31 – 1.37, General Provisions, Underwriting Rules and Guidelines, Market Analysis Rules and Guidelines, Appraisal Rules and Guidelines, Environmental Site Assessment Rules and Guidelines, Property Condition Assessment Guidelines, and Reserve for Replacement Rules and Guidelines is hereby ordered and is approved, together with the preambles presented to this meeting, for publishing in the *Texas Register* for public comment;

FURTHER RESOLVED, that the Executive Director and his designees be and each them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the draft 10 TAC Chapter 10, Subchapter D, Underwriting and Loan Policies, in the form presented to this meeting, to be published in the *Texas Register* for public comment and, in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

The Real Estate Analysis Rules are currently separate from the Qualified Allocation Plan (“QAP”) and other multifamily program rules to facilitate the application of these rules to all of the Department's multifamily programs.

As part of the consolidation of the Department's multifamily rules into one rule, staff is recommending the repeal of the current REA rules found in 10 TAC Chapter 1, §§1.31 – 1.37 and publishing them as Subchapter D of the new consolidated multifamily rule.

While the rule consolidation itself is substantive, much of the language, intent and operative sections of the current REA rule are unchanged in the new rule.

Significant changes as a result of the consolidation or intent and operative sections of the REA rules are summarized below. Other changes that are minor or clarifying in nature are not discussed herein. Section headings below are those of the current rule to aid in describing intent or operative changes.

§10.003 DEFINITIONS [previously §1.31(b)]

Definitions in §1.31(b) of the current rule are moved to §10.003 of the new consolidated rule. Some of the definitions that previously existed in the REA rule are changed for consistency with definitions throughout the new rule. These changes are wording only without material change to meanings, intent or use of the original definitions themselves.

Definitions added to the new consolidated rule specifically relating to the current REA rule are: Building Costs, Off-Site Construction and Site Work. These definitions are added to clearly define various physical components of a Development, and associated costs, thereby simplifying other operative sections of the new rule.

§10.302 Underwriting Rules and Guidelines [previously §1.32]

§10.302(e)(2), (3) and (4) [previously §§1.32(e)(2), (3) and (4)] are simplified as a result of creating definitions for these items in the new consolidated rule. Additionally, required supporting documentation to be provided with respect to these items is incorporated elsewhere for consistency with other requirements in the new rule.

§10.302(e)(4)(B) [previously §1.32(e)(4)(B)] adds a requirement of a detailed narrative description for the intended scope of work on the rehabilitation of an existing development. This information is helpful to REA in understanding and identifying inconsistencies between the developer's intended scope of work and the PCA provider's identified scope of work.

§10.302(e)(7) [previously §1.32(e)(7)] is re-written and organized for clarity. There is no operative change to the prior wording.

§10.302(e)(9) [previously §1.32(e)(9)] adds that certain partnership related fees will not be included in Total Housing Development Cost.

§10.303 Market Analysis Rules and Guidelines [previously §1.33]

§10.303(d)(F) adds a requirement for an analysis of employment trends and forecasts in the primary market area to assist with understanding the overall economic dynamics of the market area.

§10.306 Property Condition Assessment and Guidelines [previously §1.36]

§10.306(a) [previously §1.36(a)] requires that the PCA report must contain an estimate of repair and replacement costs over 20 years instead of 15 years. This change is necessary to appropriately evaluate repair and replacement costs during the 15 year long-term operating proforma. Some PCA reports deferred a large amount of replacement costs to year 16 thereby understating costs for replacement during the first 15 years. No change is made to the use of the 15 year long-term proforma for sizing replacement reserves.

§1.37 Reserve for Replacement Rules and Guidelines is moved in its entirety to Subchapter E of the consolidated rule pertaining to Post Award and Asset Management Requirements and is being addressed under a separate Board item.

§10.307 Direct Loan Requirements

This section contains portions of 10 TAC Chapter 53, Subchapter H concerning the HOME program rules and makes the standard loan terms applicable to all multifamily loans made by the Department under the consolidated rule.

Attachment A: Preamble and Proposed repeal of 10 TAC, Chapter 1, Subchapter B, concerning Underwriting, Market Analysis, Appraisal, Environmental Site Assessment, Property Condition Assessment, and Reserve for Replacement Rules and Guidelines.

The Texas Department of Housing and Community Affairs (the “Department”) proposes repeal of 10 TAC, Chapter 1, Subchapter B, §§1.31 – 1.37, concerning Underwriting, Market Analysis, Appraisal, Environmental Site Assessment, Property Condition Assessment, and Reserve for Replacement Rules and Guidelines. The purpose of the repeal is to move and amend the rules to a new proposed subchapter of a consolidated multifamily rule. In addition, the rules pertaining to Reserve for Replacement Requirements is proposed to be placed in the proposed new 10 TAC Chapter 10, Subchapter E concerning Post Award Activities and Asset Management. The proposed new Chapter 10, concerning 2013 Uniform Multifamily Rules, is published concurrently with this repeal in this issue of the *Texas Register*.

FISCAL NOTE. Mr. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed sections will be the adoption of new rules to enhance the state’s ability to provide decent, safe, sanitary and affordable housing. It is not anticipated that the repeal and replacement will have a change in the economic cost to any individual required to comply with the repealed sections.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no change in economic effect on small businesses or micro-businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT. The Department has determined that there will be no change in effect on local economies as a result of the repeal.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012 to receive input on the repealed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, ATTN: Pam Cloyde, or by email to pcloyde@tdhca.state.tx.us, or by FAX to (512) 475-4420. **ALL COMMENTS MUST BE RECEIVED BY 5:00 PM on OCTOBER 22, 2012.**

STATUTORY AUTHORITY. The repealed sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed repeal affect no other code, article or statute.

- §1.31. General Provisions.
- §1.32. Underwriting Rules and Guidelines.
- §1.33. Market Analysis Rules and Guidelines.
- §1.34. Appraisal Rules and Guidelines.
- §1.35. Environmental Site Assessment Rules and Guidelines.

- §1.36. Property Condition Assessment Guidelines.
- §1.37. Reserve for Replacement Rules and Guidelines.

Attachment B: Preamble and Proposed new 10 TAC, Chapter 10, Subchapter D, concerning 2013 Underwriting and Loan Policy.

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC, Chapter 10, Subchapter D, §§10.301 – 10.307, concerning 2013 Underwriting and Loan Policies. The purpose of the proposed rules is to move and amend the repealed rules to a subchapter of a proposed consolidated multifamily rule. In addition, all repealed rules pertaining to reserve for replacement requirements are being moved 10 TAC Chapter 10, Subchapter E of the proposed consolidated multifamily rule pertaining to Post Award Activities and Asset Management. The proposed new Chapter 10, concerning 2013 Uniform Multifamily Rules, is published concurrently with this repeal in this issue of the *Texas Register*.

FISCAL NOTE. Mr. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections do not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will enhance the state’s ability to provide decent, safe, sanitary and affordable housing. It is not anticipated that proposed new sections will have a change in the economic cost to any individual required to comply with the new sections.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no change in economic effect on small businesses or micro-businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT. The Department has determined that there will be no change in effect on local economies as a result of the adoption of the proposed new rule.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012 to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, ATTN: Pam Cloyde, or by email to pcloyde@tdhca.state.tx.us, or by FAX to (512) 475-4420. ALL COMMENTS MUST BE RECEIVED BY 5:00 PM on OCTOBER 22, 2012.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed sections and amendments affect no other code, article or statute.

§10.301. General Provisions.

- (a) *Purpose.* The rules in this subchapter apply to the underwriting, Market Analysis, appraisal, Environmental Site Assessment, Property Condition Assessment, and Direct Loan standards employed by the Department. This subchapter provides rules for the underwriting review of an affordable housing Development's financial feasibility and economic viability that ensures the most efficient allocation of resources while promoting and preserving the public interest in ensuring the

long-term health of the Department's portfolio. In addition, this chapter guides staff in making recommendations to the Executive Award and Review Advisory Committee (the "Committee"), Executive Director, and the Board to help ensure procedural consistency in the determination of Development feasibility (Texas Government Code, §§2306.081(c), 2306.185, and 2306.6710(d)). Due to the unique characteristics of each Development the interpretation of the rules and guidelines described in this subchapter are subject to the discretion of the Department and final determination by the Board.

- (b) *Appeals.* Certain programs contain express appeal options. Where not indicated, §10.902 of this chapter (relating to Appeals Process). In addition, the Department encourages the use of Alternative Dispute Resolution (ADR) methods, as outlined in §10.904 of this chapter (relating to Alternative Dispute Resolution (ADR) Policy).

§10.302. Underwriting Rules and Guidelines.

- (a) *General Provisions.* Pursuant to Texas Government Code, §2306.148 and §2306.185(b), the Board is authorized to adopt underwriting standards as set forth in this section. Furthermore, for Housing Credit Allocation, §42(m)(2) of the Internal Revenue Code (the "Code"), requires the tax credits allocated to a Development not to exceed the amount necessary to assure feasibility. The rules of the Texas Government Code and the Code, resulting in a Credit Underwriting Analysis Report used by the Board in decision making with the goal to assist as many Texans as possible by providing no more financing than necessary based on an independent analysis of Development feasibility. The Report considers all information timely provided by the Applicant. The Report generated in no way guarantees or purports to warrant the actual performance, feasibility, or viability of the Development.
- (b) *Report Contents.* The Report provides a synopsis and reconciliation of the Application information submitted by the Applicant. The Report contents will be based solely upon information that is provided in accordance with the timeframes provided in the current Qualified Allocation Plan (QAP) or Notice of Funds Availability (NOFA), as applicable.
- (c) *Recommendations in the Report.* The conclusion of the Report includes a recommended award of funds or Housing Credit Allocation Amount based on the lesser amount calculated by the program limit method, if applicable, gap/DCR method, or the amount requested by the Applicant as further described in paragraphs (1) - (3) of this subsection, and states any feasibility conditions to be placed on the award.
 - (1) *Program Limit Method.* For Applicants requesting a Housing Credit Allocation, this method is based upon calculation of Eligible Basis after applying all cost verification measures and program limits as described in this section. The Applicable Percentage used is as defined in §10.003 of this chapter (relating to Definitions). For Applicants requesting funding through a Department program other than Housing Tax Credits, this method is based upon calculation of the funding limit based on the current program rules or NOFA at the time of underwriting.

- (2) *Gap/DCR Method.* This method evaluates the amount of funds needed to fill the gap created by Total Housing Development Cost less total non-Department-sourced funds or Housing Tax Credits. In making this determination, the Underwriter resizes any anticipated deferred developer fee down to zero before reducing the amount of Department funds or Housing Tax Credits. In the case of Housing Tax Credits, the syndication proceeds needed to fill the gap in permanent funds are divided by the syndication rate to determine the amount of Housing Tax Credits. In making this determination and based upon specific conditions set forth in the Report, the Underwriter may assume adjustments to the financing structure or make adjustments to any Department financing, such that the cumulative DCR conforms to the standards described in this section.
- (3) *The Amount Requested.* The amount of funds that is requested by the Applicant as reflected in the original Application documentation.
- (d) *Operating Feasibility.* The operating financial feasibility of developments funded by the Department is tested by subtracting operating expenses, including replacement reserves and taxes, from income to determine Net Operating Income. The annual Net Operating Income is divided by the cumulative annual debt service required to be paid to determine the Debt Coverage Ratio. The Underwriter characterizes a Development as infeasible from an operational standpoint when the Debt Coverage Ratio does not meet the minimum standard set forth in paragraph (4)(D) of this subsection. The Underwriter may make adjustments to the financing structure, which could result in a re-characterization of the Development as feasible based upon specific conditions set forth in the Report.
- (1) *Income.* In determining the first year stabilized pro forma, the Underwriter evaluates the reasonableness of the Applicant's income estimate by determining the appropriate rental rate per unit based on contract, program and market factors. Miscellaneous income and vacancy and collection loss limits as set forth in subparagraphs (B) and (C) of this paragraph, respectively, are applied unless well-documented support is provided.
- (A) *Rental Income.* The Underwriter will independently calculate the Pro Forma Rent for comparison to the Applicant's estimate in the Application.
- (i) *Market Rents.* The Underwriter will use the Market Analyst's conclusion of Market Rent if reasonably justified and supported by the attribute adjustment matrix of Comparable Units as described in §10.303 of this chapter (relating to Market Analysis Rules and Guidelines). Independently determined Market Rents by the Underwriter may be used based on rent information gained from direct contact with comparable properties, whether or not used by the Market Analyst, and other market data sources.
- (ii) *Net Program Rents.* The Underwriter reviews the Applicant's proposed rent schedule and determines if it is consistent with the representations made in the remainder of the Application. The Underwriter uses the Gross Program Rents for the year that is most current at the time the underwriting begins. When underwriting for a simultaneously funded competitive round, all Applications are underwritten with the Gross Program Rents for the same year. If Gross Program Rents are adjusted by the Department after the close of the Application Acceptance Period but prior to publication of the Report, the Underwriter may adjust the Applicant's EGI to account for any increase or decrease in Gross Program Rents for the purposes of determining the reasonableness of the Applicant's EGI.

- (I) Units must be individually metered for all utility costs to be paid by the tenant.
 - (II) Gas utilities are verified on the building plans and elsewhere in the Application when applicable.
 - (III) Trash allowances paid by the tenant are rare and only considered when the building plans allow for individual exterior receptacles.
 - (IV) Refrigerator and range allowances are not considered part of the tenant-paid utilities unless the tenant is expected to provide their own appliances, and no eligible appliance costs are included in the Total Housing Development Cost schedule.
- (iii) *Contract Rents*. The Underwriter reviews rental assistance contracts to determine the Contract Rents currently applicable to the Development. Documentation supporting the likelihood of continued rental assistance is also reviewed. The Underwriter will take into consideration the Applicant's intent to request a Contract Rent increase. At the discretion of the Underwriter, the Applicant's proposed rents may be used as the Pro Forma Rent with the recommendations of the Report conditioned upon receipt of final approval of such increase.
- (B) *Miscellaneous Income*. All ancillary fees and miscellaneous secondary income, including but not limited to late fees, storage fees, laundry income, interest on deposits, carport rent, washer and dryer rent, telecommunications fees, and other miscellaneous income, are anticipated to be included in a \$5 to \$20 per Unit per month range. Exceptions may be made at the discretion of the Underwriter for garage income, pass-through utility payments, pass-through water, sewer and trash payments, cable fees, congregate care/assisted living/elderly facilities, and child care facilities.
- (i) Exceptions must be justified by operating history of existing comparable properties.
 - (ii) The Applicant must show that the tenant will not be required to pay the additional fee or charge as a condition of renting a Unit and must show that the tenant has a reasonable alternative.
 - (iii) The Applicant's operating expense schedule should reflect an itemized offsetting cost associated with income derived from pass-through utility payments, pass-through water, sewer and trash payments, and cable fees.
 - (iv) Collection rates of exceptional fee items will generally be heavily discounted.
 - (v) If an additional fee is charged for the use of an amenity, any cost associated with the construction, acquisition, or development of the hard assets needed to produce the additional fee for such amenity must be excluded from Eligible Basis.
- (C) *Vacancy and Collection Loss*. The Underwriter generally uses a vacancy rate of 7.5 percent (5 percent vacancy plus 2.5 percent for collection loss). The Underwriter may use other assumptions based on conditions in the immediate market area. Qualified Elderly Developments and 100 percent project-based rental subsidy developments and other well documented cases may be underwritten at a combined 5 percent at the discretion of the Underwriter if the historical performance reflected in the Market Analysis is consistently higher than a 95 percent occupancy rate.
- (D) *Effective Gross Income (EGI)*. The Underwriter independently calculates EGI. If the EGI estimate provided by the Applicant is within 5 percent of the EGI calculated by the Underwriter, the Applicant's EGI is characterized as reasonable in the Report; however, for

purposes of calculating DCR the Underwriter's pro forma will be used unless the Applicant's pro forma meets the requirements of paragraph (3) of this subsection.

- (2) *Expenses.* In determining the first year stabilized pro forma, the Underwriter evaluates the reasonableness of the Applicant's expense estimate by line item comparisons based upon the specifics of each transaction, including the Development type, the size of the Units, and the Applicant's expectations as reflected in their pro forma. Historical stabilized certified financial statements of the Development or Third Party quotes specific to the Development will reflect the strongest data points to predict future performance. The TDHCA Database of properties in the same location or region as the proposed Development also provides heavily relied upon data points; expense data from the TDHCA Database is available on the TDHCA website. Data from the Institute of Real Estate Management's (IREM) most recent Conventional Apartments-Income/Expense Analysis book for the proposed Development's property type and specific location or region may be referenced. In some cases local or project-specific data such as Public Housing Authority (PHA) Utility Allowances and property tax rates are also given significant weight in determining the appropriate line item expense estimate. Estimates of utility savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor. Well documented information provided in the Market Analysis, Appraisal, the Application, and other sources may be considered.
- (A) *General and Administrative Expense (G&A)*--Expense for operational accounting fees, legal fees, advertising and marketing expenses, office operation, supplies, and equipment expenses. G&A does not include partnership related expenses such as asset management, accounting or audit fees. Costs of tenant services are not included in G&A.
- (B) *Management Fee.* Fee paid to the property management company to oversee the operation of the Property and is most often based upon a percentage of Effective Gross Income as documented in a property management agreement. Typically, 5 percent of the Effective Gross Income is used, though higher percentages for rural transactions that are consistent with the TDHCA Database may be used. Percentages as low as 3 percent may be used if well documented.
- (C) *Payroll Expense.* Expense for direct on-site staff payroll, insurance benefits, and payroll taxes including payroll expenses for repairs and maintenance typical of a comparable development. It does not, however, include direct security payroll or additional tenant services payroll.
- (D) *Repairs and Maintenance Expense.* Expense for repairs and maintenance, Third-Party maintenance contracts and supplies. It should not include capitalized expenses that would result from major replacements or renovations. Direct payroll for repairs and maintenance activities are included in payroll expense.
- (E) *Utilities Expense.* Utilities expense includes all gas and electric energy expenses paid by the Development.
- (F) *Water, Sewer and Trash Expense (WST)*--Includes all water, sewer and trash expenses paid by the Development.
- (G) *Insurance Expense.* Insurance expense includes any insurance for the buildings, contents, and general liability but not health or workman's compensation insurance.
- (H) *Property Tax.* Includes real property and personal property taxes but not payroll taxes.

- (i) An assessed value will be calculated based on the capitalization rate published by the county taxing authority. If the county taxing authority does not publish a capitalization rate, a capitalization rate of 10 percent or a comparable assessed value may be used.
 - (ii) Property tax exemptions or a Proposed Payment In Lieu Of Tax (PILOT) agreement must be documented as being reasonably achievable. At the discretion of the Underwriter, a property tax exemption that meets known federal, state and local laws may be applied based on the tax-exempt status of the Development Owner and its Affiliates.
 - (I) *Reserves*. An annual reserve for replacements of future capital expenses and any ongoing operating reserve requirements. The Underwriter includes minimum reserves of \$250 per Unit for New Construction and Reconstruction Developments and \$300 per Unit for all other Developments. The Underwriter may require an amount above \$300 for the Development based on information provided in the PCA. The Applicant's assumption for reserves may be adjusted by the Underwriter if the amount provided by the Applicant is insufficient to fund capital needs as documented by the PCA during the first fifteen (15) years of the long term pro forma. Higher reserves may be used if documented by a primary lender or syndicator.
 - (J) *Other Expenses*. The Underwriter will include other reasonable and documented expenses. These include audit fees, tenant services, security expense and compliance fees. This category does not include depreciation, interest expense, lender or syndicator's asset management fees, or other ongoing partnership fees. The most common other expenses are described in more detail in clauses (i) - (iv) of this subparagraph.
 - (i) *Tenant Services*. Cost to the Development of any non-traditional tenant benefit such as payroll for instruction or activities personnel and associated operating expenses. Tenant services expenses are considered in calculating the Debt Coverage Ratio.
 - (ii) *Security Expense*. Contract or direct payroll expense for policing the premises of the Development.
 - (iii) *Compliance Fees*. Include only compliance fees charged by the Department and are considered in calculating the Debt Coverage Ratio.
 - (iv) *Cable Television Expense*. Includes fees charged directly to the Development Owner to provide cable services to all Units. The expense will be considered only if a contract for such services with terms is provided and income derived from cable television fees is included in the projected EGI. Cost of providing cable television in only the community building should be included in General and Administrative Expense as described in subparagraph (A) of this paragraph.
 - (K) The Underwriter may request additional documentation supporting some, none or all expense line items. If a rationale acceptable to the Underwriter for the difference is not provided, the discrepancy is documented in the Report. If the Applicant's total expense estimate is within 5 percent of the final total expense figure calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating DCR the Underwriter's independent calculation will be used unless the Applicant's first year stabilized pro forma meets the requirements of paragraph (3) of this subsection.
- (3) *Net Operating Income*. The difference between the EGI and total operating expenses. If the first year stabilized NOI figure provided by the Applicant is within 5 percent of the NOI calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for

purposes of calculating the first year stabilized pro forma DCR the Underwriter will maintain and use his independent calculation of NOI unless the Applicant's first year stabilized EGI, total expenses, and NOI are each within 5 percent of the Underwriter's estimates.

- (4) *Debt Coverage Ratio*. DCR is calculated by dividing Net Operating Income by the sum of scheduled loan principal and interest payments for all permanent sources of funds. Loan principal and interest payments are calculated based on the terms indicated in the term sheet(s) for financing submitted in the Application. Unusual or non-traditional financing structures may also be considered.
- (A) *Interest Rate*. The rate documented in the term sheet(s) will be used for debt service calculations. Term sheets indicating a variable interest rate must provide a breakdown of the rate index and component rates comprising an all-in interest rate. The term sheet(s) must state the lender's underwriting interest rate, or the Applicant must submit a separate statement from the lender with an estimate of the interest rate as of the date of such statement. The Underwriter may adjust the underwritten interest rate based on data collected on similarly structured transactions or rate index history.
- (B) *Amortization Period*. The Department generally requires an amortization of not less than thirty (30) years and not more than forty (40) years (fifty (50) years for federally sourced loans), or an adjustment to the amortization is made for the purposes of the analysis and recommendations. In non-Housing Tax Credit transactions a lesser amortization period may be used if the Department's funds are fully amortized over the same period.
- (C) *Repayment Period*. For purposes of projecting the DCR over a 30-year period for developments with permanent financing structures with balloon payments in less than thirty (30) years, the Underwriter will carry forward debt service based on a full amortization at the interest rate stated in the term sheet(s).
- (D) *Acceptable Debt Coverage Ratio Range*. The acceptable first year stabilized pro forma DCR for all priority or foreclosable lien financing plus the Department's proposed financing must be between a minimum of 1.15 and a maximum of 1.35. HOPE VI and USDA transactions may underwrite to a DCR less than 1.15 or greater than 1.35 based upon documentation of acceptance from the lender.
- (i) For Developments other than HOPE VI and USDA transactions, if the DCR is less than the minimum, the recommendations of the Report may be based on an assumed reduction to debt service and the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause.
- (I) A reduction of the interest rate or an increase in the amortization period for Direct Loans;
- (II) A reclassification of Direct Loans to reflect grants, if permitted by program rules;
- (III) A reduction in the permanent loan amount for non-Department funded loans based upon the rates and terms in the permanent loan term sheet(s) as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.
- (ii) If the DCR is greater than the maximum, the recommendations of the Report may be based on an assumed increase to debt service and the Underwriter will make adjustments

to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause.

(I) reclassification of Department funded grants to reflect loans, if permitted by program rules;

(II) An increase in the interest rate or a decrease in the amortization period for Direct Loans;

(III) An increase in the permanent loan amount for non-Department funded loans based upon the rates and terms in the permanent loan term sheet as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.

(iii) For Housing Tax Credit Developments, a reduction in the recommended Housing Credit Allocation Amount may be made based on the gap/DCR method described in subsection (c)(2) of this section.

(iv) Although adjustments in debt service may become a condition of the Report, future changes in income, expenses, and financing terms could allow for an acceptable DCR.

(5) *Long Term Pro forma.* The Underwriter will create a 30-year operating pro forma.

(A) The Underwriter's first year stabilized pro forma is utilized unless the Applicant's first year stabilized EGI, operating expenses, and NOI are each within 5 percent of the Underwriter's estimates.

(B) A 2 percent annual growth factor is utilized for income and a 3 percent annual growth factor is utilized for expenses.

(C) Adjustments may be made to the long term pro forma if satisfactory support documentation is provided by the Applicant or as determined by the Underwriter.

(e) *Total Housing Development Costs.* The Development's need for permanent funds and, when applicable, the Development's Eligible Basis is based upon the projected Total Housing Development Cost. The Department's estimate of the Total Housing Development Cost will be based on the Applicant's development cost schedule to the extent that it can be verified to a reasonable degree of certainty with documentation from the Applicant and tools available to the Underwriter. For New Construction Developments, the Underwriter's total cost estimate will be used unless the Applicant's Total Housing Development Cost is within 5 percent of the Underwriter's estimate. The Department's estimate of the Total Housing Development Cost for acquisition/Rehabilitation will be based in accordance with the PCA's estimated cost for the scope of work as defined by the Applicant and §10.306(a)(5) of this chapter (relating to Property Condition Assessment Guidelines). If the Applicant's is utilized and the Applicant's line item costs are inconsistent with documentation provided in the Application or program rules, the Underwriter may make adjustments to the Applicant's Total Housing Development Cost.

(1) *Acquisition Costs.* The underwritten acquisition cost is verified with Site Control document(s) for the Property.

(A) *Excess Land Acquisition.* In cases where more land is to be acquired than will be utilized as the Development Site and the remainder acreage is not accessible for use by tenants or dedicated as permanent and maintained green space, the value ascribed to the proposed

Development Site will be prorated based on acreage from the total cost reflected in the Site Control document(s). An appraisal containing segregated values for the total acreage, the acreage for the Development Site and the remainder acreage, or tax assessment value may be used by the Underwriter in making a proration determination based on relative value; however, the Underwriter will not utilize a prorated value greater than the total amount in the Site Control document(s).

(B) *Identity of Interest Acquisitions.*

- (i) The acquisition will be considered an identity of interest transaction when the seller is an Affiliate of, a Related Party to, any owner at any level of the Development Team or a Related Party lender; and
 - (I) Is the current owner in whole or in part of the Property; or
 - (II) Was the owner in whole or in part of the Property during any period within the thirty-six (36) months prior to the first day of the Application Acceptance Period.
- (ii) In all identity of interest transactions the Applicant is required to provide subclauses (I) and (II) of this clause.
 - (I) The original acquisition cost evidenced by an executed settlement statement or, if a settlement statement is not available, the original asset value listed in the most current financial statement for the identity of interest owner; and
 - (II) If the original acquisition cost evidenced by subclause (I) of this clause is less than the acquisition cost stated in the application:
 - (-a-) an appraisal that meets the requirements of §10.304 of this chapter (relating to Appraisal Rules and Guidelines); and
 - (-b-) any other verifiable costs of owning, holding, or improving the Property, excluding seller financing, that when added to the value from subclause (I) of this clause justifies the Applicant's proposed acquisition amount.
 - (-1-) For land-only transactions, documentation of owning, holding or improving costs since the original acquisition date may include property taxes, interest expense to unrelated Third Party lender(s), capitalized costs of any physical improvements, the cost of zoning, platting, and any off-site costs to provide utilities or improve access to the Property. All allowable holding and improvement costs must directly benefit the proposed Development by a reduction to hard or soft costs. Additionally, an annual return of 10 percent may be applied to the original capital investment and documented holding and improvement costs; this return will be applied from the date the applicable cost is incurred until the date of the Department's Board meeting at which the Grant, Direct Loan and/or Housing Credit Allocation will be considered.
 - (-2-) For transactions which include existing buildings that will be rehabilitated or otherwise retained as part of the Development, documentation of owning, holding, or improving costs since the original acquisition date may include capitalized costs of improvements to the Property, and in the case of USDA financed Developments the cost of

exit taxes not to exceed an amount necessary to allow the sellers to be made whole in the original and subsequent investment in the Property and avoid foreclosure. Additionally, an annual return of 10 percent may be applied to the original capital investment and documented holding and improvement costs; this return will be applied from the date the applicable cost was incurred until the date of the Department's Board meeting at which the Grant, Direct Loan and/or Housing Credit Allocation will be considered. For any period of time during which the existing buildings are occupied or otherwise producing revenue, holding costs may not include operating expenses, including, but not limited to, property taxes and interest expense.

(iii) In no instance will the acquisition cost utilized by the Underwriter exceed the lesser of the original acquisition cost evidenced by clause (ii)(I) of this subparagraph plus costs identified in clause (ii)(II)(-b-) of this subparagraph, or the "as-is" value conclusion evidenced by clause (ii)(II)(-a-) of this subparagraph. The resulting acquisition cost will be referred to as the "Adjusted Acquisition Cost."

(C) *Acquisition of Buildings for Tax Credit Properties.* Building acquisition cost will be included in the underwritten Total Housing Development Cost and/or Eligible Basis if the Applicant provided an appraisal that meets the Department's Appraisal Rules and Guidelines as described in §10.304 of this chapter. The underwritten Total Housing Development Cost and/or Eligible Basis will include the lowest of the values determined based on clauses (i) - (iii) of this subparagraph.

- (i) The Applicant's stated building acquisition cost;
- (ii) The building acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost (as defined in paragraph (1)(B)(iii) of this subsection), prorated using the relative land and building values indicated by the applicable appraised value;
- (iii) Total acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost (as defined in paragraph (1)(B)(iii) of this subsection), less the appraised "as-vacant" land value;
- (iv) The Underwriter will use the value that best corresponds to the circumstances presently affecting the Development and that will continue to affect the Development after transfer to the new owner in determining the building value. Any value of existing favorable financing will be attributed prorata to the land and buildings.

(2) *Off-Site Costs.* The Underwriter will only consider costs of Off-Site Construction that are well documented and certified to by a Third Party engineer on the required Application forms and supporting documentation.

(3) *Site Work Costs.* The Underwriter will only consider costs of Site Work that are well documented and certified to by a Third Party engineer on the required Application forms and supporting documentation.

(4) *Building Costs.*

(A) *New Construction and Reconstruction.* The Underwriter will use the Marshall and Swift Residential Cost Handbook, other comparable published Third-Party cost estimating data sources, historical final cost certifications of previous Housing Tax Credit developments and

other acceptable cost data available to the Underwriter to estimate Building Cost. Generally, the "Average Quality" multiple, townhouse, or single family costs, as appropriate, from the Marshall and Swift Residential Cost Handbook or other comparable published Third-Party data source, will be used based upon details provided in the Application and particularly building plans and elevations. The Underwriter will consider amenities, specifications and development types not included in the Average Quality standard.

(B) *Rehabilitation and Adaptive Reuse.*

- (i) The Applicant must provide a detailed narrative description of the scope of work for the proposed rehabilitation.
- (ii) The Underwriter will use cost data provided by the Property Condition Assessment (PCA). In the case where the PCA is inconsistent with the Applicant's estimate as proposed in the Total Housing Development Cost schedule and/or the Applicant's scope of work, the Underwriter may request a supplement executed by the PCA provider reconciling the Applicant's estimate and detailing the difference in costs. If the Underwriter determines that the reasons for the initial difference in costs are not well-documented, the Underwriter utilizes the initial PCA estimations.

(5) *Contingency.* All contingencies identified in the Applicant's project cost schedule including any soft cost contingency will be limited to a maximum of 7 percent of Building Cost plus Site Work and off-sites for New Construction and Reconstruction Developments and 10 percent of Building Cost plus Site Work and off-sites for Rehabilitation and Adaptive Reuse Developments. For Housing Tax Credit Developments, the percentage is applied to the sum of the eligible Building Cost, eligible Site Work costs and eligible off-site costs in calculating the eligible contingency cost. The Applicant's estimate is used by the Underwriter if less than the 7 percent or 10 percent limit, as applicable.

(6) *Contractor Fee.* Contractor fees include general requirements, contractor overhead, and contractor profit. General requirements include, but are not limited to, on-site supervision or construction management, off-site supervision and overhead, jobsite security, equipment rental, storage, temporary utilities and other indirect costs. Contractor fees are limited to a total of 14 percent on Developments with Hard Costs of \$3 million or greater, the lesser of \$420,000 or 16 percent on Developments with Hard Costs less than \$3 million and greater than \$2 million, and the lesser of \$320,000 or 18 percent on Developments with Hard Costs at \$2 million or less. For tax credit Developments, the percentages are applied to the sum of the Eligible Hard Costs in calculating the eligible contractor fees. For Developments also receiving financing from USDA, the combination of builder's general requirements, builder's overhead, and builder's profit should not exceed the lower of TDHCA or USDA requirements. Additional fees for ineligible costs will be limited to the same percentage of ineligible Hard Costs but will not be included in Eligible Basis.

(7) *Developer Fee.*

- (A) For Housing Tax Credit Developments, the Developer fees and Development Consultant fees included in Eligible Basis cannot exceed 15 percent of the project's eligible costs, less Developer fees, for Developments proposing fifty (50) Units or more and 20 percent of the project's eligible costs, less Developer fees, for Developments proposing forty-nine (49) Units or less.

- (B) Any additional Developer fee claimed for ineligible costs will be limited to the same percentage but applied only to ineligible Hard Costs (15 percent for Developments with fifty (50) or more Units, or 20 percent for Developments with forty-nine (49) or fewer Units). Any Developer fee above this limit will be excluded from Total Housing Development Costs. All fees to Affiliates and/or Related Parties for work or guarantees determined by the Underwriter to be typically completed or provided by the Developer or Principal(s) of the Developer will be considered part of Developer fee.
- (C) In the case of a transaction requesting acquisition Housing Tax Credits:
- (i) the allocation of eligible Developer fee in calculating Rehabilitation/New Construction Housing Tax Credits will not exceed 15 percent of the Rehabilitation/New Construction eligible costs less Developer fees for Developments proposing fifty (50) Units or more and 20 percent of the Rehabilitation/New Construction eligible costs less Developer fees for Developments proposing forty-nine (49) Units or less; and
 - (ii) no Developer fee attributable to an identity of interest acquisition of the Development will be included.
- (D) Eligible Developer fee is multiplied by the appropriate Applicable Percentage depending whether it is attributable to acquisition or rehabilitation basis.
- (E) For non-Housing Tax Credit developments, the percentage can be up to 15 percent but is based upon Total Housing Development Cost less the sum of the fee itself, land costs, the costs of permanent financing, excessive construction period financing described in paragraph (8) of this subsection, reserves, and any identity of interest acquisition cost.
- (8) *Financing Costs.* Eligible construction period interest is limited to the lesser of actual eligible construction period interest, or the interest on one (1) year's fully drawn construction period loan funds at the construction period interest rate indicated in the term sheet(s). Any excess over this amount will not be included in Eligible Basis. Construction period interest on Related Party construction loans are not included in Eligible Basis.
- (9) *Reserves.* The Underwriter will utilize the amount described in the Applicant's project cost schedule if it is within the range of two (2) to six (6) months of stabilized operating expenses plus debt service. Alternatively, the Underwriter may consider a greater amount proposed by the first lien lender or syndicator if the detail for such greater amount is reasonable and well documented. Reserves do not include capitalized asset management fees or other similar costs.
- (10) *Other Soft Costs.* For Housing Tax Credit Developments, all other soft costs are divided into eligible and ineligible costs. Eligible costs are defined by Internal Revenue Code but generally are costs that can be capitalized in the basis of the Development for tax purposes. Ineligible costs are those that tend to fund future operating activities and operating reserves. The Underwriter will evaluate and apply the allocation of these soft costs in accordance with the Department's prevailing interpretation of the Internal Revenue Code. If the Underwriter questions the amount or eligibility of any soft costs, the Applicant will be given an opportunity to clarify and address the concern prior to completion of the Report.

(f) *Development Team Capacity and Development Plan.*

- (1) The Underwriter will evaluate and report on the overall capacity of the Development Team by reviewing the documents as identified in paragraphs (1) – (4) of this subsection.

- (A) Personal credit reports for development sponsors, Developer fee recipients and those individuals anticipated to provide guarantee(s). The Underwriter will evaluate the credit report and identify any bankruptcy, state or federal tax liens or other relevant credit risks for compliance with eligibility and debarment requirements in the this chapter;
- (B) Quality of construction, Rehabilitation, and ongoing maintenance of previously awarded housing developments by review of construction inspection reports, compliance on-site visits, findings of UPCS violations and other information available to the Underwriter;
- (C) For Housing Tax Credit Developments, repeated or ongoing failure to timely submit cost certifications, requests for and clearance of final inspections, and timely response to deficiencies in the cost certification process;
- (D) Adherence to obligations on existing or prior Department funded developments with respect to program rules and documentation.

(2) While all components of the development plan may technically meet the other individual requirements of this section, a confluence of serious concerns and unmitigated risks identified during the underwriting process will result in an Application being referred to the Committee. The Committee will review any recommendation made under this subsection to deny an Application for a Grant, Direct Loan and/or Housing Credit Allocation prior to completion of the Report and posting to the Department's website.

(g) *Other Underwriting Considerations.* The Underwriter will evaluate additional feasibility elements as described in paragraphs (1) – (3) of this subsection.

(1) *Floodplains.* The Underwriter evaluates the site plan, floodplain map, survey and other information provided to determine if any of the buildings, drives, or parking areas reside within the 100-year floodplain. If such a determination is made by the Underwriter, the Report will include a condition that:

- (A) The Applicant must pursue and receive a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR-F); or
- (B) The Applicant must identify the cost of flood insurance for the buildings and for the tenant's contents for buildings within the 100-year floodplain and certify that the flood insurance will be obtained; and
- (C) The Development must be designed to comply with the QAP, as proposed.

(2) *Proximity to Other Developments.* The Underwriter will identify in the Report any developments funded or known and anticipated to be eligible for funding within one linear mile of the subject.

(3) *Supportive Housing.* The unique development and operating characteristics of Supportive Housing Developments may require special consideration in these areas:

- (A) *Operating Income.* The extremely-low-income tenant population typically targeted by a Supportive Housing Development may include deep-skewing of rents to well below the 50 percent AMGI level or other maximum rent limits established by the Department. The Underwriter should utilize the Applicant's proposed rents in the Report as long as such rents are at or below the maximum rent limit proposed for the units and equal to any project based rental subsidy rent to be utilized for the Development;

- (B) *Operating Expenses.* A Supportive Housing Development may have significantly higher expenses for payroll, management fee, security, resident support services, or other items than typical affordable housing developments. The Underwriter will rely heavily upon the historical operating expenses of other Supportive Housing Developments provided by the Applicant or otherwise available to the Underwriter;
- (C) *DCR and Long Term Feasibility.* Supportive Housing Developments may be exempted from the DCR requirements of subsection (d)(4)(D) of this section if the Development is anticipated to operate without conventional or “must-pay” debt. Applicants must provide evidence of sufficient financial resources to offset any projected 15-year cumulative negative Cash Flow. Such evidence will be evaluated by the Underwriter on a case-by-case basis to satisfy the Department's long term feasibility requirements and may take the form of one or a combination of: executed subsidy commitment(s); set-aside of Applicant's financial resources to be substantiated by current financial statements evidencing sufficient resources; and/or proof of annual fundraising success sufficient to fill anticipated operating losses. If either a set aside of financial resources or annual fundraising are used to evidence the long term feasibility of a Supportive Housing Development, a resolution from the Applicant's governing board must be provided confirming their irrevocable commitment to the provision of these funds and activities; and/or
- (D) *Total Housing Development Costs.* For Supportive Housing Developments designed with only Efficiency Units, the Underwriter may use "Average Quality" dormitory costs, or costs of other appropriate design styles from the Marshall & Swift Valuation Service, with adjustments for amenities and/or quality as evidenced in the Application, as a base cost in evaluating the reasonableness of the Applicant's Building Cost estimate for New Construction Developments.
- (h) *Work Out Development.* Developments that are underwritten subsequent to Board approval in order to refinance or gain relief from restrictions may be considered infeasible based on the guidelines in this section, but may be characterized as "the best available option" or "acceptable available option" depending on the circumstances and subject to the discretion of the Underwriter as long as the option analyzed and recommended is more likely to achieve a better financial outcome for the property and the Department than the status quo.
- (i) *Feasibility Conclusion.* An infeasible Development will not be recommended for a Grant, Direct Loan or Housing Credit Allocation unless the Underwriter can determine an alternative structure and/or conditions the recommendations of the Report upon receipt of documentation supporting an alternative structure. A Development will be characterized as infeasible if paragraph (1) or (2) of this subsection applies. The Development will be characterized as infeasible if one or more of paragraphs (3) - (5) of this subsection applies unless paragraph (6)(B) of this subsection also applies.
- (1) *Gross Capture Rate.* The method for determining the Gross Capture Rate for a Development is defined in §10.303(d)(11)(F) of this chapter. The Underwriter will independently verify all components and conclusions of the Gross Capture Rate and may at their discretion use independently acquired demographic data to calculate demand and may make a determination of the effective Gross Capture Rate based upon an analysis of the Sub-market. The Development:

- (A) is characterized as a Qualified Elderly Development and the Gross Capture Rate exceeds 10 percent for the total proposed Units; or
- (B) is outside a Rural Area and targets the general population, and the Gross Capture Rate exceeds 10 percent for the total proposed Units; or
- (C) is in a Rural Area and targets the general population, and the Gross Capture Rate exceeds 30 percent; or
- (D) targets Persons with Disabilities and the Gross Capture Rate exceeds 30 percent.
- (E) Developments meeting the requirements of subparagraph (A), (B), (C), or (D) of this paragraph may avoid being characterized as infeasible if clause (i) or (ii) of this subparagraph apply.
 - (i) *Replacement Housing*. The proposed Development is comprised of affordable housing which replaces previously existing affordable housing within the Primary Market Area as defined in §10.303 of this chapter on a Unit for Unit basis, and gives the displaced tenants of the previously existing affordable housing a leasing preference.
 - (ii) *Existing Housing*. The proposed Development is comprised of existing affordable housing which is at least 50 percent occupied and gives displaced existing tenants a leasing preference as stated in a relocation plan.
- (2) *Deferred Developer Fee*. Applicants requesting an allocation of tax credits where the estimated deferred Developer fee, based on the Underwriter's recommended financing structure, is not repayable from Cash Flow within the first fifteen (15) years of the long term pro forma as described in subsection (d)(5) of this section.
- (3) *Pro Forma Rent*. The Pro Forma Rent for Units with rents restricted at 60 percent of AMGI is less than the Net Program Rent for Units with rents restricted at or below 50 percent of AMGI unless the Applicant accepts the Underwriter's recommendation, if any, that all restricted units have rents and incomes restricted at or below the 50 percent of AMGI level.
- (4) *Initial Feasibility*. The first year stabilized pro forma operating expense divided by the first year stabilized pro forma Effective Gross Income is greater than 68 percent for Rural Developments 36 Units or less and 65 percent for all other Developments.
- (5) *Long Term Feasibility*. Any year in the first fifteen (15) years of the Long Term Pro forma, as defined in subsection (d)(5) of this section, reflects:
 - (A) negative Cash Flow; or
 - (B) a Debt Coverage Ratio below 1.15.
- (6) *Exceptions*. The infeasibility conclusions may be excepted where either of the criteria apply.
 - (A) The requirements in this subsection may be waived by the Executive Director of the Department or by the Committee if documentation is submitted by the Applicant to support unique circumstances that would provide mitigation.
 - (B) Developments meeting the requirements of one or more of paragraphs (3) - (5) of this subsection will be re-characterized as feasible if one or more of clauses (i) - (v) of this subparagraph apply.

- (i) The Development will receive Project-based Section 8 Rental Assistance for at least 50 percent of the Units and a firm commitment with terms including Contract Rent and number of Units is submitted at Application.
- (ii) The Development will receive rental assistance for at least 50 percent of the Units in association with USDA financing.
- (iii) The Development will be characterized as public housing as defined by HUD for at least 50 percent of the Units.
- (iv) The Development will be characterized as Supportive Housing for at least 50 percent of the Units and evidence of adequate financial support for the long term viability of the Development is provided.
- (v) The Development has other long term project based restrictions on rents for at least 50 percent of the Units that allow rents to increase based upon expenses and the Applicant's proposed rents are at least 10 percent lower than both the Net Program Rent and Market Rent.

§10.303. MARKET ANALYSIS RULES AND GUIDELINES.

- (a) *General Provision.* A Market Analysis prepared for the Department must evaluate the need for decent, safe, and sanitary housing at rental rates or sales prices that eligible tenants can afford. The analysis must determine the feasibility of the subject Property rental rates or sales price and state conclusions as to the impact of the Property with respect to the determined housing needs. The Market Analysis must include a statement that the report preparer has read and understood the requirements of this section.

- (b) *Self-Contained.* A Market Analysis prepared for the Department must allow the reader to understand the market data presented, the analysis of the data, and the conclusions derived from such data. All data presented should reflect the most current information available and the report must provide a parenthetical (in-text) citation or footnote describing the data source. The analysis must clearly lead the reader to the same or similar conclusions reached by the Market Analyst. All steps leading to a calculated figure must be presented in the body of the report.

- (c) *Market Analyst Qualifications.* A Market Analysis submitted to the Department must be prepared and certified by an approved Qualified Market Analyst. (§2306.67055) The Department will maintain an approved Market Analyst list based on the guidelines set forth in paragraphs (1) - (3) of this subsection.
 - (1) If not listed as approved by the Department, Market Analysts must submit subparagraphs (A) - (F) of this paragraph at least thirty (30) days prior to the first day of the Application Acceptance Period for which the Market Analyst must be approved. To maintain status as an approved Qualified Market Analyst, updates to the items described in subparagraphs (A) - (C) of this paragraph must be submitted annually on the first Monday in February for review by the Department.
 - (A) Documentation of good standing from the Texas Comptroller of Public Accounts.

- (B) A current organization chart or list reflecting all members of the firm who may author or sign the Market Analysis.
 - (C) Resumes for all members of the firm or subcontractors who may author or sign the Market Analysis.
 - (D) General information regarding the firm's experience including references, the number of previous similar assignments and timeframes in which previous assignments were completed.
 - (E) Certification from an authorized representative of the firm that the services to be provided will conform to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the Application Round in which each Market Analysis is submitted.
 - (F) A sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the sample Market Analysis is submitted.
- (2) During the underwriting process each Market Analysis will be reviewed and any discrepancies with the rules and guidelines set forth in this section may be identified and require timely correction. Subsequent to the completion of the Application Round and as time permits, staff or a review appraiser will re-review a sample set of submitted market analyses to ensure that the Department's Market Analysis Rules and Guidelines are met. If it is found that a Market Analyst has not conformed to the Department's Market Analysis Rules and Guidelines, as certified to, the Market Analyst will be notified of the discrepancies in the Market Analysis and will be removed from the approved Qualified Market Analyst list.
- (A) In and of itself, removal from the list of approved Market Analysts will not invalidate a Market Analysis commissioned prior to the removal date and at least ninety (90) days prior to the first day of the applicable Application Acceptance Period.
 - (B) To be reinstated as an approved Qualified Market Analyst, the Market Analyst must amend the previous report to remove all discrepancies or submit a new sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the updated or new sample Market Analysis is submitted.
- (3) The list of approved Qualified Market Analysts is posted on the Department's web site and updated within seventy-two (72) hours of a change in the status of a Market Analyst.
- (d) *Market Analysis Contents.* A Market Analysis for a rental Development prepared for the Department must be organized in a format that follows a logical progression and must include, at minimum, items addressed in paragraphs (1) - (13) of this subsection.
- (1) *Title Page.* Include Property address or location, effective date of analysis, date report completed, name and address of person authorizing report, and name and address of Market Analyst.
 - (2) *Letter of Transmittal.* The date of the letter must be the date the report was completed. Include Property address or location, description of Property, statement as to purpose and scope of analysis, reference to accompanying Market Analysis report with effective date of analysis and summary of conclusions, date of Property inspection, name of persons inspecting subject

Property, and signatures of all Market Analysts authorized to work on the assignment. Include a statement that the report preparer has read and understood the requirements of this section.

- (3) *Table of Contents*. Number the exhibits included with the report for easy reference.
- (4) *Summary Sheet*. Include the Department's Market Analysis Summary exhibit.
- (5) *Assumptions and Limiting Conditions*. Include a description of all assumptions, both general and specific, made by the Market Analyst concerning the Property.
- (6) *Identification of the Property*. Provide a statement to acquaint the reader with the Development. Such information includes street address, tax assessor's parcel number(s), and Development characteristics.
- (7) *Statement of Ownership*. Disclose the current owners of record and provide a three (3) year history of ownership for the subject Property.
- (8) *Secondary Market Area*. A Secondary Market Area is not required, but may be defined at the discretion of the Market Analyst to support identified demand. All of the Market Analyst's conclusions specific to the subject Development must be based on only one Secondary Market Area definition. The entire PMA, as described in this paragraph, must be contained within the Secondary Market boundaries. The Market Analyst must adhere to the methodology described in this paragraph when determining the Secondary Market Area. (§2306.67055)
 - (A) The Secondary Market Area will be defined by the Market Analyst with:
 - (i) size based on a base year population of no more than 250,000 people inclusive of the Primary Market Area; and
 - (ii) boundaries based on U.S. census tracts, ZIP codes, or place, as defined by the U.S. Census Bureau.
 - (B) The Market Analyst's definition of the Secondary Market Area must include:
 - (i) a detailed description of why the subject Development is expected to draw a significant number of tenants or homebuyers from the defined SMA;
 - (ii) a complete demographic report for the defined SMA; and
 - (iii) a scaled distance map indicating the SMA boundaries as well as the location of the subject Development and all comparable Developments.
- (9) *Primary Market Area*. All of the Market Analyst's conclusions specific to the subject Development must be based on only one Primary Market Area definition. The Market Analyst must adhere to the methodology described in this paragraph when determining the market area. (§2306.67055)
 - (A) The Primary Market Area will be defined by the Market Analyst with:
 - (i) size based on a base year population of no more than 100,000 people;
 - (ii) boundaries based on U.S. census tracts, ZIP codes, or place, as defined by the U.S. Census Bureau; and
 - (iii) the population of the PMA may exceed 100,000 if the amount over the limit is contained within a single census tract or ZIP code, and if the PMA is defined by census tract or ZIP code.
 - (B) The Market Analyst's definition of the Primary Market Area must include:

- (i) a detailed description of why the subject Development is expected to draw a majority of its prospective tenants or homebuyers from the defined PMA;
- (ii) a complete demographic report for the defined PMA; and
- (iii) a scaled distance map indicating the PMA boundaries as well as the location of the subject Development and all comparable Developments.

(C) *Comparable Units*. Identify Developments in the PMA with Comparable Units. In Primary Market Areas lacking sufficient rent comparables, it may be necessary for the Market Analyst to collect data from markets with similar characteristics and make quantifiable location adjustments. Provide a data sheet for each Development consisting of:

- (i) Development name;
- (ii) Address;
- (iii) Year of construction and year of Rehabilitation, if applicable;
- (iv) Property condition;
- (v) Target Population;
- (vi) Unit mix specifying number of Bedrooms, number of baths, Net Rentable Area; and
 - (I) monthly rent and Utility Allowance; or
 - (II) sales price with terms, marketing period and date of sale;
- (vii) Description of concessions;
- (viii) List of unit amenities;
- (ix) Utility structure;
- (x) List of common amenities; and
- (xi) For rental developments only, the occupancy and turnover.

(10) *Market Information*.

(A) For each of the defined market areas, identify the number of units for each of the categories in clauses (i) - (vi) of this subparagraph; the data must be clearly labeled as relating to either the PMA or the SMA, if applicable:

- (i) total housing;
- (ii) rental developments (all multi-family);
- (iii) Affordable housing;
- (iv) Comparable Units;
- (v) Unstabilized Comparable Units; and
- (vi) proposed Comparable Units.

(B) *Occupancy*. The occupancy rate indicated in the Market Analysis may be used to support both the overall demand conclusion for the proposed Development and the vacancy rate assumption used in underwriting the Development described in §10.302(d)(1)(C) of this chapter (relating to Underwriting Rules and Guidelines). State the overall physical occupancy rate for the proposed housing tenure (renter or owner) within the defined market areas by:

- (i) number of Bedrooms;
- (ii) quality of construction (class);
- (iii) Target Population; and
- (iv) Comparable Units.

- (C) *Absorption*. State the absorption trends by quality of construction (class) and absorption rates for Comparable Units.
- (D) *Demographic Reports*.
- (i) All demographic reports must include population and household data for a five (5) year period with the year of Application submission as the base year;
 - (ii) All demographic reports must provide sufficient data to enable calculation of income-eligible, age-, size-, and tenure-appropriate household populations;
 - (iii) For Developments targeting seniors, all demographic reports must provide a detailed breakdown of households by age and by income; and
 - (iv) A complete copy of all demographic reports relied upon for the demand analysis, including the reference index that indicates the census tracts or ZIP codes on which the report is based.
- (E) *Demand*. Provide a comprehensive evaluation of the need for the proposed housing for the Development as a whole and each Unit type by number of Bedrooms proposed and rent restriction category within the defined market areas using the most current census and demographic data available.
- (i) *Demographics*. The Market Analyst should use demographic data specific to the characteristics of the households that will be living in the proposed Development. For example, the Market Analyst should use demographic data specific to elderly population for a Qualified Elderly Development, if available, and should avoid making adjustments from more general demographic data. If adjustment rates are used based on more general data for any of the criteria described in subclauses (I) – (V) of this clause, they should be clearly identified and documented as to their source in the report.
 - (I) *Population*. Provide population and household figures, supported by actual demographics, for a five (5) year period with the year of Application submission as the base year.
 - (II) *Target*. If applicable, adjust the household projections for the Qualified Elderly or Persons with Special Needs targeted by the proposed Development.
 - (III) *Household Size-Appropriate*. Adjust the household projections or target household projections, as applicable, for the appropriate household size for the proposed Unit type by number of Bedrooms proposed and rent restriction category based on 1.5 persons per Bedroom (round up).
 - (IV) *Income Eligible*. Adjust the household size appropriate projections for income eligibility based on the income bands for the proposed Unit Type by number of Bedrooms proposed and rent restriction category with:
 - (-a-) the lower end of each income band calculated based on the lowest gross rent proposed divided by 35 percent for the general population and 50 percent for Qualified Elderly households; and
 - (-b-) the upper end of each income band equal to the applicable gross median income limit for the largest appropriate household size based on 1.5 persons per Bedroom (round up) or one person for Efficiency Units.

- (V) *Tenure-Appropriate*. Adjust the income-eligible household projections for tenure (renter or owner). If tenure appropriate income eligible target household data is available, a tenure appropriate adjustment is not necessary.
- (ii) *Gross Demand*. Gross Demand is defined as the sum of Potential Demand from the PMA, Demand from Other Sources, and Potential Demand from a Secondary Market Area (SMA) to the extent that SMA demand does not exceed 25 percent of Gross Demand.
- (iii) *Potential Demand*. Potential Demand is defined as the number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placed in service date.
 - (I) Maximum eligible income is equal to the applicable gross median income limit for the largest appropriate household size based on 1.5 persons per Bedroom (round up) or one person for Efficiency Units.
 - (II) For Developments targeting the general population:
 - (-a-) Minimum eligible income is based on a 35 percent rent to income ratio;
 - (-b-) Appropriate household size is defined as 1.5 persons per Bedroom (rounded up); and
 - (-c-) The tenure-appropriate population for a rental Development is limited to the population of renter households.
 - (III) For Developments consisting solely of single family residences on separate lots with all Units having three (3) or more Bedrooms:
 - (-a-) Minimum eligible income is based on a 35 percent rent to income ratio;
 - (-b-) Appropriate household size is defined as 1.5 persons per Bedroom (rounded up); and
 - (-c-) Gross Demand includes both renter and owner households.
 - (IV) For Qualified Elderly Developments:
 - (-a-) Minimum eligible income is based on a 50 percent rent to income ratio; and
 - (-b-) Gross Demand includes all household sizes and both renter and owner households.
- (iv) *Demand from Secondary Market Area*:
 - (I) Potential Demand from an SMA should be calculated in the same way as Potential Demand from the PMA;
 - (II) Potential Demand from an SMA may be included in Gross Demand to the extent that SMA demand does not exceed 25 percent of Gross Demand; and
 - (III) The supply of proposed and unstabilized Comparable Units in the SMA must be included in the calculation of the capture rate at the same proportion that Potential Demand from the SMA is included in Gross Demand.
- (v) *Demand from Other Sources*:

- (I) The source of additional demand and the methodology used to calculate the additional demand must be clearly stated;
 - (II) Consideration of Demand from Other Sources is at the discretion of the Underwriter;
 - (III) Demand from Other Sources must be limited to households that are not included in Potential Demand; and
 - (IV) If households with Section 8 vouchers are identified as a source of demand, the Market Study must include:
 - (-a-) Documentation of the number of vouchers administered by the local Housing Authority; and
 - (-b-) A complete demographic report for the area in which the vouchers are distributed.
- (F) *Employment*. Provide a comprehensive analysis of employment trends and forecasts in the Primary Market Area.
- (11) *Conclusions*. Include a comprehensive evaluation of the subject Property, separately addressing each housing type and specific population to be served by the Development in terms of items in subparagraphs (A) - (I) of this paragraph. All conclusions must be consistent with the data and analysis presented throughout the Market Analysis.
- (A) *Unit Mix*. Provide a best possible unit mix conclusion based on the occupancy rates by Bedroom type within the PMA and target, income-eligible, size-appropriate and tenure-appropriate household demand within the PMA.
 - (B) *Rents*. Provide a separate Market Rent conclusion for each proposed Unit Type by number of Bedrooms and rent restriction category. Conclusions of Market Rent below the maximum Net Program Rent limit must be well documented as the conclusions may impact the feasibility of the Development under §10.302(i) of this chapter. In support of the Market Rent conclusions, provide a separate attribute adjustment matrix for each proposed Unit Type by number of Bedrooms and rental restriction category.
 - (i) The Department recommends use of HUD Form 92273.
 - (ii) A minimum of three developments must be represented on each attribute adjustment matrix.
 - (iii) Adjustments for concessions must be included, if applicable.
 - (iv) Total adjustments in excess of 15 percent must be supported with additional narrative.
 - (v) Total adjustments in excess of 25 percent indicate the Units are not comparable for the purposes of determining Market Rent conclusions.
 - (C) *Effective Gross Income*. Provide rental income, secondary income, and vacancy and collection loss projections for the subject derived independent of the Applicant's estimates.
 - (D) *Demand*:
 - (i) State the Gross Demand for each Unit Type by number of Bedrooms proposed and rent restriction category (e.g. one-Bedroom Units restricted at 50 percent of AMGI; two-Bedroom Units restricted at 60 percent of AMGI); and
 - (ii) State the Gross Demand for the proposed Development as a whole. If some households are eligible for more than one Unit Type due to overlapping eligible ranges for income or

household size, Gross Demand should be adjusted to avoid including households more than once.

(E) *Relevant Supply*. The Relevant Supply of proposed and unstabilized Comparable Units includes:

- (i) The proposed subject Units;
- (ii) Comparable Units with priority over the subject that have made application to the Department and have not been presented to the Board for decision;
- (iii) Comparable Units in previously approved but Unstabilized Developments in the PMA; and
- (iv) Comparable Units in previously approved but Unstabilized Developments in the SMA, in the same proportion as the proportion of Potential Demand from the SMA that is included in Gross Demand.

(F) *Gross Capture Rate*. The Gross Capture Rate is defined as the Relevant Supply divided by the Gross Demand. The Market Analyst must calculate a Gross Capture Rate for the subject Development as a whole, as well as for each Unit Type by number of Bedrooms and rent restriction categories, and market rate Units, if applicable. Refer to §10.302(i) of this chapter for feasibility criteria.

(G) A complete demand and capture rate analysis is required in every Market Study, regardless of the current occupancy level of an existing Development.

(H) *Absorption*. Project an absorption period for the subject Development to achieve Breakeven Occupancy. State the absorption rate.

(I) *Market Impact*. Provide an assessment of the impact the subject Development, as completed, will have on existing Developments supported by Housing Tax Credits in the Primary Market. (§2306.67055)

(12) *Photographs*. Provide labeled color photographs of the subject Property, the neighborhood, street scenes, and comparables. An aerial photograph is desirable but not mandatory.

(13) *Appendices*. Any Third Party reports including demographics relied upon by the Market Analyst must be provided in appendix form. A list of works cited including personal communications also must be provided, and the Modern Language Association (MLA) format is suggested.

(e) The Department reserves the right to require the Market Analyst to address such other issues as may be relevant to the Department's evaluation of the need for the subject Development and the provisions of the particular program guidelines.

(f) In the event that the PMA for a subject Development overlaps the PMA's of other proposed or unstabilized comparable Developments, the Underwriter may perform an extended Sub-Market analysis considering the combined PMA's and all proposed and unstabilized Units in the extended Sub-Market Area; the Gross Capture Rate from such an extended Sub-Market Area analysis may be used as the basis for a feasibility conclusion.

- (g) All Applicants shall acknowledge, by virtue of filing an Application, that the Department shall not be bound by any such opinion or Market Analysis, and may substitute its own analysis and underwriting conclusions for those submitted by the Market Analyst.

§10.304. APPRAISAL RULES AND GUIDELINES.

- (a) *General Provision.* An appraisal prepared for the Department must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Standards Board of the Appraisal Foundation. The appraisal must include a statement that the report preparer has read and understood the requirements of this section.
- (b) *Self-Contained.* An appraisal prepared for the Department must describe sufficient and adequate data and analyses to support the final opinion of value. The final value(s) must be reasonable, based on the information included. Any Third Party reports relied upon by the appraiser must be verified by the appraiser as to the validity of the data and the conclusions.
- (c) *Appraiser Qualifications.* The qualifications of each appraiser are determined on a case-by-case basis by the Director of Real Estate Analysis or review appraiser, based upon the quality of the report itself and the experience and educational background of the appraiser. At minimum, a qualified appraiser must be appropriately certified or licensed by the Texas Appraiser Licensing and Certification Board.
- (d) *Appraisal Contents.* An appraisal prepared for the Department must be organized in a format that follows a logical progression. In addition to the contents described in USPAP Standards Rule 2, the appraisal must include items addressed in paragraphs (1) - (12) of this subsection.
- (1) *Title Page.* Include a statement identifying the Department as the client, acknowledging that the Department is granted full authority to rely on the findings of the report, and name and address of person authorizing report.
- (2) *Letter of Transmittal.* Include reference to accompanying appraisal report, reference to all person(s) that provided significant assistance in the preparation of the report, date of report, effective date of appraisal, date of property inspection, name of person(s) inspecting the property, tax assessor's parcel number(s) of the site, estimate of marketing period, and signatures of all appraisers authorized to work on the assignment including the appraiser who inspected the property. Include a statement indicating the report preparer has read and understood the requirements of this section.
- (3) *Table of Contents.* Number the exhibits included with the report for easy reference.
- (4) *Disclosure of Competency.* Include appraiser's qualifications, detailing education and experience.
- (5) *Statement of Ownership of the Subject Property.* Discuss all prior sales of the subject Property which occurred within the past three (3) years. Any pending agreements of sale, options to buy, or listing of the subject Property must be disclosed in the appraisal report.

- (6) *Property Rights Appraised*. Include a statement as to the property rights (e.g., fee simple interest, leased fee interest, leasehold, etc.) being considered. The appropriate interest must be defined in terms of current appraisal terminology with the source cited.
- (7) *Site/Improvement Description*. Discuss the site characteristics including subparagraphs (A) - (E) of this paragraph.
- (A) *Physical Site Characteristics*. Describe dimensions, size (square footage, acreage, etc.), shape, topography, corner influence, frontage, access, ingress-egress, etc. associated with the Development Site. Include a plat map and/or survey.
- (B) *Floodplain*. Discuss floodplain (including flood map panel number) and include a floodplain map with the subject Property clearly identified.
- (C) *Zoning*. Report the current zoning and description of the zoning restrictions and/or deed restrictions, where applicable, and type of Development permitted. Any probability of change in zoning should be discussed. A statement as to whether or not the improvements conform to the current zoning should be included. A statement addressing whether or not the improvements could be rebuilt if damaged or destroyed, should be included. If current zoning is not consistent with the highest and best use, and zoning changes are reasonable to expect, time and expense associated with the proposed zoning change should be considered and documented. A zoning map should be included.
- (D) *Description of Improvements*. Provide a thorough description and analysis of the improvements including size (Net Rentable Area, gross building area, etc.), number of stories, number of buildings, type/quality of construction, condition, actual age, effective age, exterior and interior amenities, items of deferred maintenance, energy efficiency measures, etc. All applicable forms of depreciation should be addressed along with the remaining economic life.
- (E) *Environmental Hazards*. It is recognized appraisers are not experts in such matters and the impact of such deficiencies may not be quantified; however, the report should disclose any potential environmental hazards (e.g., discolored vegetation, oil residue, asbestos-containing materials, lead-based paint etc.) noted during the inspection.
- (8) *Highest and Best Use*. Market Analysis and feasibility study is required as part of the highest and best use. The highest and best use analysis should consider paragraph (7)(A) - (E) of this subsection as well as a supply and demand analysis.
- (A) The appraisal must inform the reader of any positive or negative market trends which could influence the value of the appraised Property. Detailed data must be included to support the appraiser's estimate of stabilized income, absorption, and occupancy.
- (B) The highest and best use section must contain a separate analysis "as if vacant" and "as improved" (or "as proposed to be improved/renovated"). All four elements (legally permissible, physically possible, feasible, and maximally productive) must be considered.
- (9) *Appraisal Process*. It is mandatory that all three approaches, Cost Approach, Sales Comparison Approach and Income Approach, are considered in valuing the Property. If an approach is not applicable to a particular property an adequate explanation must be provided. A land value estimate must be provided if the Cost Approach is not applicable.

- (A) *Cost Approach*. This approach should give a clear and concise estimate of the cost to construct the subject improvements. The source(s) of the cost data should be reported.
- (i) Cost comparables are desirable; however, alternative cost information may be obtained from Marshall & Swift Valuation Service or similar publications. The section, class, page, etc. should be referenced. All soft costs and entrepreneurial profit must be addressed and documented.
 - (ii) All applicable forms of depreciation must be discussed and analyzed. Such discussion must be consistent with the description of the improvements.
 - (iii) The land value estimate should include a sufficient number of sales which are current, comparable, and similar to the subject in terms of highest and best use. Comparable sales information should include address, legal description, tax assessor's parcel number(s), sales price, date of sale, grantor, grantee, three (3) year sales history, and adequate description of property transferred. The final value estimate should fall within the adjusted and unadjusted value ranges. Consideration and appropriate cash equivalent adjustments to the comparable sales price for subclauses (I) - (VII) of this clause should be made when applicable.
 - (I) Property rights conveyed.
 - (II) Financing terms.
 - (III) Conditions of sale.
 - (IV) Location.
 - (V) Highest and best use.
 - (VI) Physical characteristics (e.g., topography, size, shape, etc.).
 - (VII) Other characteristics (e.g., existing/proposed entitlements, special assessments, etc.).
- (B) *Sales Comparison Approach*. This section should contain an adequate number of sales to provide the reader with a description of the current market conditions concerning this property type. Sales data should be recent and specific for the property type being appraised. The sales must be confirmed with buyer, seller, or an individual knowledgeable of the transaction.
- (i) Sales information should include address, legal description, tax assessor's parcel number(s), sales price, financing considerations and adjustment for cash equivalency, date of sale, recordation of the instrument, parties to the transaction, three (3) year sale history, complete description of the Property and property rights conveyed, and discussion of marketing time. A scaled distance map clearly identifying the subject and the comparable sales must be included.
 - (ii) The method(s) used in the Sales Comparison Approach must be reflective of actual market activity and market participants.
 - (I) Sale Price/Unit of Comparison. The analysis of the sale comparables must identify, relate, and evaluate the individual adjustments applicable for property rights, terms of sale, conditions of sale, market conditions, and physical features. Sufficient narrative must be included to permit the reader to understand the direction and magnitude of

the individual adjustments, as well as a unit of comparison value indicator for each comparable.

- (II) Net Operating Income/Unit of Comparison. The Net Operating Income statistics or the comparables must be calculated in the same manner. It should be disclosed if reserves for replacement have been included in this method of analysis. At least one other method should accompany this method of analysis.
- (C) *Income Approach*. This section must contain an analysis of both the actual historical and projected income and expense aspects of the subject Property.
- (i) *Market Rent Estimate/Comparable Rental Analysis*. This section of the report should include an adequate number of actual market transactions to inform the reader of current market conditions concerning rental Units. The comparables must indicate current research for this specific property type. The comparables must be confirmed with the landlord, tenant or agent and individual data sheets must be included. The individual data sheets should include property address, lease terms, description of the property (e.g., Unit Type, unit size, unit mix, interior amenities, exterior amenities, etc.), physical characteristics of the property, and location of the comparables. Analysis of the Market Rents should be sufficiently detailed to permit the reader to understand the appraiser's logic and rationale. Adjustment for lease rights, condition of the lease, location, physical characteristics of the property, etc. must be considered.
 - (ii) *Comparison of Market Rent to Contract Rent*. Actual income for the subject along with the owner's current budget projections must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. The Contract Rents should be compared to the market-derived rents. A determination should be made as to whether the Contract Rents are below, equal to, or in excess of market rates. If there is a difference, its impact on value must be qualified.
 - (iii) *Vacancy/Collection Loss*. Historical occupancy data and current occupancy level for the subject should be reported and compared to occupancy data from the rental comparables and overall occupancy data for the subject's Primary Market.
 - (iv) *Expense Analysis*. Actual expenses for the subject, along with the owner's projected budget, must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. Historical expenses should be compared to comparables expenses of similar property types or published survey data (e.g., IREM, BOMA, etc.). Any expense differences should be reconciled. Include historical data regarding the subject's assessment and tax rates and a statement as to whether or not any delinquent taxes exist.
 - (v) *Capitalization*. The appraiser should present the capitalization method(s) reflective of the subject market and explain the omission of any method not considered in the report.
 - (I) Direct Capitalization. The primary method of deriving an overall rate (OAR) is through market extraction. If a band of investment or mortgage equity technique is utilized, the assumptions must be fully disclosed and discussed.
 - (II) Yield Capitalization (Discounted Cash Flow Analysis). This method of analysis should include a detailed and supportive discussion of the projected holding/investment period, income and income growth projections, occupancy

projections, expense and expense growth projections, reversionary value and support for the discount rate.

(10) *Value Estimates*. Reconciliation of final value estimates is required. The Underwriter may request additional valuation information based on unique existing circumstances that are relevant for deriving the market value of the Property.

(A) All appraisals shall contain a separate estimate of the "as vacant" market value of the underlying land, based upon current sales comparables. The appraiser should consider the fee simple or leased fee interest as appropriate.

(B) For existing Developments with any project-based rental assistance that will remain with the property after the acquisition, the appraisal must include an "as-is as-currently-restricted value" inclusive of the value associated with the rental assistance. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates and/or occupancy rates on project-based developments, this must be fully explained and supported to the satisfaction of the Underwriter.

(C) For existing Developments with rent restrictions, the appraisal must include the "as-is as-restricted" value. In particular, the restricted rents should be contemplated when deriving the value based on the income approach.

(D) For all other existing Developments, the appraisal must include the "as-is" value.

(E) For any Development with favorable financing (generally below market debt) that will remain in place and transfer to the new owner, the appraisal must include a separate value for the existing favorable financing with supporting information.

(F) If required the appraiser must include a separate assessment of personal property, furniture, fixtures, and equipment (FF&E) and/or intangible items. If personal property, FF&E, or intangible items are not part of the transaction or value estimate, a statement to such effect should be included.

(11) *Marketing Time*. Given property characteristics and current market conditions, the appraiser(s) should employ a reasonable marketing period. The report should detail existing market conditions and assumptions considered relevant.

(12) *Photographs*. Provide good quality color photographs of the subject Property (front, rear, and side elevations, on-site amenities, interior of typical Units if available). Photographs should be properly labeled. Photographs of the neighborhood, street scenes, and comparables should be included. An aerial photograph is desirable but not mandatory.

(e) *Additional Appraisal Concerns*. The appraiser(s) must be aware of Department program rules and guidelines and the appraisal must include analysis of any impact to the subject's value.

§10.305. ENVIRONMENTAL SITE ASSESSMENT RULES AND GUIDELINES.

(a) *General Provisions*. The Environmental Site Assessments (ESA) prepared for the Department should be conducted and reported in conformity with the standards of the American Society for

Testing and Materials. The initial report should conform with the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E1527-05). Any subsequent reports should also conform to ASTM standards and such other recognized industry standards as a reasonable person would deem relevant in view of the Property's anticipated use for human habitation. The ESA shall be conducted by a Third Party environmental professional at the expense of the Applicant, and addressed to TDHCA as a User of the report (as defined by ASTM standards). Copies of reports provided to the Department which were commissioned by other financial institutions should address TDHCA as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to the Department. The ESA report should also include a statement that the person or company preparing the ESA report will not materially benefit from the Development in any other way than receiving a fee for performing the ESA, and that the fee is in no way contingent upon the outcome of the assessment. The ESA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

(b) In addition to ASTM requirements, the report must:

- (1) State if a noise study is recommended for a property in accordance with current HUD guidelines and identify its proximity to industrial zones, major highways, active rail lines, civil and military airfields, or other potential sources of excessive noise;
- (2) Provide a copy of a current survey, if available, or other drawing of the site reflecting the boundaries and adjacent streets, all improvements on the site, and any items of concern described in the body of the ESA or identified during the physical inspection;
- (3) Provide a copy of the current FEMA Flood Insurance Rate Map showing the panel number and encompassing the site with the site boundaries precisely identified and superimposed on the map;
- (4) If the subject Development Site includes any improvements or debris from pre-existing improvements, state if testing for asbestos containing materials (ACMs) would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;
- (5) If the subject Development Site includes any improvements or debris from pre-existing improvements, state if testing for Lead Based Paint would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;
- (6) State if testing for lead in the drinking water would be required pursuant to local, state, and federal laws, or recommended due to any other consideration such as the age of pipes and solder in existing improvements; and
- (7) Assess the potential for the presence of Radon on the Property, and recommend specific testing if necessary.

(c) If the report recommends further studies or establishes that environmental hazards currently exist on the Property, or are originating off-site but would nonetheless affect the Property, the Development Owner must act on such a recommendation or provide a plan for either the abatement or elimination of the hazard. Evidence of action or a plan for the abatement or elimination of the hazard must be presented upon Application submittal.

- (d) For Developments in programs that allow a waiver of the Phase I ESA such as a USDA funded Development, the Development Owners are hereby notified that it is their responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.
- (e) Those Developments which have or are to receive first lien financing from HUD may submit HUD's environmental assessment report, provided that it conforms to the requirements of this subsection.

§10.306. PROPERTY CONDITION ASSESSMENT GUIDELINES.

- (a) *General Provisions.* The objective of the Property Condition Assessment (PCA) for Rehabilitation Developments is to provide cost estimates for repairs and replacements, and new construction of additional buildings or amenities, which are: immediately necessary repairs and replacements; improvements proposed by the Applicant as outlined in a scope of work narrative submitted by the Applicant to the PCA provider that is consistent with the scope of work provided in the Application; and expected to be required throughout the term of the Affordability Period and not less than thirty (30) years. The PCA prepared for the Department should be conducted and reported in conformity with the American Society for Testing and Materials "Standard Guide for Property Condition Assessments. Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2018") except as provided for in subsections (b) and (c) of this section. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section. The PCA must include the Department's PCA Cost Schedule Supplement which details all Rehabilitation costs and projected repairs and replacements through at least twenty (20) years. The PCA must also include discussion and analysis of:
 - (1) *Useful Life Estimates.* For each system and component of the property the PCA should assess the condition of the system or component, and estimate its remaining useful life, citing the basis or the source from which such estimate is derived;
 - (2) *Code Compliance.* The PCA should review and document any known violations of any applicable federal, state, or local codes. In developing the cost estimates specified herein, it is the responsibility of the Applicant to ensure that the PCA adequately considers any and all applicable federal, state, and local laws and regulations which may govern any work performed to the subject Property;
 - (3) *Program Rules.* The PCA should assess the extent to which any systems or components must be modified, repaired, or replaced in order to comply with any specific requirements of the housing program under which the Development is proposed to be financed, particular consideration being given to accessibility requirements, the Department's Housing Quality Standards, and any scoring criteria for which the Applicant may claim points;
 - (4) *Statement of Acknowledgement.* The PCA provider must affirm in the report that the Applicant's scope of work for improvements and the immediate needs of the Rehabilitation are considered and reconciled within the PCA report and the PCA Cost Schedule Supplement; and
 - (5) *Cost Estimates for Repair and Replacement.* It is the responsibility of the Applicant to ensure that the PCA provider is apprised of all development activities associated with the proposed

transaction and consistency of the total immediately necessary and proposed repair and replacement cost estimates with the Total Housing Development Cost schedule and scope of work submitted as an exhibit of the Application.

(A) *Immediately Necessary Repairs and Replacement.* Systems or components which are expected to have a remaining useful life of less than one (1) year, which are found to be in violation of any applicable codes, which must be modified, repaired or replaced in order to satisfy program rules, or which are otherwise in a state of deferred maintenance or pose health and safety hazards should be considered immediately necessary repair and replacement. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or maintenance of each system or component which is identified as being an immediate need, citing the basis or the source from which such cost estimate is derived.

(B) *Proposed Repair, Replacement, or New Construction.* If the development plan calls for additional repair, replacement, or New Construction above and beyond the immediate repair and replacement described in subparagraph (A) of this paragraph, such items must be identified and the nature or source of obsolescence or improvement to the operations of the Property discussed. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or new construction which is identified as being above and beyond the immediate need, citing the basis or the source from which such cost estimate is derived.

(C) *Expected Repair and Replacement Over Time.* The term during which the PCA should estimate the cost of expected repair and replacement over time must equal the longest term of any land use or regulatory restrictions which are, or will be, associated with the provision of housing on the Property. The PCA must estimate the periodic costs which are expected to arise for repairing or replacing each system or component or the property, based on the estimated remaining useful life of such system or component as described in paragraph (1) of this subsection adjusted for completion of repair and replacement immediately necessary and proposed as described in subparagraphs (A) and (B) of this paragraph. The PCA must include a separate table of the estimated long term costs which identifies in each line the individual component of the property being examined, and in each column the year during the term in which the costs are estimated to be incurred and no less than fifteen (15) years. The estimated costs for future years should be given in both present dollar values and anticipated future dollar values assuming a reasonable inflation factor of not less than 2.5 percent per annum.

(b) If a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied, the Department will also accept copies of reports commissioned or required by the primary lender for a proposed transaction, which have been prepared in accordance with:

- (1) Fannie Mae's criteria for Physical Needs Assessments;
- (2) Federal Housing Administration's criteria for Project Capital Needs Assessments;
- (3) Freddie Mac's guidelines for Engineering and Property Condition Reports;
- (4) USDA guidelines for Capital Needs Assessment; or

(5) Standard and Poor's Property Condition Assessment Criteria: Guidelines for Conducting Property Condition Assessments, Multifamily Buildings.

- (c) The Department may consider for acceptance reports prepared according to other standards which are not specifically named in subsection (b) of this section, if a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied.
- (d) The PCA shall be conducted by a Third Party at the expense of the Applicant, and addressed to TDHCA as the client. Copies of reports provided to the Department which were commissioned by other financial institutions should address TDHCA as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to TDHCA. The PCA report should also include a statement that the person or company preparing the PCA report will not materially benefit from the Development in any other way than receiving a fee for performing the PCA. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

§10.307. DIRECT LOAN REQUIREMENTS.

Direct Loans through the Departments must be structured according to the criteria as identified in paragraphs (1) – (5) of this section.

- (1) The interest rate may be as low as zero percent provided all applicable program requirements are met as well as requirements in this subchapter. In the case of HOME funds, to the extent Match in an amount less than 5 percent of the HOME funds is provided, an interest rate no lower than 2 percent may be requested;
- (2) Unless structured only as an interim construction or bridge loan, the loan term shall be no less than fifteen (15) years and no greater than forty (40) years and the amortization schedule shall be no less than thirty (30) years and no greater than forty (40) years;
- (3) The loan shall be structured with a regular monthly payment beginning at the end of the construction period and continuing for the loan term. If the first lien mortgage is a federally insured HUD or FHA mortgage, the Department may approve a loan structure with annual payments payable from surplus cash flow provided that the debt coverage ratio, inclusive of the loan, continues to meet the requirements in this subchapter. The Board may also approve, on a case-by-case basis, a cash flow loan structure provided it determines that the financial risk is outweighed by the need for the proposed housing; and
- (4) The loan shall have a deed of trust with a permanent lien position consistent with the principal amount of the loan in relation to the principal amounts of the other sources of financing. Notwithstanding the foregoing, the loan shall have a lien position that is superior to any other sources for financing that have soft repayment structures, non-amortizing balloon notes, are deferred forgivable loans or in which the lender has an identity of interest with any member of the Development Team. The Board may also approve, on a case-by-case basis, an alternative lien priority provided it determines that the financial risk is outweighed by the need for the proposed housing.

- (5) If the Direct Loan amounts to more than 50 percent of the Total Housing Development Cost, except for Developments also financed through the USDA §515 program, the Application must include the documents as identified in subparagraphs (A) – (C) of this paragraph.
- (A) A letter from a Third Party CPA verifying the capacity of the Applicant, Developer or Development Owner to provide at least 10 percent of the Total Housing Development Cost as a short term loan for the Development; and
 - (B) A letter from the Applicant, Developer or Development Owner's bank(s) confirming funds equal to 10 percent of the Total Housing Development Cost are available; or
 - (C) Evidence of a line of credit or equivalent tool equal to at least 10 percent of the Total Housing Development Cost from a financial institution that is available for use during the proposed Development activities.

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BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
September 6, 2012

Presentation, Discussion, and Possible Action regarding the proposed repeal of 10 TAC Chapter 1, §1.9, concerning Qualified Contracts and §1.25 concerning Right of First Refusal; and proposed new 10 TAC Chapter 10, Subchapter E, concerning Post Award and Asset Management Requirements for public comment and publication in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, staff has identified the need to reorganize and publish rules to implement processes that increase efficiency and consistency within the Department's multifamily programs, and

WHEREAS, existing rules regarding qualified contracts, right of first refusal, reserve for replacements, construction monitoring, recording of LURAs, material amendments to LURAs and various sections of the qualified allocation plan associated with post award activities and asset management are more logically grouped together. It is hereby

RESOLVED, that the Executive Director and his designees be and each of them hereby are, authorized, directed, and empowered, for and on behalf of the Department, to cause the proposed repeal of 10 TAC Chapter 1, Subchapter A §1.9 and §1.25; and proposed new 10 TAC Chapter 10, Subchapter E regarding Post Award and Asset Management Requirements in the form presented to this meeting, to be published in the *Texas Register* for public comment and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

As part of the overhaul and reorganization of the Department's multifamily rules staff is recommending the creation of a new chapter of rules that brings together the post award programmatic activities into one chapter. While the reorganization is substantive much of the actual language has been unchanged from the language in its prior location. The most significant changes to language in the rules are outlined below.

Section 10.400 is new and sets out the general reasons for this chapter, which is primarily to ensure the ongoing maintenance of safe, decent, and affordable housing after an award is made.

Section 10.401 contains general information regarding the requirements for commitment or determination notices that were previously in the Qualified Allocation Plan (QAP) and the HOME rule. These are the requirements for activities that occur immediately after the Board approves an award and the steps required to formalize that award.

Section 10.402 addresses the bulk of post award requirements for tax credit developments and bond deals with tax credits that was previously included in the QAP. The section more specifically describes commitment and determination notices and includes carryover, 10 Percent Test, construction status, Land Use Restriction Agreements (LURAs), and cost certification.

Section 10.403 comes from the prior HOME rules being repealed in Chapter 53 and addresses the closing and loan documentation requirements as well as the draw process.

Section 10.404 addresses reserve for replacement requirements and was moved from the Real Estate Analysis Rules and Guidelines, 10 TAC §1.37 being repealed under separate board action. This section has also been re-written for clarity and is based on experience with some of these accounts being established and used, though the content and intent continues to align with the statutory requirements in Texas Government Code, §2306.186.

Section 10.405 includes the three types of post award amendments that were previously described in the QAP and the compliance rules and are now consolidated in this section. There are two types of amendments that can be made post award but prior to the recordation of the LURA; those that are material as defined by Texas Government Code, §2306.6712, requiring Board approval and those that are not material and thus do not need to be approved by the Board, but may be subject to appeal if denied by the Executive Director. Amendments that occur after the LURA is executed and would require a material change to the LURA are required to go through a public hearing process in addition to the Board approval process as previously outlined in 10 TAC §60.130.

Section 10.406 describes ownership transfers which were previously addressed in the QAP but have been relocated to this section.

Section 10.407 describes the different types of right of first refusal language used in various years' LURAs (minimum purchase price for 2 years, minimum purchase price for 90 days, fair market value for 90 days) and provides for a consistent process for Developments Owners to reference in adhering to this requirement. This new section includes part of the prior Qualified Contract Policy rule, formerly 10 TAC §1.9, that referenced the right of first refusal requirement under the minimum purchase price calculation. The intent of this revision is to describe the type of valuation methods available per the requirement of the specific LURA and provide direction of the process for each type. There continues to be two basic methods to determine the sales price of the property under right of first refusal: minimum purchase price and fair market value. The minimum purchase price calculation is a floor value described in §42(i)(7)(B) of the Code, but effectively is a maximum value in the right of first refusal rules and in LURAs for which it was included. The minimum purchase price calculation includes the outstanding debt secured by the buildings and taxes associated with the sale. The fair market value is determined by the current market with the sales price determined using a recent purchase offer or an appraisal. The fair market value is how a small subset of LURA's reflect the right of first refusal price but more routinely, it is the method to determine the value for any unrestricted or market rate portion of a property. Thus the rule provides for a mechanism for blending these two values as well.

There are also two different timeframes (90 days or 2 years) for offering a property under a right of first refusal depending on the specific requirements described in the LURA. Older LURA's typically have a 90 day period however since approximately 2001 the 2 year provision has been codified in Texas Government Code, §2306.6726, which requires specific marketing efforts associated with each six month period during the 2 years.

Section 10.408 is the Qualified Contract Policy rule, which was formerly 10 TAC Chapter 1, Subchapter A §1.9. The revision to this rule primarily consists of relocation of the entire section that references the

minimum purchase price right of first refusal process. That section was combined with the right of first refusal rule, formerly 10 TAC Chapter 1, Subchapter A §1.25, which was created this spring and now is being relocated to §10.407. Additionally, there are revisions and clarifications to the process and document submission requirements.

Attachment A: Preamble and Proposed repeal of 10 TAC Chapter 1, §1.9, concerning Qualified Contract Policy, and §1.25, concerning Right of First Refusal at Fair Market Value

The Texas Department of Housing and Community Affairs (the “Department”) proposes the repeal of 10 TAC Chapter 1, Subchapter A §1.9 concerning Qualified Contract Policy, and §1.25 concerning Right of First Refusal at Fair Market Value. The purpose of these repeals is to move the sections under a proposed new Chapter 10 concerning Uniform Multifamily Rules and amend them to combine all right of first refusal information in the new right of first refusal rule and to include only information on qualified contracts in the new qualified contract rule. In addition, all rules pertaining to post award and asset management requirements are being repealed from various other sections under this title by separate action. The proposed new 10 TAC Chapter 10, Subchapter E, concerning Post Award and Asset Management Requirements, is published concurrently with this repeal in this issue of the *Texas Register*

FISCAL NOTE. Mr. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeals are in effect, enforcing or administering the repealed sections does not have any foreseeable implications related to new costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine has also determined that, for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of the repealed sections and proposed new Chapter 10 will be a more consistent and uniform approach to the activities that occur after an award of funds is made. There is no anticipated new direct cost impact as a result of the repeal due to the proposed adoption of the new rule. It is not anticipated that the repeal and replacement will have a change in the economic cost to any individual required to comply with the repealed or recreated sections.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no change in economic effect on small businesses or micro-businesses as a result of the repeal.

LOCAL EMPLOYMENT IMPACT STATEMENT. The Department has determined that there will be no effect on local economies as a result of the repeal.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012 to receive input on the repeal.. Written comments may be submitted to the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, ATTN: Cari Garcia, Director of Asset Management; or by FAX to (512) 475-7500. **ALL COMMENTS MUST BE RECEIVED BY 5:00 PM OCTOBER 22, 2012**

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed repeal affects no other code, article or statute.

§1.9. Qualified Contract Policy.

§1.25. Right of First Refusal at Fair Market Value.

Attachment B: Preamble and Proposed new 10 TAC Chapter 10, Subchapter E, concerning Post Award and Asset Management Requirements

The Texas Department of Housing and Community Affairs (the “Department”) proposes the new 10 TAC Chapter 10 Subchapter E, §§10.400 – 10.408, concerning Post Award and Asset Management Requirements. The purpose of the new rule is to move relevant sections under a proposed new Chapter 10 concerning 2013 Uniform Multifamily Rules. The new Subchapter E replaces sections, in whole or part, of previously approved rules under this title, including 10 TAC Chapters 1, 49, 50, 53, and 60 being repealed and re-establishes them under a proposed new Subchapter E concerning Post Award and Asset Management Requirements. The proposed new sections describe the requirements for multifamily activities that occur after the approval of an award including requirements for commitment and determination notices, post award status and draw requirements, amendments, ownership transfers, right of first refusal and qualified contracts.

FISCAL NOTE. Mr. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the proposed new sections are in effect, enforcing or administering the proposed new subchapter does not have any foreseeable implications related to new costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the proposed new subchapter is in effect, the public benefit anticipated as a result of the proposed new subchapter and proposed new Chapter 10 will be a more consistent and uniform approach to the activities that occur after an award of funds is made. There is no anticipated new direct cost impact as a result of the proposed adoption of the new rule. It is not anticipated that the proposed new subchapter will have a change in economic cost to any individual required to comply with the proposed new subchapter.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no change in economic effect on small businesses or micro-businesses as a result of the proposed new subchapter.

LOCAL EMPLOYMENT IMPACT STATEMENT. The Department has determined that there will be no effect on local economies as a result of the proposed adoption of the new subchapter.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012 to receive input on the repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, ATTN: Cari Garcia, Director of Asset Management; or by FAX to (512) 475-7500. **ALL COMMENTS MUST BE RECEIVED BY 5:00 PM OCTOBER 22, 2012**

STATUTORY AUTHORITY. The new subchapter is proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules.

§10.400. Purpose.

The purpose of this chapter is to establish the requirements governing the post award and asset management activities associated with awards of multifamily development assistance pursuant to Texas Government

Code, Chapter 2306 and its regulation of multifamily funding provided through the Texas Department of Housing and Community Affairs (the “Department”) as authorized by the legislature. These rules are designed to ensure that Developers and Development Owners of low-income Developments that are financed or otherwise funded through the Department maintain safe, decent and affordable housing for the term of the affordability period.

§10.401. General Commitment or Determination Notice Requirements and Documentation.

(a) A Commitment or Determination Notice shall not be issued with respect to any Development for an unnecessary amount or where the cost for the total development, acquisition, construction or rehabilitation exceeds the limitations established from time to time by the Department and the Board, unless staff makes a recommendation that is clearly documented to the Board based on the need to fulfill the goals of the applicable multifamily program as expressed herein and other applicable Department rules, and the Board accepts the recommendation.

(b) All Commitments or Determination Notices, whether reflected in the Commitment or Determination Notice or not, are made subject to full compliance with all provision of law and rule, including compliance with the Qualified Allocation Plan, the Uniform Multifamily Rules, the Multifamily Housing Revenue Bond Rules, completion of underwriting and satisfactory compliance with the results thereof, full and satisfactory addressing of any Administrative Deficiencies and conditions of award, Commitment, Contract or any other matters.

(c) The Department shall notify, in writing, the mayor, chief county judge, or other appropriate official of the municipality or county, as applicable, in which the Development is located informing him/her of the Board's issuance of a Commitment or Determination Notice, as applicable.

(d) The Department may cancel a Commitment, Determination Notice or Carryover Allocation prior to the issuance of IRS Form 8609 (for Housing Tax Credits) or completion of construction with respect to a Development and/or apply administrative penalties if:

(1) the Applicant or the Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure to meet any of the conditions of such Commitment, Determination Notice or Carryover Allocation or any of the undertakings and commitments made by the Development Owner in the Application process for the Development;

(2) any material statement or representation made by the Development Owner or made with respect to the Development Owner or the Development is untrue or misleading;

(3) an event occurs with respect to the Applicant or the Development Owner which would have made the Application ineligible for funding pursuant to Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules) if such event had occurred prior to issuance of the Commitment, Determination Notice or Carryover Allocation; or

(4) the Applicant or the Development Owner or the Development, as applicable, fails after written notice and a reasonable opportunity to cure to comply with this chapter or other applicable Department rules or the procedures or requirements of the Department.

(e) *Direct Loan Commitment.* The Department shall execute, with the Development Owner, a Commitment which shall confirm that the Board has approved the loan or award and provide the loan terms. The Commitment may be abbreviated and will generally not express all terms and conditions that will be included in the loan documents. The Commitment shall have a deadline for the loan closing to occur no more than six (6) months from execution of the Commitment, which may be extended in accordance with the provisions in this chapter.

§10.402. Housing Tax Credit and Tax Exempt Bond Developments.

(a) *Commitment.* For Competitive HTC Developments the Department shall issue a Commitment to the Development Owner which shall confirm that the Board has approved the Application and state the Department's commitment to make a Housing Credit Allocation to the Development Owner in a specified amount, subject to the feasibility determination described in Subchapter D of this chapter (relating to 2013 Underwriting and Loan Policies) and that the Development satisfies the requirements of this chapter and other applicable Department rules. The Commitment shall expire on the date specified therein, which shall be thirty (30) calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Commitment, pays the required fee specified in §10.901 of this chapter (relating to Fee Schedule), and satisfies any conditions set forth therein by the Department. The Commitment expiration date may not be extended without prior Board approval for good cause.

(b) *Determination Notices.* For Tax Exempt Bond Developments the Department shall issue a Determination Notice which shall confirm the Board's determination that the Development satisfies the requirements of this chapter as applicable and other applicable Department rules in accordance with the §42(m)(1)(D) of the Internal Revenue Code (the "Code"). The Determination Notice shall also state the Department's commitment to issue IRS Form(s) 8609 to the Development Owner in a specified amount, subject to the requirements set forth in the Department's rules, as applicable. The Determination Notice shall expire on the date specified therein, which shall be thirty (30) calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Determination Notice, pays the required fee specified in §10.901 of this chapter and satisfies any conditions set forth therein by the Department. The Determination Notice expiration date may not be extended without prior Board approval for good cause. The Determination Notice will terminate if the Tax Exempt Bonds are not closed within the timeframe provided for under the Bond Reservation or if the financing or development change significantly as determined by the Department.

(c) The amount of tax credits reflected in the IRS Form 8609 may be greater or less than the amount set forth in the Determination Notice based upon the Department's and the bond issuer's determination as of each building's placement in service. Any increase of tax credits, from the amount specified in the Determination Notice, at the time of each building's placement in service will only be permitted if it is determined necessary by the Department, as required by §42(m)(2)(D) of the Code. Increases to the amount of tax credits that exceed 110 percent of the amount of credits reflected in the Determination Notice are contingent upon approval by the Board. Increases to the amount of tax credits that do not exceed 110 percent of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director.

Increases to the tax credit amount are subject to the Credit Increase Fee as described in §10.901 of this chapter.

(d) *Commitment and Determination Notice Documentation.* No later than the expiration date of the Commitment (or no later than December 31 for Competitive HTC Applications, whichever is earlier) or Determination Notice, the documentation described in paragraphs (1) – (6) of this subsection must be provided. Failure to provide these documents may cause the Commitment or Determination Notice to be rescinded.

(1) For entities formed outside the state of Texas, evidence that the entity has the authority to do business in Texas in the form of a Certificate of Filing from the Texas Office of the Secretary of State;

(2) A Certificate of Account Status from the Texas Comptroller of Public Accounts or, if such a Certificate is not available because the entity is newly formed, a statement to such effect; and a Certificate of Name Reservation from the Texas Office of the Secretary of State;

(3) Evidence that the signer(s) of the Application have the authority to sign on behalf of the Applicant in the form of a corporate resolution which indicates the sub-entity in Control and that those Persons signing the Application constitute all Persons required to sign or submit such documents;

(4) Evidence of final zoning that was proposed or needed to be changed pursuant to the Development plan;

(5) Any conditions identified in the Real Estate Analysis report or any other conditions of the award required to be met at Commitment or Determination Notice.; and

(6) Any changes to representations made in the application subject to §10.405 of this chapter (relating to Amendments).

(e) *Post Bond Closing Documentation Requirements.*

(1) Regardless of the issuer of the bonds, no later than sixty (60) calendar days following closing on the bonds, the Development Owner must submit:

(A) a Management Plan and an Affirmative Marketing Plan (as further described in the Tax Exempt Bond Process Manual);

(B) evidence that the Development Owner or management company has attended Department-approved Fair Housing training, relating to leasing and management issues, for at least five (5) hours;

(C) evidence that the Development architect or engineer responsible for Fair Housing compliance for the Development has attended Department-approved Fair Housing training, relating to design issues, for at least five (5) hours;

(D) evidence that the financing has closed, such as an executed settlement statement.

(2) Certifications required under subparagraphs (B) and (C) of this paragraph must not be older than two (2) years from the date of the submission deadline.

(f) *Carryover (Competitive HTC Only).* All Developments which received a Commitment, and will not be placed in service and receive IRS Form 8609 in the year the Commitment was issued, must submit the Carryover documentation, in the form prescribed by the Department in the Multifamily Programs Procedures Manual, no later than the Carryover Documentation Delivery Date as identified in §11.2 of this title (relating

to Program Calendar for Competitive Housing Tax Credits) of the year in which the Commitment is issued pursuant to §42(h)(1)(C) of the Code.

(1) Commitments for credits will be terminated if the Carryover documentation, or an approved extension, has not been received by this deadline. This termination is final and not appealable, and immediately upon issuance of notice of termination staff is directed to award the credits to other qualified Applicants based on the approved waiting list.

(2) If the interim or permanent financing structure, syndication rate, amount of debt or syndication proceeds are finalized but different at the time of Carryover from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be reevaluated by the Department.

(3) All Carryover Allocations will be contingent upon the Development Owner providing evidence that they have and will maintain Site Control through 10 Percent Test or through the anticipated closing date, whichever is earlier. For purposes of this paragraph, Site Control must be identical to the Development Site that was submitted at the time of Application submission as determined by the Department.

(4) Evidence that the Development Owner entity has been formed must be submitted with the Carryover Allocation.

(5) The Department will not execute a Carryover Allocation Agreement with any Development Owner having any member in Material Noncompliance on October 1 of the current program year.

(g) *10 Percent Test (Competitive HTC Only)*. No later than July 1 of the year following the submission of the Carryover Allocation Agreement, the Development Owner must incur more than 10 percent of the Development Owner's reasonably expected basis, pursuant to §42(h)(1)(E)(i) and (ii) of the Code (as amended by The Housing and Economic Recovery Act of 2008), and Treasury Regulations, §1.42-6. The evidence to support the satisfaction of this requirement must be submitted to the Department no later than the 10 Percent Test Documentation Delivery Date as identified in §11.2 of this title. The Development Owner must submit, in the form prescribed by the Department, documentation evidencing paragraphs (1) - (5) of this subsection, along with all information outlined in the Post Carryover Activities Manual. The 10 Percent Test documentation will be contingent upon the submission of these items as well as all other conditions placed upon the Application in the Commitment. Documentation to be submitted includes:

(1) evidence that the Development Owner has purchased, transferred, leased, or otherwise has ownership of the Development Site;

(2) for New Construction, Reconstruction and Adaptive Reuse Developments, a certification from a Third Party civil engineer stating that all necessary utilities will be available at the Development Site and that there are no easements, licenses, royalties or other conditions on or affecting the Development that would materially and adversely impact the ability to acquire, develop and operate as set forth in the Application. Copies of such supporting documents will be provided upon request;

(3) a Management Plan and an Affirmative Marketing Plan as further described in the Post Carryover Activities Manual;

(4) evidence confirming attendance of the Development Owner or management company at Department-approved Fair Housing training, relating to leasing and management issues, for at least five (5) hours and of the Development architect or engineer responsible for Fair Housing compliance at Department-approved Fair Housing training, relating to design issues, for at least five (5) hours on or before the time the 10 Percent Test Documentation is submitted. Certifications must not be older than two (2) years from the date of submission of the 10 Percent Test Documentation;

(5) a Certification from the lender or syndicator identifying all Guarantors.

(h) *Construction Status Report.* Within three (3) months of the close of the construction loan or partnership agreement, whichever comes first, and every quarter thereafter all multifamily developments must submit a construction status report consisting of the items identified in paragraphs (1) – (4) of this subsection for the first report and items identified in paragraphs (3) – (4) of this subsection for all subsequent reports unless changes to the original submissions of paragraphs (1) and (2) of this subsection have occurred, in which case such amendments shall also be submitted with the subsequent report. Construction status reports shall be due within ten (10) days of the first day of each quarter (January, April, July, and October) and continue on a quarterly basis until the entire development is complete and all units are placed in service, whereupon a final report will be due.

- (1) The executed partnership agreement with the investor or other documents setting forth the legal structure and ownership;
- (2) The executed construction loan agreement. If the loan has not closed, the anticipated closing date must be provided and, upon closing, the agreement must be provided to the Department;
- (3) The construction contract and the most recent AIA G702 and G703 (or equivalent) certified by the Architect of Record; and
- (4) All Third Party construction inspection reports not previously submitted.

(i) *LURA Origination (Competitive HTC Only).* After the Department receives the Construction Status Report, the Department will generate a LURA for the Development Owner that will impose the income and rent restrictions identified in the Development's final underwriting report and other representations made in the Application, including but not limited to, specific commitments to provide tenant services, to lease to Persons with Disabilities and/or to provide specific amenities. The executed LURA and all exhibits will be sent to the Development Owner whereupon the Development Owner will then execute the LURA and have the fully-executed document and all exhibits and attachments recorded in the real property records for the county in which the Development is located. The original recorded LURA must be returned to the Department no later than the end of the first year of the Credit Period. In general, no Housing Tax Credit are allowed to be issued for a building unless there is a properly executed and recorded LURA in effect at the end of the first year of the Credit Period. Nothing in this section negates an Development Owner's responsibility for full compliance with §42(h)(6) of the Code. The Department will not issue IRS Form(s) 8609 until it receives the original, properly-recorded LURA or has alternative arrangements which are acceptable to the Department and approved by the Executive Director.

(j) *Cost Certification.* The Department conducts a feasibility analysis in accordance with §42(m)(2)(C)(i)(II) of the Code to make a final determination on the allocation of Housing Tax Credits. The requirements for cost certification include those identified in paragraphs (1) – (3) of this subsection.

- (1) Development Owners must file cost certification documentation no later than January 15 following the first year of the Credit Period, as defined in §42(f)(1) of the Code.
- (2) The Department will evaluate the cost certification documentation and notify the Development Owner of any additional required documentation. The Department reserves the right to request additional documents or certifications as it deems necessary or useful in the determination of the Development's eligibility for a final

Housing Tax Credit Allocation Amount. Any communication issued to the Development Owner pertaining to the cost certification documentation may also be sent to the syndicator.

(3) IRS Form(s) 8609 will not be issued until the conditions as stated in subparagraphs (A) – (G) of this paragraph have been met. The Development Owner has:

(A) provided evidence that all buildings in the Development have been placed in Service by:

(i) December 31 of the year the Commitment was issued;

(ii) December 31 of the second year following the year the Carryover Allocation Agreement was executed;
or

(iii) the approved Placed in Service deadline;

(B) provided a complete final cost certification package in the format prescribed by the Department. As used herein a complete final cost certification package means a package that meets all of the Department's criteria with all required information and exhibits listed in clauses (i) - (xxiii) of this subparagraph, and pursuant to the Post Carryover Activities Manual:

(i) Carryover Allocation Agreement/Determination Notice and Election Statement;

(ii) Development Owner's Statement of Certification;

(iii) Development Owner Summary;

(iv) Evidence of Nonprofit and CHDO Participation;

(v) Evidence of Historically Underutilized Business (HUB) Participation;

(vi) Development Summary (including list of tenant services, unit and common amenities);

(vii) As-Built Survey;

(viii) Closing Statement;

(ix) Title Policy;

(x) Evidence of Placement in Service;

(xi) Independent Auditor's Reports;

(xii) Total Development Cost Schedule;

(xiii) AIA Form G702 and G703, Application and Certificate for Payment;

(xiv) Rent Schedule;

(xv) Utility Allowance;

(xvi) Annual Estimated Operating Expenses and 15-Year *Pro forma*;

(xvii) Current Annual Operating Statement and Rent Roll;

(xviii) Final Sources of Funds;

(xix) Executed Limited Partnership Agreement;

(xx) Loan Agreement or Firm Commitment;

(xxi) Architect's Certification of Fair Housing Requirements;

(xxii) TDHCA Compliance Workshop Certificate; and

(xxiii) Previous Participation Exhibits.

(C) received written notice from the Department that all deficiencies noted during the final construction inspection have been resolved in accordance with Subchapter F of this chapter (relating to Compliance Monitoring);

(D) informed the Department of and received written approval for all amendments and ownership transfers relating to the Development in accordance with §10.405 of this chapter (relating to Amendments) and §10.406 of this chapter (relating to Ownership Transfers); (§2306.6731(b))

(E) submitted to the Department the recorded LURA in accordance with subsection (i) of this section;

(F) paid all applicable Department fees, including any past due fees; and

(G) corrected all issues of noncompliance, including but not limited to noncompliance status with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for the subject Development, as described in this chapter.

§10.403. Direct Loans.

(a) *Loan Closing.* In preparation for closing any Direct Loan the Development Owner must submit the items described in paragraphs (1) – (10) of this subsection:

(1) Documentation of the prior or reasonable assurance of a concurrent closing with any superior lien holders or any other sources of funds determined to be necessary for the long-term financial feasibility of the Development and all due diligence determined by the Department to be prudent and necessary to meet the Department's rules and to secure the interests of the Department. Where the Department will have a first lien position and the Applicant provides documentation that closing on other sources is reasonably expected to occur within three (3) months, the Executive Director may approve a closing to move forward without the closing on other sources. The Executive Director may require a personal guarantee from a Principal of the Development Owner for the interim period.

(2) When Department funds have a first lien position, assurance of completion of the Development in the form of payment and performance bonds in the full amount of the construction contract will be required or equivalent guarantee in the sole determination of the Department. Such assurance of completion will run to the Department as obligee. Development Owners also utilizing the USDA §515 program are exempt from this requirement but must meet the alternative requirements set forth by USDA.

(3) Owner/General Contractor agreement and Owner/architect agreement;

(4) Survey of the Property that includes a certification to the Department, Development Owner, Title Company, and other lenders;

(5) If layered with Competitive Housing Tax Credits, a fully executed limited partnership agreement between the General Partner and the tax credit investor entity (may be provided concurrent with closing);

(6) A budget that includes the amount of Development funds specifying the acquisition cost, construction costs, developer fees, other soft costs and Match to be provided. The sources of funds used to finance the Development must be submitted. If the budget or sources of funds reflect material changes from what was approved by the Board that may affect the financial feasibility of the Development, the Department may request additional documentation to ensure that the Development continues to meet the requirements of Subchapter D of this chapter (relating to 2013 Underwriting and Loan Policies);

- (7) If required for the Direct Loan, prior to closing, the Development Owner must have received verification of environmental clearance;
- (8) Verification of HUD Site and Neighborhood clearance;
- (9) Documentation necessary to show compliance with the Uniform Relocation Act and any other relocation requirements that may apply; and
- (10) Any other documentation that is necessary or prudent to meet program requirements or state or federal law in the sole determination of the Department.

(b) *Loan Documents.* The Development Owner is required to execute all loan closing documents required by and in form and substance acceptable to the Legal Division including but not limited to a promissory note, deed of trust, construction loan agreement, LURA, and assignment and security instruments whereby the Developer, the Development Owner, and/or any Affiliate grants the Department any rights, liens, charges, security interests, ownership interests, mortgages, pledges, hypothecations, or other rights, legally or beneficially, collaterally or directly, to provide for the protection of the Department against any failure to adhere to the program's requirements. The construction loan agreement shall provide for a construction or development period of eighteen (18) months from the actual date of loan closing at which point the permanent loan repayment period will begin. An extension of the construction or development period of not more than 6 months may be approved for good cause by the Executive Director or designee at any time during the construction or development period. Extensions longer than six (6) months or requests other than during the construction or development period may only be approved by the Board for good cause.

(c) *Disbursement of Funds (including developer fees).* The Development Owner must comply with the requirements in paragraphs (1) – (9) of this subsection for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Development Owner's compliance with these requirements may be required with a request for disbursement.

(1) Except for disbursements for acquisition and closing costs, a down-date endorsement to the title policy not older than the date of the last disbursement of funds or forty-five (45) calendar days, whichever is later. For release of retainage the down-date endorsement must be dated at least thirty (30) calendar days after the date of the construction completion;

(2) For hard construction costs, documentation of the total construction costs incurred and costs incurred since the last disbursement of funds must be submitted. Such documentation must be signed by the General Contractor and certified by the Development architect and is generally in the form of an AIA Form G702 or G703.

(3) The Department may require that sufficient funds be held back from initial disbursement to allow for periodic disbursements as may be necessary to meet federal requirements.

(4) If applicable, up to 90 percent of Development funds may be drawn before providing evidence of Match. Thereafter, each Development Owner must provide evidence of Match, including the date of provision, prior to release of the final 10 percent of funds. If funds are utilized for acquisition costs, a contract between the Development Owner and the Person providing the Match which specifies the terms of the Match provision may be accepted;

(5) Developer fee disbursement shall be conditioned upon:

(A) For Developments in which the loan is secured by a first lien deed of trust against the Property, 75 percent shall be disbursed in accordance with percent of construction completed (i.e. 75 percent of the total

allowable fee will be multiplied by the percent completion) as documented by the construction contract and as may be verified by an inspection by the Department. The remaining 25 percent shall be disbursed at the time of release of retainage; or

(B) For Developments in which the loan is not secured by a first lien deed of trust or the Development is also utilizing Housing Tax Credits, developer fees will not be reimbursed by the Department unless the other lenders and syndicator confirm in writing that they do not have an existing or planned agreement to govern the disbursement of developer fees and expect that Department funds shall be used to fund developer fees. Provided this requirement is met, developer fees shall be reimbursed in the same manner as described in subparagraph (A) of this paragraph; and

(C) The Department may reasonably withhold any disbursement of developer fees if it is determined that the Development is not progressing as necessary to meet Contract benchmarks or that cost overruns may put the Department's funds or completion within budget at risk. Once a reasonable alternative that is deemed acceptable by the Department has been provided, disbursement of the remaining fee may occur;

(6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure requested. The Department may request the Development Owner make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of Department funds to Development Owner as may be necessary or advisable for compliance with all program requirements;

(7) Table funding requests must be submitted to the Department with complete documentation no later than ten (10) business days prior to the anticipated loan closing date. Such a request must generally include a draft settlement statement, title company payee identification information, the Development Owner's authorization for disbursement of funds to the title company, request letter from title company to the Texas Comptroller with bank account wiring instructions, and invoices for soft costs being paid at closing;

(8) Include the withholding of 10 percent of the construction contract for retainage. Retainage will be held until at least thirty (30) calendar days after all of the items described in subparagraphs (A) – (D) of this paragraph are received:

(A) completion of construction;

(B) a final inspection, after which receipt, a clearance is issued by the Department;

(C) labor standards final wage compliance report;

(D) receipt of certificates of occupancy for New Construction or a certification of completion from the Development architect for Rehabilitation; and

(9) For final disbursement requests, the Development Owner must submit documentation required for Development completion reports which may include documentation of full compliance with the Uniform Relocation Act and any other applicable relocation requirements.

§10.404. Reserve for Replacement Requirements.

(a) *Maintenance.* The Department will require Development Owners to provide regular maintenance to keep housing sanitary, safe and decent by maintaining a reserve for replacement in accordance with Texas Government Code, §2306.186. The reserve must be established for each Unit in a Development of 25 or more rental units regardless of the amount of rent charged for the Unit. The Department shall, through

cooperation of its divisions responsible for asset management and compliance, ensure compliance with this section.

(b) *Escrow Agent to Reserve Funds.* The First Lien Lender shall maintain the Reserve Account through an escrow agent acceptable to the First Lien Lender to hold reserve funds in accordance with an executed escrow agreement and the rules set forth in this section and Texas Government Code, §2306.186.

(1) Where there is a First Lien Lender other than the Department or a Bank Trustee as a result of a bond trust indenture or tax credit syndication, the Department shall:

- (A) Be a required signatory party in all escrow agreements for the maintenance of reserve funds;
- (B) Be given notice of any asset management findings or reports, transfer of money in Reserve Accounts to fund necessary repairs, and any financial data and other information pursuant to the oversight of the Reserve Account within thirty (30) days of any receipt or determination thereof; and
- (C) Subordinate its rights and responsibilities under the escrow agreement, including those described in this subsection, to the First Lien Lender or Bank Trustee through a subordination agreement subject to its ability to do so under the law and normal and customary limitations for fraud and other conditions contained in the Department's standard subordination clause agreements as modified periodically, to include subsection (c) of this section.

(2) The escrow agreement and subordination agreement, if applicable, shall further specify the time and circumstances under which the Department can exercise its rights under the escrow agreement in order to fulfill its obligations under Texas Government Code, §2306.186 and as described in this section.

(3) Where the Department is the First Lien Lender and there is no Bank Trustee as a result of a bond trust indenture or tax credit syndication, or where there is no First Lien Lender but the allocation of funds by the Department and Texas Government Code, §2306.186 requires that the Department oversee a Reserve Account, the Development Owner shall provide at their sole expense for appointment of an escrow agent acceptable to the Department to act as Bank Trustee as necessary under this section. The Department shall retain the right to replace the escrow agent with another Bank Trustee or act as escrow agent at a cost plus fee payable by the Development Owner due to breach of the escrow agent's responsibilities or otherwise with thirty (30) days prior notice of all parties to the escrow agreement.

(c) *Final Certification Submission.* If the Department is not the First Lien Lender with respect to the Development, each Development Owner receiving Department assistance for multifamily rental housing shall submit on an annual basis within the Department's required Development Owner's Financial Certification packet a signed certification by the First Lien Lender including:

- (1) Reserve for replacement requirements under the first lien loan agreement (if applicable);
- (2) Monitoring standards established by the First Lien Lender to ensure compliance with the established reserve for replacement requirements; and
- (3) A statement by the First Lien Lender indicating:
 - (A) the Development Owner has met all established reserve for replacement requirements; or
 - (B) the plan of action to bring the Development in compliance with all established reserve for replacement requirements.

(d) *Repair Reserve*. If the establishment of a Reserve Account for repairs has not been required by the First Lien Lender or Bank Trustee, each Development Owner receiving Department assistance for multifamily rental housing shall set aside the repair reserve amount as described in subsection (e)(1) - (3) of this section through the date described in subsection (f)(2) of this section through the appointment of an escrow agent as further described in subsection (b)(3) of this section. The Development Owner shall submit on an annual basis within the Department's required Development Owner's Financial Certification packet a signed certification by the First Lien Lender including:

(1) Financial statements, audited if available, with clear identification of the replacement Reserve Account balance and all capital improvements to the Development within the fiscal year;

(2) Identification of costs other than capital improvements funded by the replacement Reserve Account; and

(3) Signed statement of cause for:

(i) Use of replacement Reserve Account for expenses other than necessary repairs, including property taxes or insurance;

(ii) Deposits to the replacement Reserve Account below the Department's or First Lien Lender's mandatory levels as defined in subsections (c) - (e) of this section; and

(iii) Failure to make a required deposit.

(e) *Reserve Account*. If the Department is the First Lien Lender with respect to the Development, each Development Owner receiving Department assistance for multifamily rental housing shall deposit annually into a Reserve Account through the date described in subsection (f)(2) of this section.

(1) For New Construction Developments, not less than \$250 per Unit; or

(2) For Adaptive Reuse, Rehabilitation and Reconstruction Developments, the greater of the amount per Unit per year either established by the information presented in a Property Condition Assessment in conformance with Subchapter D of this chapter (relating to 2013 Underwriting and Loan Policies) or \$300 per Unit per year.

(3) For all Developments, the Development Owner of a multifamily rental housing Development shall contract for a Third-Party Property Condition Assessment and the Department will re-evaluate the annual reserve requirement based on the findings and other support documentation. Submission by the Development Owner to the Department will occur within thirty (30) days of completion of the Property Condition Assessment and must include the complete Property Condition Assessment, the First Lien Lender and/or Development Owner response to the findings of the Property Condition Assessment, documentation of repairs made as a result of the Property Condition Assessment, and documentation of adjustments to the amounts held in the replacement Reserve Account based upon the Property Condition Assessment. A Property Condition Assessment will be conducted:

(A) At appropriate intervals that are consistent with requirements of the First Lien Lender, other than the Department; or

(B) At least once during each five (5) year period beginning with the eleventh (11th) year after the awarding of any financial assistance for the Development by the Department, if the Department is the First Lien Lender or the First Lien Lender does not require a Third-Party Property Condition Assessment.

(f) *Land Use Restriction Agreement (LURA)*. A Land Use Restriction Agreement or restrictive covenant between the Development Owner and the Department must require:

- (1) the Development Owner to begin making annual deposits to the Reserve Account on the later of:
- (A) The date that occupancy of the Development stabilizes as defined by the First Lien Lender or, in the absence of a First Lien Lender other than the Department, the date the Property is at least 90 percent occupied; or
 - (B) The date that permanent financing for the Development is completely in place as defined by the First Lien Lender or in the absence of a First Lien Lender other than the Department, the date when the permanent loan is executed and funded.
- (2) The Development Owner to continue making deposits until the earliest of:
- (A) The date on which the Development Owner suffers a total casualty loss with respect to the Development;
 - (B) The date on which the Development becomes functionally obsolete, if the Development cannot be or is not restored;
 - (C) The date on which the Development is demolished;
 - (D) The date on which the Development ceases to be used as a multifamily rental property; or
 - (E) The later of the end of the Affordability Period specified by the Land Use Restriction Agreement or restrictive covenant; or the end of the repayment period of the first lien loan.

(g) *Change of Ownership Responsibilities.* The duties of the Development Owner under this section cease on the date of a change in ownership of the Development; however, the subsequent Development Owner of the Development is subject to the requirements of this section.

(h) *Penalties and Material Non-Compliance.* If a request for extension or waiver is not approved by the Department then a penalty of up to \$200 per dwelling Unit in the Development and/or characterization of the Development as being in Material Non-Compliance, as defined in §10.003 of this chapter (relating to Definitions) may be taken when:

- (1) A Reserve Account, as described in this section, has not been established for the Development;
- (2) The Department is not a party to the escrow agreement for the Reserve Account;
- (3) Money in the Reserve Account:
 - (i) Is used for expenses other than necessary repairs, including property taxes or insurance; or
 - (ii) Falls below mandatory deposit levels;
- (4) Development Owner fails to make a required deposit;
- (5) Development Owner fails to contract for the Third-Party Property Condition Assessment as required under this section; or
- (6) Development Owner fails to make necessary repairs.

(i) *Department-Initiated Repairs.* The Department or its agent may make repairs to the Development if the Development Owner fails to complete necessary repairs indicated in the submitted Property Condition Assessment or identified by physical inspection. Repairs may be deemed necessary if the Development is notified of the Development Owner's failure to comply with federal, state, and/or local health, safety, or building code. Payment for necessary repairs must be made directly by the Development Owner or through a

replacement Reserve Account established for the Development under this section. The Department or its agent will produce a Request for Bids to hire a contractor to complete and oversee necessary repairs. On a case-by-case basis, the Department may determine that the money in the Reserve Account may be used for expenses other than necessary repairs, including property taxes or insurance, if:

(1) Development income before payment of return to Development Owner or deferred developer fee is insufficient to meet operating expense and debt service requirements; and the funds withdrawn from the Reserve Account are replaced as Cash Flow after payment of expenses, but before payment of return to Development Owner or Developer; or

(2) Development income after payment of operating expenses, but before payment of return to Development Owner or deferred developer fee is insufficient to fund the mandatory deposit levels; and subsequent deposits to the Reserve Account exceed mandatory deposit levels as Cash Flow after payment of operating expenses, but before payment of return to Development Owner or deferred developer fee is available until the Reserve Account has been replenished to the mandatory deposit level less capital expenses to date.

(j) *Exceptions to Reserve Account.* This section does not apply to a Development for which the Development Owner is required to maintain a Reserve Account under any other provision of federal or state law.

§10.405. Amendments.

(a) *Amendments to Application or Award Prior to Land Use Restriction Agreement (LURA) Recording or amendments that do not result in a change to the LURA.* (§2306.6712) Regardless of development stage, the Board shall reevaluate a Development that undergoes a substantial change, as identified in paragraph (4) of this subsection at any time after the initial Board approval of the Development. (§2306.6731(b)) The Board may deny an amendment request and subsequently may revoke any Commitment or Determination Notice issued for a Development and for Competitive HTC Applications, and reallocate the credits to other Applicants on the waiting list.

(1) If a proposed modification would materially alter a Development approved for an allocation of Housing Tax Credits, or if the Applicant has altered any selection criteria item for which it received points, the Department shall require the Applicant to file a formal, written request for an amendment to the Application. Such request must include a proposed form of amendment, if requested by the Department, and the applicable fee as identified in §10.901 of this chapter (relating to Fee Schedule) in order to be received and processed by the Department.

(2) Department staff will evaluate the amendment request. The Executive Director may administratively approve all non-material amendments, including those involving changes to the Developer, Guarantor or Person used to meet the experience requirement in §10.204(5) of this chapter (relating to Required Documentation for Application Submission). Amendments considered material pursuant to paragraph (4) of this subsection must be approved by the Board. Amendment requests which require Board approval must be received by the Department at least forty-five (45) calendar days prior to the Board meeting in which the amendment will be considered. Before the fifteenth (15th) day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting. (§2306.6717(a)(4))

(3) Amendment requests may be denied if the Board determines that the modification proposed in the amendment:

- (A) would materially alter the Development in a negative manner; or
 - (B) would have adversely affected the selection of the Application in the Application Round.
- (4) Material alteration of a Development includes, but is not limited to:
- (A) a significant modification of the site plan;
 - (B) a modification of the number of units or bedroom mix of units;
 - (C) a substantive modification of the scope of tenant services;
 - (D) a reduction of 3 percent or more in the square footage of the units or common areas;
 - (E) a significant modification of the architectural design of the Development;
 - (F) a modification of the residential density of the Development of at least 5 percent;
 - (G) an increase or decrease in the site acreage, other than changes required by local government, of greater than 10 percent from the original site under control and proposed in the Application;
 - (H) exclusion of any requirements as identified in Subchapter B of this chapter (relating to Site and Development Restrictions and Requirements) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules); or
 - (I) any other modification considered significant by the Board.
- (5) In evaluating the amendment under this subsection, Department Staff shall consider whether the need for the proposed modification was reasonably foreseeable by the Applicant at the time the Application was submitted or preventable by the Applicant. Amendment requests will be denied if the circumstances were reasonably foreseeable and preventable unless good cause is found for the approval of the amendment.
- (6) This section shall be administered in a manner that is consistent with §42 of the Code.
- (7) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants identified in the Credit Underwriting Analysis Report at the time of award and as approved by the Board, the procedure described in subparagraphs (A) and (B) of this paragraph will apply to the extent such request is not prohibited based on statutory and/or regulatory provisions:
- (A) for amendments that involve a reduction in the total number of Low-Income Units being served, or a reduction in the number of Low-Income Units at any rent or income level, as approved by the Board, evidence must be presented to the Department that includes written confirmation from the lender and syndicator that the Development is infeasible without the adjustment in Units. The Board may or may not approve the amendment request; however, any affirmative recommendation to the Board is contingent upon concurrence from the Real Estate Analysis Division that the Unit adjustment is necessary for the continued feasibility of the Development; and
 - (B) if it is determined by the Department that an allocation of credits would not have been made in the year of allocation because the loss of low-income targeting points would have resulted in the Application not receiving an allocation, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all Persons or entities with any ownership interest in the Application (excluding any tax credit purchaser/syndicator), from participation in the Housing Tax Credit Program (for both the Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for twenty-four (24) months from the time that the amendment is approved.

(b) *Amendments to the LURA.* Department staff will evaluate the amendment request and provide the Development Owner an amended LURA for execution and recordation in the county where the Development is located. The Executive Director or designee may administratively approve all non-material LURA amendments. Board approval is required if a Development Owner requests a reduction in the number of Low-Income Units, a change in the income or rent restrictions, a change in the Target Population, a substantive modification in the scope of tenant services, or a delay in the Right of First Refusal (ROFR) requirements. The Department will not approve changes that would violate state or federal laws including the requirements of §42 of the Code, 24 CFR Part 92 (HOME Final Rule), §11 of this title (relating to 2013 Qualified Allocation Plan), Texas Government Code, Chapter 2306, the Fair Housing Act, and, for Tax Exempt Bond Developments, compliance with their trust indenture and corresponding bond issuance documents. Prior to staff taking a recommendation to the Board for consideration, the procedures in paragraphs (1) - (5) of this subsection must be followed. An amendment to the LURA is not considered material if the change is the result of a work out arrangement or loan modification or other condition recommended by the Asset Review Committee.

(1) The Development Owner must submit a written request accompanied by an amendment fee as identified in §10.901 of this chapter (relating to Fee Schedule), specifying the requested change, the reason the change is necessary, the good cause for the change and if the necessity for the amendment was reasonably foreseeable at the time of Application;

(2) The Development Owner must supply financial information for the Department to evaluate the financial impact of the change;

(3) The Department may order a Market Study or appraisal to evaluate the request which shall be at the expense of the Development Owner and the Development Owner will remit funds necessary for such report prior to the Department commissioning such report;

(4) At least seven (7) business days before the Board meeting when the Development Owner would like the Board to consider their request, the Development Owner must hold a public hearing. The notice of the hearing and requested change must be provided to each tenant of the Development, the current lender and/or investors, the State Senator and Representative for the district containing the Development, and the chief elected official for the municipality, if located in a municipality, or the county commissioners, if located outside of a municipality; and

(5) Ten (10) business days before the public hearing, the Development Owner must submit a draft notice of the hearing for approval by the Department. The Department will create and provide upon request a sample notice and approve or amend the notice within three (3) business days of receipt.

(c) *Amendments to Direct Loan Terms.* An Applicant may request a change to the terms of a loan or loan commitment. Any such request will be fully vetted and Applicants are encouraged to make such requests in a timely manner providing sufficient time for the Department staff to review and, if necessary, underwrite the changes. The Executive Director or authorized designee may approve amendments to loan terms as described in paragraphs (1) – (5) of this subsection. Board approval is necessary for other any changes.

(1) Extensions of up to twelve (12) months to the loan closing date in the loan Commitment. An Applicant must document good cause, which may include constraints in arranging a multiple-source closing;

(2) Changes to the loan maturity date to accommodate the requirements of other lenders or to maintain parity of term;

(3) Extensions of up to six (6) months for the construction completion or loan conversion date based on documentation that the extension is necessary to complete construction and that there is good cause for the extension. Such a request will generally not be approved prior to initial loan closing;

(4) Changes to the loan amortization or interest rate that cause the annual repayment amount to change less than 20 percent; and

(5) Changes to other loan terms or requirements as necessary to facilitate the loan closing without exposing the Department to undue financial risk.

(d) *HTC Extensions.* Extensions must be requested if the original deadline associated with carryover, the 10 Percent Test (including submission and expenditure deadlines), or cost certification requirements will not be met. If the extension is requested at least thirty (30) calendar days in advance of the deadline, no fee will be required; however, if the extension is requested at any point after the applicable deadline the applicable fee as further described in §10.901 of this chapter must be submitted. Extension requests submitted after the deadline will not be processed unless accompanied by the applicable fee. Extension requests will be approved by the Executive Director or Designee, unless, at staff's discretion it warrants Board approval due to extenuating circumstances stated in the request. The extension request must specify a requested extension date and the reason why such an extension is required. Carryover extension requests will not be granted an extended deadline later than December 1st of the year the Commitment was issued.

§10.406. Ownership Transfers. (§2306.6713)

(a) *Ownership Transfer Notification.* A Development Owner must provide written notice to the Department as least thirty (30) calendar days prior to any sale, transfer, or exchange of the Development or any portion of the Development. Department approval must be requested for any new member to join in the ownership of a Development, except for changes to the limited partner or other partners required by the investment limited partner. Furthermore, a Development Owner may not transfer an allocation of tax credits or ownership of a Development supported with an allocation of tax credits to any Person or entity other than an Affiliate of the Development Owner or non-Controlling Related Party for estate planning purposes unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer.

(b) *Transfers Prior to 8609 Issuance.* Transfers (other than to an Affiliate or non-Controlling Related Party for estate planning purposes included in the ownership structure) will not be approved prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) unless the Development Owner can provide evidence that a hardship is creating the need for the transfer (e.g. potential bankruptcy, removal by a partner, etc.). The Development Owner and the proposed transferee must provide to the Department with a copy of any applicable agreement between the parties to the transfer, including any Third-Party agreement.

(c) *Documentation Required.* A Development Owner must submit documentation requested by the Department, including but not limited to a list of the names of transferees and Related Parties and detailed information describing the experience and financial capacity of transferees and related parties, to enable the Department to understand fully the facts and circumstances that gave rise to the need for the transfer and the effects of approval or denial. All transfer requests must disclose the reason for the request. The Development Owner shall certify that the tenants in the Development have been notified in writing of the transfer no later than thirty (30) calendar days prior to the submission of the transfer request to the Department. Not later than five (5) business days after the date the Department receives all necessary information under this section,

staff shall conduct a qualifications review of a transferee to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter. If the Department determines that the transfer, involuntary removal or replacement, was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure, staff may make recommendations to the Board for the debarment of the entity and/or its principals and affiliates.

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

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

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

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

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

§10.407. Right of First Refusal.

(a) *General.* This section applies to LURAs that provided an incentive for Development Owners to offer a Right of First Refusal to nonprofit or tenant organizations. The purpose of this section is to provide administrative procedures and guidance on the valuation of properties under this restriction using different terminology in the LURA. All requests for Right of First Refusal (ROFR) submitted to the Department, regardless of existing regulations, must adhere to this process. A ROFR request must be made in accordance with the LURA for the Development. If a LURA includes a provision creating ROFR, a Development Owner may not request a Qualified Contract until the requirements outlined in this section have been satisfied. The Department reviews and approves all ownership transfers, including transfers to a nonprofit or tenant organization through a ROFR. Properties subject to a LURA may not be transferred to an entity that is considered an ineligible entity under the Department's most recent Qualified Allocation Plan. In addition, Department staff will not approve an ownership transfer to an entity that controls a Property in Material Noncompliance as defined in §10.003 of this chapter (relating to Definitions). However, an entity that controls a Property in Material Noncompliance that wishes to pursue the acquisition of a Department-administered Property may follow the procedures outlined in Subchapter F of this chapter (relating to Compliance Monitoring). Satisfying the ROFR requirement does not terminate the LURA.

(b) *Right of First Refusal Offer Price.* There are two general expectations of the ROFR offer or sale price identified in the outstanding LURAs. The descriptions that follow do not alter the requirements or definitions included in the LURA but provide further clarification as applicable.

(1) Fair Market Value is established using either a current appraisal of the Property or an executed purchase offer from any buyer other than a qualified nonprofit or tenant organization that the Development Owner would like to accept. The purchase offer must contain specific language that the offer is conditioned upon satisfaction of the ROFR requirement.

(2) The Minimum Purchase Price, pursuant to §42(i)(7)(B) of the Code, is the sum of:

(A) the principal amount of outstanding indebtedness secured by the project (other than indebtedness incurred within the five (5)-year period immediately preceding the date of said notice); and

(B) all federal, state, and local taxes incurred or payable by the Development Owner as a consequence of such sale. If the Property has a minimum Applicable Fraction of less than 1, the offer must take this into account by multiplying the purchase price by the applicable fraction and the fair market value of the non-Low-Income Units.

(c) *Required Documentation.* Upon establishing the value of the Property, the ROFR process is the same for all types of LURAs. The Development Owner may market the Property for sale and sell the Property to a Qualified Nonprofit Organization or tenant organization without going through the ROFR process outlined herein. To proceed with the ROFR request, submit the notice of intent and all documents listed in paragraphs (1) - (12) of this subsection.

(1) Upon the Development Owner's determination to sell the Development to a for-profit entity, the Development Owner shall provide a notice of intent to the Department of said determination to sell the Development and to such other parties as the Department may direct at that time. If the LURA identifies a Qualified Nonprofit Organization or tenant organization that has a limited priority in exercising a ROFR to purchase the Development, the Development Owner must first offer the Property to this entity. If the nonprofit entity does not purchase the Property, this denial of offer must be in writing and submitted to the Department along with the notice of intent to sell the Property as described in paragraph (3) of this subsection and no other documentation in this subsection is necessary. In the event that this organization is not operating when the ROFR is to be made, the ROFR must be provided to another Qualified Nonprofit Organization. Upon review and approval of the notice of intent and denial of offer letter, the Department will notify the Development Owner in writing that the ROFR requirement has been satisfied. Upon receipt of written notice, the Development Owner may pursue the Qualified Contract process or proceed with the sale to a for-profit buyer at or above the posted price.

(2) Documentation verifying the ROFR offer price of the property.

(A) If the Development Owner receives an offer to purchase the Property from any buyer other than a Qualified Nonprofit Organization that the Development Owner would like to accept, the Development Owner may execute a sales contract, conditioned upon satisfaction of the ROFR requirement, and submit the executed sales contract to establish fair market value; or

(B) If the Development Owner of the Property chooses to establish fair market value using an appraisal, the Development Owner must submit an appraisal of the Property completed during the last three (3) months from the date of submission of the ROFR request, establishing a value for the Property in compliance with Subchapter D of this chapter (regarding 2013 Underwriting and Loan Policies) in effect at the time of the request. The appraisal should take into account the existing and continuing requirements to operate the Property under the LURA and any other restrictions that may exist. Department staff will review all

materials within thirty (30) calendar days of receipt. If, after the review, the Department does not agree with the fair market value proposed in the Development Owner's appraisal, the Department may order another appraisal at the Development Owner's expense; or

(C) If the LURA requires valuation through the Minimum Purchase Price calculation, submit documentation verifying the calculation of the Minimum Purchase Price as described in subsection (b)(2) of this section regardless of any existing offer or appraised value; or

(D) If the property has both a minimum purchase price requirement for the restricted portion of the property and a fair market value price for the unrestricted portion then a proportional value of each shall be calculated based on the proportion of Net Rentable Area of each unless otherwise addressed in the LURA.

(E) Any attempt to close on an offer below the minimum purchase price may violate §42(i)(7)(B) of the Code, and will not be approved as an ownership transfer without the opinion of legal counsel of and approved by the limited partner.

(3) Description of the Property, including all amenities and current zoning requirements;

(4) Copies of all documents imposing income, rental and other restrictions, if any, applicable to the operation of the Property;

(5) Copy of the most current title report, commitment or policy in the Development Owner's possession;

(6) Any recent Physical Needs Assessment conducted by a Third-Party that is less than one (1) year old from the date of the submission of the request and in the Development Owner's possession;

(7) Copy of the monthly operating statements, including income statements and balance sheets for the Property for the most recent twelve (12) consecutive months (financial statements should identify amounts held in reserves);

(8) The three (3) most recent consecutive audited annual operating statements, if available;

(9) Detailed set of photographs of the Property, including interior and exterior of representative units and buildings, and the Property's grounds (including digital photographs that may be easily displayed on the Department's website);

(10) Current and complete rent roll for the entire Property;

(11) If any portion of the land or improvements is leased for other than residential purposes, copies of the commercial leases; and

(12) ROFR fee as identified in §10.901 of this chapter (relating to Fee Schedule).

(d) *Process.* Within five (5) business days of receipt of all required documentation, the Department will review the submitted documents and notify the Development Owner of any deficiencies. Once the deficiencies are resolved and the Development Owner and Department come to an agreement on the ROFR offer price of the Property, the Department will list the Property for sale on the Department's website and contact entities on the nonprofit buyer list maintained by the Department to inform them of the availability of the Property for the agreed upon ROFR offer price as determined under this section. The Department will notify the Development Owner when the Property has been listed and of any inquiries or offers generated by such listing. Prospective nonprofit purchasers may submit offers at, above, or below the determined value posted on the website. If the Department or Development Owner receives offers to purchase the Property from more than one tenant or Qualified Nonprofit Organization, the Development Owner shall sell the Property to the organization selected by the Development Owner on such basis as it shall determine

appropriate. The period of time required for offering the property at the ROFR offer price is based upon the period identified in the LURA and clarified in paragraphs (1) and (2) of this subsection:

(1) If the LURA requires a ninety (90) day ROFR posting period, within ninety (90) days from the date listed on the website, the process as identified in subparagraphs (A) – (D) of this paragraph shall be followed.

(A) If an offer from a nonprofit is received at or above the posted ROFR offer price, and the Development Owner does not accept the offer, the ROFR requirement will not be satisfied.

(B) If an offer from a nonprofit is received at or above the posted ROFR offer price and the Development Owner accepts the offer, and the nonprofit fails to consummate the purchase, the ROFR requirement will be deemed met.

(C) If an offer from a nonprofit is received at a price below the posted ROFR offer price, the Development Owner is not required to accept the offer, and the ROFR requirement will be deemed met if no other offers at or above the price are received during the ninety (90) day period.

(D) If no offers are received during the ninety (90) day period, the Department will notify the Development Owner in writing that the ROFR requirement has been met. Upon receipt of written notice, the Development Owner may pursue the Qualified Contract process or proceed with the sale to a for-profit buyer at or above the posted price.

(2) If the LURA requires a two year ROFR posting period, and the Development Owner intends to sell the Property upon expiration of the Compliance Period, the notice of intent described in this section shall be given within two (2) years before the expiration as required by Texas Government Code, §2306.6726. If the Development Owner determines that it will sell the Development at some point later than the end of the Compliance Period, the notice of intent shall be given within two (2) years before the date upon which the Development Owner intends to sell the Development. The two (2) year period referenced in this paragraph begins when the Department has received and approved all documentation required under subsection (c)(1) - (13) of this section. During the two (2) years following the notice of intent, the Development Owner may enter into an agreement to sell the Development only with the parties listed, and in order of priority:

(A) during the first six (6) month period after notice of intent, only with a Qualified Nonprofit Organization that is also a community housing development organization, as defined in the HOME Final Rule and is approved by the Department;

(B) during the second six (6) month period after notice of intent, only with a Qualified Nonprofit Organization or a tenant organization; and

(C) during the second year after notice of intent, only with the Department or with a Qualified Nonprofit Organization approved by the Department or a tenant organization approved by the Department.

(D) If, during the two (2) year period, the Development Owner shall receive an offer to purchase the Development at the Minimum Purchase Price from one of the organizations designated in subparagraphs (A) - (C) of this paragraph (within the period(s) appropriate to such organization), the Development Owner shall sell the Development at the Minimum Purchase Price to such organization. If, during such period, the Development Owner shall receive more than one offer to purchase the Development at the Minimum Purchase Price from one or more of the organizations designated in subparagraphs (A) - (C) of this paragraph (within the period(s) appropriate to such organizations), the Development Owner shall sell the Development at the Minimum Purchase Price to whichever of such organizations it shall choose.

(E) Upon expiration of the two (2) year period, if no Minimum Purchase Price offers were received from a Qualified Nonprofit Organization, tenant organization or the Department, the Department will notify the Development Owner in writing that the ROFR requirement has been met. Upon receipt of written notice, the

Development Owner may pursue the Qualified Contract process or proceed with the sale to a for-profit buyer at or above the minimum purchase price.

(e) *Closing the Transaction.* The Department shall have the right to enforce the Development Owner's obligation to sell the Development as herein contemplated by obtaining a power-of-attorney from the Development Owner to execute such a sale or by obtaining an order for specific performance of such obligation or by such other means or remedy as shall be, in the Department's discretion, appropriate.

(1) Prior to closing a sale of the Property, the final settlement statement and final sales contract with all amendments must be submitted to the Department. If there is no material change in the sales price or terms and conditions of the sale, as approved at the conclusion of the ROFR process, the Department will notify the Development Owner in writing that they may sell the Property or request a Qualified Contract pursuant to §10.408 of this chapter (relating to Qualified Contract Requirements). If the Development Owner proceeds with a sale of the Property, prior to such sale, the Development Owner must obtain Department approval of the transfer through the ownership transfer process in accordance with §10.406 of this chapter (relating to Ownership Transfers).

(2) If the closing price is materially less than the amount identified in the sales contract or appraisal that submitted in accordance with subsection (c)(2)(A) - (E) of this section or the terms and conditions of the sale change materially, in the Department's sole determination, the Development Owner must go through the ROFR process again.

(3) Following notice that the ROFR requirement has been met, if the Development Owner fails to proceed with a request for a Qualified Contract or sell the Property to a for-profit entity within twenty-four (24) months of the Department's written approval, the Development Owner must again offer the Property to nonprofits in accordance with the applicable section prior to any transfer.

(f) *Appeals.* A Development Owner may appeal a staff decision in accordance with §10.902 of this title (relating to the Appeals Process). The appeal may include:

- (1) The best interests of the residents of the Development;
- (2) The impact the decision would have on other Developments in the Department's portfolio;
- (3) The source of the data used as the basis for the Development Owner's appeal;
- (4) The rights of nonprofits under the ROFR;
- (5) Any offers from an eligible nonprofit to purchase the Development; and
- (6) Other factors as deemed relevant by the Executive Director.

§10.408. Qualified Contract Requirements.

(a) *General.* Pursuant to §42(h)(6) of the Code, after the end of the 14th year of the Compliance Period, the Development Owner of a Development utilizing Housing Tax Credits can request that the allocating agency find a buyer at the Qualified Contract Price. If a buyer cannot be located within one (1) year, the Extended Use Period will expire. This section provides the procedures for the submittal and review of Qualified Contract Request.

(b) *Eligibility.* A Development Owner may submit a Qualified Contract Request at any time after the end of the year preceding the last year of the Initial Affordability Period, following the Department's determination that the Development Owner is eligible. The Initial Affordability Period starts concurrently with the credit period, which begins at placement-in-service or is deferred until the beginning of the next tax year, if there is an election. Unless the Development Owner has elected an Initial Affordability Period longer than the Compliance Period, as described in the LURA, this can commence at any time after the end of the 14th year of the Compliance Period. References in this section to actions which can occur after the 14th year of the Compliance Period shall refer, as applicable, to the year proceeding the last year of the Initial Affordability Period, if the Development Owner elected an Initial Affordability Period longer than the Compliance Period.

(1) If there are multiple buildings placed in service in different years, the end of the Initial Affordability Period will be based upon the date the last building placed in service. For example, if five buildings in the Development began their credit periods in 1990 and one began in 1991, the 15th year would be 2005.

(2) If a Development received an allocation in multiple years, the end of the Initial Affordability Period will be based upon the last year of a multiple allocation. For example, if a Development received its first allocation in 1990 and a subsequent allocation and began the credit period in 1992, the 15th year would be 2006.

(3) Development Owners who received an allocation of credits on or after January 1, 2002 are not eligible to request a Qualified Contract. (§2306.185)

(c) *Preliminary Qualified Contract Request.* A Development Owner is eligible to file a pre-request any time after the end of the year proceeding the last year of the Initial Affordability Period.

(1) In addition to determining the basic eligibility described in subsection (b) of this section, the pre-request will be used to determine that:

(A) the Property does not have any outstanding instances of noncompliance, with the exception of the physical condition of the Property;

(B) there is a Right of First Refusal (ROFR) connected to the Property that has been satisfied;

(C) the Compliance Period has not been extended in the LURA and, if it has, the Development Owner is eligible to file a pre-request as described in paragraph (2) of this subsection; and

(D) the Development Owner has all of the necessary documentation to submit a Request.

(2) In order to assess the validity of the pre-request, the Development Owner must submit:

(A) Preliminary Request Form;

(B) Qualified Contract Pre-Request fee as outlined in §10.901 of this chapter (relating to Fee Schedule);

(C) Copy of all regulatory agreements or LURAs associated with the property (non-TDHCA);

(D) Local code compliance report within the last twelve (12) months or HUD-certified UPCS inspection.

(3) The pre-request will not bind the Development Owner to submit a Request and does not start the One (1) Year Period (1YP). A review of the pre-request will be conducted by the Department within ninety (90) days of receipt of all documents described in paragraph (2) of this subsection. If the Department determines that this stage is satisfied, a letter will be sent to the Development Owner stating that they are eligible to submit a Qualified Contract (QC) Request.

(d) *Qualified Contract Request.* A Development Owner may file a QC Request anytime after written approval is received from the Department verifying that the Development Owner is eligible to submit the Request.

(1) The documentation that must be submitted with a Request is outlined in subparagraphs (A) - (P) of this paragraph:

(A) a completed application and certification;

(B) the Qualified Contract price calculation worksheets completed by a Third-Party certified public accountant (CPA). The CPA shall certify that they have reviewed annual partnership tax returns for all years of operation, loan documents for all secured debt, and partnership agreements. They shall also certify that they are not being compensated for the assignment based upon a predetermined outcome;

(C) a thorough description of the Development, including all amenities;

(D) a description of all income, rental and other restrictions, if any, applicable to the operation of the Development;

(E) a current title report;

(F) a current appraisal consistent with Subchapter D of this chapter (relating to 2013 Underwriting and Loan Policies);

(G) a current Phase I Environmental Site Assessment (Phase II if necessary) consistent with Subchapter D of this chapter;

(H) a current property condition assessment consistent with Subchapter D of this chapter;

(I) a copy of the monthly operating statements for the Development for the most recent twelve (12) consecutive months;

(J) the three most recent consecutive annual operating statements;

(K) a detailed set of photographs of the development, including interior and exterior of representative units and buildings, and the property's grounds (including digital photographs that may be easily displayed on the Department's website);

(L) a current and complete rent roll for the entire Development;

(M) a certification that all tenants in the Development have been notified in writing of the request for a Qualified Contract. A copy of the letter used for the notification must also be included;

(N) if any portion of the land or improvements is leased, copies of the leases;

(O) the Qualified Contract Fee as identified in §10.901 of this chapter; and

(P) additional information deemed necessary by the Department.

(2) Unless otherwise directed by the Department pursuant to subsection (g) of this section, the Development Owner shall contract with a broker approved by the Department to market and sell the Property. The fee for this service will be paid by the seller, not to exceed 6 percent of the QC Price.

(3) Within ninety (90) days of the submission of a complete Request, the Department will notify the Development Owner in writing of the acceptance or rejection of the Development Owner's QC Price calculation. The Department will have one (1) year from the date of the acceptance letter to find a Qualified Purchaser and present a QC. The Department's rejection of the Development Owner's QC Price calculation

will be processed in accordance with subsection (e) of this section and the 1YP will commence as provided therein.

(e) *Determination of Qualified Contract Price.* The CPA contracted by the Development Owner will determine the QC Price in accordance with §42(h)(6)(F) of the Code:

(1) Distributions to the Development Owner of any and all cash flow, including incentive management fees and reserve balance distributions or future anticipated distributions, but excluding payments of any eligible deferred developer fee. These distributions can only be confirmed by a review of all prior year tax returns for the Development;

(2) All equity contributions will be adjusted based upon the lesser of the consumer price index or 5 percent for each year, from the end of the year of the contribution to the end of year fourteen or the end of the year of the request for a QC Price if requested at the end of the year or the year prior if the request is made earlier than the last year of the month;

(3) These guidelines are subject to change based upon future IRS Rulings and/or guidance on the determination of Development Owner distributions, equity contributions and/or any other element of the QC Price; and

(4) The QC Price calculation is not the same as the Minimum Purchase Price calculation for the ROFR.

(f) *Appeal of Qualified Contract Price.* The Department reserves the right, at any time, to request additional information to document the QC Price calculation or other information submitted. If the documentation does not support the price indicated by the CPA hired by the Development Owner, the Department may engage its own CPA to perform a QC Price calculation and the cost of such service will be paid for by the Development Owner. If a Development Owner disagrees with the QC Price calculated by the Department, a Development Owner may appeal in writing. A meeting will be arranged with representatives of the Development Owner, the Department and the CPA contracted by the Department to attempt to resolve the discrepancy. The 1YP will not begin until the Department and Development Owner have agreed to the QC Price in writing.

(g) *Marketing of Property.* By submitting a Request, the Development Owner grants the Department the authority to market the Development and provide Development information to interested parties. Development information will consist of pictures of the Development, location, amenities, number of Units, age of building, etc. Development Owner contact information will also be provided to interested parties. The Development Owner is responsible for providing staff to assist with site visits and inspections. Marketing of the Development will continue until such time that a Qualified Contract is presented or the 1YP has expired. Notwithstanding subsection (d)(2) of this section, the Department reserves the right to contract directly with a Third Party in marketing the Development. Cost of such service, including a broker's fee not to exceed 6 percent, will be paid for by the existing Development Owner. The Department must have continuous cooperation from the Development Owner. Lack of cooperation will cause the process to cease and the Development Owner will be required to comply with requirements of the LURA for the remainder of the Extended Use Period. A prospective purchaser must complete all requirements of an ownership transfer request and be approved by the Department prior to closing on the purchase. The Department will then assess if the prospective purchaser is a Qualified Purchaser. Responsibilities of the Development Owner include but are not limited to the items described in paragraphs (1) – (3) of this subsection. The Development Owner must:

(1) allow access to the Property and tenant files;

- (2) keep the Department informed of potential purchasers; and
- (3) notify the Department of any offers to purchase.

(h) *Presentation of a Qualified Contract.* If the Department finds a Qualified Purchaser willing to present an offer to purchase the property for an amount at the QC Price, the Development Owner must agree to enter into a commercially reasonable form of earnest money agreement or other contract of sale for the property and provide a reasonable time for necessary due diligence and closing of the purchase. Although the Development Owner is obligated to sell the development for the QC Price pursuant to a QC, the consummation of such a sale is not required for the LURA to continue to bind the Development for the remainder of the Extended Use Period. Once the Department presents a QC to the Development Owner, the possibility of terminating the Extended Use Period is removed forever and the Property remains bound by the provisions of the LURA.

(1) The Department will attempt to procure a QC only once during the Extended Use Period. If the transaction closes under the contract, the new Development Owner will be required to fulfill the requirements of the LURA for the remainder of the Extended Use Period.

(2) If the Department fails to present a QC before the end of the 1YP, the Department will file a release of the LURA and the Development will no longer be restricted to low-income requirements and compliance. However, in accordance with §42(h)(6)(E)(ii) of the Code, for a three (3) year period commencing on the termination of the Extended Use Period, the Development Owner may not evict or displace tenants of Low-Income Units for reasons other than good cause and will not be permitted to increase rents beyond the maximum tax credit rents. Additionally, the Development Owner should submit evidence, in the form of a signed certification and a copy of the letter to be created by the Department, that the tenants in the Development have been notified in writing that the LURA has been terminated and have been informed of their protections during the three (3) year time frame.

(3) Prior to the Department filing a release of the LURA, the Development Owner must correct all instances of noncompliance with the physical condition of the Property.

(i) *Compliance Monitoring during Extended Use Period.* For Developments that continue to be bound by the LURA and remain as affordable after the end of the Compliance Period, the Department will implement modified compliance monitoring policies and procedures. Refer to the Extended Use Period Compliance Policy in Subchapter F of this title (relating to Compliance Monitoring) for more information.

7g

BOARD ACTION REQUEST

COMPLIANCE DIVISION

SEPTEMBER 6, 2012

Presentation, Discussion, and Possible Action regarding the proposed repeal of 10 TAC Chapter 60, Subchapter A, §§60.101 – 60.130 concerning Compliance Administration and proposal of a new 10 TAC Chapter 10, Subchapter F, §§10.601 – 10.625 concerning Compliance Monitoring for public comment and publication in the *Texas Register*.

RECOMMENDED ACTION

WHEREAS, the Department is reorganizing its rules in the Texas Administrative Code, and the compliance rules have been located in Chapter 60, subchapter A and the Department is proposing a new chapter of rules all of which will address multifamily housing, it is hereby

RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered and directed, for an on behalf of the Department, to approve the proposed repeal of 10 TAC Chapter 60, Subchapter A, §§60.101 –60.130 and the proposed new 10 TAC Chapter 10, Subchapter F, §§10.601 – 10.625 to be published in the Texas Register for review and public comment, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

The Compliance Rules are being moved from Chapter 60, Subchapter A into Chapter 10, Subchapter F along with the other Department rules regarding multifamily housing. Some sections of Chapter 60 are moving to other subchapters of Chapter 10. The definitions have been incorporated into Subchapter A. The sections on recording Land Use Restriction Agreements (LURA), construction inspection reports, and Material Amendments to LURAs have moved to Subchapter E: Post Award and Asset Management since those functions transferred in the Department reorganization. In addition, the section regarding previous participation reviews and requests for reinstatement have moved to Chapter 1 since that is a process that affects all types of programs, not just multifamily transactions.

An online forum was available to provide Department staff with feedback beginning July 30, 2012. Five individuals provided comment and suggestions. Some comments have been incorporated others have not because the issues are addressed in other handbooks or rules.

Significant changes to the rule include:

§10.603 (former §60.105) Reporting Requirements.

All multifamily rental developments submit an annual report consisting of five parts Part A Owner's Certification of Program Compliance, Part B Unit Status Report, Part C Housing for Persons with

Disabilities, Part D Owner's Financial Certification, and Part E Form 8703 (tax-exempt bond properties only). A change in the due date for the annual report is proposed. In the past, Parts A, B, C and E were due on March 1st and Part D was due the last day in April. The proposal is to change the report due date for all section to the last day in April.

§10.607(m) (former § 60.109) Utility Allowances:

(m) The Department will review utility allowances for reasonableness by comparing the allowance to other available data. If the allowance does not appear reasonable or appears understated, the Department may require additional support and/or deny the request.

On occasion, staff has concerns about the utility allowances presented for approval and wants to be sure that the amounts are accurate, reasonable and in compliance with the law. This new paragraph makes it clear that if the amount appears inaccurate, additional information will be requested.

§10.608(f) (former §60.110) Lease Requirements:

(f) All owners must provide prospective households with a Department approved fair housing disclosure notice. This notice must be executed by the household no more than thirty days and no less than three days prior to the effective date of the lease. This requirement pertains to all households taking initial occupancy of a unit on a Development administered by the Department, including households transferring units within the same Development.

The paragraph incorporates the requirements of the Court Order issued in the ICP lawsuit.

§10.608(g) (former §60.110) Lease Requirements:

(g) For HOME and NSP Developments, the HOME Final Rule (and as adopted by Texas NSP) requires that properties initially built for occupancy prior to 1978 include in their lease or lease addendum a Lead Warning Statement. To demonstrate compliance, the Department will monitor that, all households at HOME and NSP Developments have signed the Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards (24 CFR §92.355).

This second paragraph formally addresses the existing federal requirement to provide disclosure regarding lead based paint. Most owners already incorporate this notification into their leasing procedures. This new paragraph puts owners on notice that the Department will begin monitoring to ensure it is present and requiring corrective action if not.

§10.610(d) (former §60.112) Managing Additional Income and Rent Restrictions for HTC, Exchange and TCAP Developments.

(d) Units at 80 percent area median income and rent on HTC developments. In certain years, the Department's Qualified Allocation Plan provided incentives to lease 10 percent of the development's Market Rate units to households at 80 percent income and rents. This section provides guidance for implementation. If the LURA requires 10 percent of the Market Rate units be leased to households at 80 percent income and rent limits, the owner must certify the 80 percent households at the time of move in only. Recertifications will not be required. Student rules do not apply to units occupied by 80 percent households. Noncompliance with the requirement to lease to 80 percent households is not reportable to the IRS on form 8823 but will be cited and scored as noncompliance under the event "Development failed to meet additional State required rent and occupancy restrictions".

This paragraph is added to provide implementation guidance.

§10.618(h) (former §60.120) Special Rules Regarding Rents and Rent Limit Violations.

(h) Employee Occupied Units (HTC Developments). Revenue Rulings 92-61 and 2004-82 provide guidance on employee occupied units. Provided that all the criteria in the Rulings are met, if the owner of the Development does not charge the employee for rent, the unit will be removed from the numerator and denominator of the applicable fraction to determine compliance. If the owner charges the employee any amount of rent, the Department will evaluate the eligibility of the household. If the household's income exceeds the maximum allowable limit or there is any other noncompliance, the event will be cited, scored and reported to the IRS on form 8823 as appropriate.

Staff recently attended a Housing Tax Credit conference where representatives from the IRS and Treasury provided guidance to state housing finance agencies. States were requested to report noncompliance if owners were charging rents to employees who live onsite and are not income qualified. This paragraph is to notify owners that staff will begin monitoring for this issue.

Other changes to the rule are clarifications and do not substantially change requirements of owners.

Attachment 1. Preamble and proposed new 10 TAC Chapter 10, Subchapter F §§10.601 through 106.25 concerning Compliance Monitoring.

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 10, Subchapter F, §§10.601 - 10.625 concerning Compliance Monitoring. The purpose of this proposed new Subchapter is to provide guidance on complying with multifamily Department programs.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to increased costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be compliant affordable housing. There will be no change in the economic cost to any individuals required to comply with the new sections.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no change in the economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012 to receive input on the new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Patricia Murphy, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. October 22, 2012.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed new sections affect Texas Government Code, Chapter 2306 with regard to the cited programs.

§10.601. Purpose and Overview.

(a) This chapter satisfies the requirement of Internal Revenue Code (the “Code”) §42(m)(1)(B)(iii) to provide a procedure that will be followed for monitoring for noncompliance with the provisions of the Code and to notify the Internal Revenue Service (IRS) of such noncompliance. This chapter is consistent with requirements established under applicable state and federal laws, rules, and regulations, and the Department will monitor in accordance with this chapter. Nothing in this chapter serves to waive, alter, or amend the requirements of any duly recorded Land Use Restriction Agreement (LURA). A party to a LURA wishing to have the LURA amended must submit a formal request to the Department, and the

Department will review any such request to determine if it is acceptable and, if acceptable, specify any appropriate requirements for or conditions or limitations on any such amendment. The Department monitors rental Developments receiving assistance under:

- (1) the Housing Tax Credit program (HTC);
- (2) the HOME Investment Partnerships program (HOME);
- (3) the Tax Exempt Bond program (BOND);
- (4) the Housing Trust Fund program (HTF);
- (5) the Tax Credit Assistance Program (TCAP);
- (6) the Tax Credit Exchange Program (Exchange); and
- (7) the Neighborhood Stabilization Program (NSP).

(b) All Developments monitored by the Department are subject to the Department's enforcement rules, found in Chapter 60, Subchapter C of this title (relating to Administrative Penalties).

(c) Compliance monitoring begins with the commencement of construction and continues to the end of the long term Affordability Period. The Compliance Division monitors to ensure Owners comply with the program rules and regulations, Texas Government Code, Chapter 2306, the LURA requirements and conditions, and representations imposed by the Application or award of funds by the Department. This chapter does not address forms and other records that may be required of Development Owners by the IRS or other governmental entities, whether for purposes of filing annual returns or supporting Development Owner tax positions during an IRS or other governmental audit.

§10.602. Construction Monitoring.

(a) The Department will monitor the entire construction phase for all applicable requirements according to the level of risk. After Final Construction during the Affordability Period, the Department will periodically monitor the Development to assure that the initial compliance review was correct.

(b) Owners are required to submit evidence of final construction within thirty (30) days of completion in a format prescribed by the Department. In addition, the Architect of Record must submit a certification that the Development was built in compliance with all applicable laws and the Engineer of Record (if applicable) must submit a certification that the Development was built in compliance with the design requirements.

(c) The Department will conduct a final inspection after receipt of notification of final construction. During the inspection, the Department will confirm that committed amenities have been provided and will inspect for compliance with the applicable accessibility laws. In addition, a Uniform Physical Condition Standards inspection may be completed.

(d) Owners will be provided a written notice after the final inspection. If any deficiencies are noted, a corrective action period will be provided.

(e) Forms 8609 and final retainage will not be released until the Owner receives written notice from the Department that all noted deficiencies have been resolved.

(f) During any construction inspection, if the Owner and the Department are unable to agree that an identified issue is a violation, the Owner must request Alternative Dispute Resolution (ADR). The process for engaging ADR is outlined in §10.622 of this subchapter.

§10.603. Reporting Requirements.

(a) The Department requires reports to be submitted electronically through the Department's web-based Compliance Monitoring and Tracking System (CMTS) and in the format prescribed by the Department. The Electronic Compliance Reporting Filing Agreement and the Owner's Designation of Administrator of Accounts forms must be filed no later than September 1st of the year following the award. The Department will provide general instruction regarding the electronic transfer of data. Under special circumstances, the Department may, at its discretion, waive the online reporting requirements where a hardship can be demonstrated. In the absence of a written waiver, all Developments are required to submit reports online.

(b) Each Development is required to submit an Annual Owner's Compliance Report (AOCR). Depending on the Development, some or all of the Report must be submitted. The first AOCR is due the second year following the award in accordance with the deadlines set out in subsection (c) of this section. For example, if a Development is awarded funds in calendar year 2007, the first report is due in 2009. The AOCR is comprised of five sections:

(1) Part A "Owner's Certification of Program Compliance." All Development Owners must annually certify to compliance with applicable program requirements. The AOCR Part A shall include answers to all questions required by Treasury Regulation 1.42-5(b)(1) or the applicable program rules. In addition, Owners are required to report on the race and ethnicity, family composition, age, income, use of rental assistance, disability status, and monthly rental payments of individuals and families applying for and

receiving assistance. HTC Developments during the Compliance Period will also be required to provide the name and mailing address of the syndicator in the Annual Owner's Compliance Report;

(2) Part B "Unit Status Report." All Developments must annually report the information related to individual household income, rent, certification dates and other necessary data to ensure compliance with applicable program regulations;

(3) Part C "Housing for Persons with Disabilities." The Department is required to establish a system that requires Owners of state or federally assisted housing Developments with 20 or more housing Units to report information regarding housing Units designed for persons with disabilities. The questions on Part C satisfy this requirement;

(4) Part D "Owner's Financial Certification." Developments funded by the Department must annually provide the data requested in the Owner's Financial Certification; and

(5) Part E "Form 8703." Tax exempt bond properties must file form 8703 each calendar year of the qualified project period. The form is due to the IRS by March 31 after the close of the calendar year for which the certification is made. The Department requires Tax Exempt Bond Development Owners to submit a copy of the filed form 8703 for the preceding calendar year.

(c) Parts A, B, C and E of the Annual Owner's Compliance Report must be provided to the Department no later than the last day in April of each year, reporting data current as of December 31st of the previous year (the reporting year). Part D, "Owner's Financial Certification," which includes the current audited financial statements and income and expenses of the Development for the prior year, must be submitted to the Department no later than the last day of April each year.

(d) Any Development for which the AOCR, Part A, "Owner's Certification of Program Compliance," is not received or is received past the due date will be considered not in compliance with this section. If Part A is incomplete, improperly completed, or is not submitted by the Development Owner, it will be considered not received and not in compliance with this section. The Department will report to the IRS on Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition, any HTC Development that fails to comply with this requirement.

(e) Department staff will review Part A of the AOCR for compliance with the requirements of the appropriate program. If it appears that the Development is not in compliance based upon the report, the Owner will be given written notice and provided a corrective action period to clarify or correct the report. If the Owner does not respond to the notice, the report will be subject to the sanctions listed in subsections (f) and (g) of this section.

(f) If any required section, or sections (Parts A, B, C, D or E), of the report are not received on or before the deadline for submission specified in subsection (c) of this section, a notice of noncompliance will be sent to the Owner, specifying a corrective action deadline. If the report is not received on or before the corrective action deadline, the Department shall:

(1) For all HTC Developments, issue Form 8823 notifying the IRS of the violation; and

(2) For all Developments, score the noncompliance in accordance with §10.621 of this subchapter (relating to Material Noncompliance Methodology).

(g) The Department may assess and enforce the sanctions described in paragraphs (1) and (2) of this subsection against an Owner who fails to submit all or any part of the AOCR on or before the due date of each year and has multiple, consistent, and/or repeated violations of failure to submit all or any part of the AOCR by the due date each year:

(1) a late processing fee in the amount of \$1,000; and/or

(2) a HTC Development that fails to submit the required AOCR for three (3) consecutive years may be reported to the IRS as no longer in compliance and never expected to comply.

(h) Periodic Unit Status Reports. All Developments must submit a Quarterly Unit Status report to the Department through the Compliance Monitoring and Tracking System. Quarterly reports are due in January, April, July, and October on the 10th day of the month. The report must report occupancy as of the last day of the previous month for the reporting period. For example, the report due October 10th should report occupancy as of September 30th. The first quarterly report is due on the first quarterly reporting date after leasing activity commences.

(i) Owners are encouraged to continuously maintain current resident data in the Department's CMTS. Under certain circumstances, such as in the event of a natural disaster, the Department may alter the reporting schedule and require all Developments to provide current occupancy data through CMTS.

(j) All rental Developments funded or administered by the Department will be required to submit a current Unit Status Report prior to an onsite monitoring visit.

(k) Exchange developments must submit form 8609 with lines 7, 8(b), 9(b), 10(a), 10(c), and 10(d) thirty (30) days after the Department issues the executed form(s).

§10.604. Record Keeping Requirements.

(a) Development Owners must comply with program recordkeeping requirements. Records must include sufficient information to comply with the reporting requirements of §10.603 of this subchapter (relating to Reporting Requirements) and any additional programmatic requirements. HTC Development Owners must retain records sufficient to comply with the reporting requirements of Treasury Regulation 1.42-5(b)(1). Records must be kept for each qualified Low Income Unit and building in the Development, commencing with lease up activities and continuing on a monthly basis until the end of the Affordability Period.

(b) Each Development that is administered by the Department must retain records as required by the specific funding program rules and regulations. In general, retention schedules include but are not limited to the provision of subsections (c) - (f) of this section.

(c) HTC records must be retained for at least six years after the due date (with extensions) for filing the federal income tax return for that year; however, the records for the first year of the Credit Period must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period of the building (§1.42-5(b)(2) of the Code).

(d) Retention of records for NSP and HOME rental Developments must comply with the provisions of 24 CFR §92.508(c), which generally requires retention of rental housing records for five (5) years after the Affordability Period terminates.

(e) Housing Trust Fund (HTF) rental Developments must retain tenant files for at least three (3) years beyond the date the tenant moves from the Development. Records pertinent to the funding of the award, including but not limited to the Application and Development costs and documentation, must be retained for at least five (5) years after the Affordability Period terminates.

(f) Other rental Developments funded or administered in whole or in part by the Department must comply with record retention requirements as required by rule or deed restriction.

§10.605 . Notices to the Department.

(a) If any of the events described in paragraphs (1) – (4) of this subsection occur, written notice must be provided to the Department within the respective timeframes:

(1) Written notice must be provided at least thirty (30) days prior to any sale, transfer, or exchange of the Development or any portion of the Development;

(2) Notification must be provided within thirty (30) days following the event of any casualty loss, in whole or in part, to the Development, using the Department's Notice of Casualty Loss (for general casualty losses) or Notice of Disaster Casualty Loss (specific to loss as a result of a Presidentially Declared Disaster); and

(3) Owners of Bond Developments shall notify the Department of the date on which 10 percent of the Units are occupied and the date on which 50 percent of the Units are occupied, within ninety (90) days of such dates and

(4) Within thirty (30) days after a foreclosure, the Department must be provided with documentation evidencing the foreclosure and a rent roll establishing occupancy on the day of the foreclosure.

(b) Owners are responsible for maintaining current information (including contact persons, physical addresses, mailing addresses, email addresses, and phone numbers) for the Ownership entity and management company in the Department's Compliance Monitoring and Tracking System (CMTS). Treasury Regulations require the Department to notify Housing Tax Credit Owners of upcoming reviews and instances of noncompliance. The Department will rely on the information supplied by the Owner in CMTS to meet this requirement.

§10.606. Determination, Documentation and Certification of Annual Income.

(a) For all rental programs administered by the Department, annual income shall be determined consistent with the Section 8 Program, using the definitions of annual income described in HUD Handbook 4350.3 as amended from time to time. For the Housing Tax Credit program, where there is a conflict between the HUD Handbook 4350.3 and the IRS Guide for Completing form 8823, the Department will evaluate annual income consistent with the IRS Guide. At the time of program designation as a low income household, Owners must certify and document household income. In general, all low income households must be certified prior to move in.

(b) The Department permits Owners to use check stubs or other firsthand documentation of income and assets provided by the applicant or household in lieu of third party verification forms. It is not necessary to first attempt to obtain a third party verification form.

(c) The Department requires the use of the TDHCA Income Certification form, unless the property also participates in the Rural Development or a project Based HUD program, in which case, the other program's income certification form will be accepted.

§10.607. Utility Allowances.

(a) The Department will monitor to determine if HTC, HOME, BOND, HTF, NSP, TCAP, and Exchange properties comply with published rent limits which include an allowance for tenant paid utilities. For HTC, TCAP and Exchange buildings, if the residents pay utilities directly to the Owner of the building or to a third party billing company, and the amount of the bill is based on an allocation method or "ratio utility billing system" (RUBS), this monthly amount will be considered a mandatory fee. For HTC, TCAP and Exchange buildings, if the residents pay utilities directly to the Owner of the building or to a third party billing company, and the amount of the bill is based on the tenant's actual consumption, Owner may account for the utility in an allowance. The rent, plus all mandatory fees, plus an allowance for those utilities paid by the resident directly to a utility provider, must be less than the allowable limit. For HOME, BOND, HTF, and NSP buildings, Owners may account for utilities paid directly to the Owner or to a third party billing company in their utility allowance. Where residents are responsible for some, or all, of the utilities--other than telephone, cable, and internet--Development Owners must use a utility allowance that complies with both this section and the applicable program regulations. An Owner may not change utility allowance methods or start charging residents for a utility without written approval from the Department. *Example 607(1)*: A Housing Tax Credit Development has been paying for water and sewer since the beginning of the Compliance Period. In year 8, the owner decides to require residents to pay for water and sewer. Prior written approval from the Department is required. Any such request must include the Utility Allowance Questionnaire found on the Department's website.

(b) Rural Housing Services (RHS) buildings or buildings with RHS assisted tenants. The applicable utility allowance for the Development will be determined under the method prescribed by the RHS (or successor agency). No other utility method described in this section can be used by RHS buildings or buildings with RHS assisted tenants.

(c) HUD-Regulated buildings layered with any Department program. If neither the building nor any tenant in the building receives RHS rental assistance payments, and the rents and the utility allowances of the building are reviewed by HUD (HUD-regulated building), the applicable utility allowance for all rent restricted Units in the building is the applicable HUD utility allowance. No other utility method described in this section can be used by HUD-regulated buildings.

(d) Other Buildings. For all other rent-restricted Units, Development Owners must use one of the methods described in paragraphs (1) – (5) of this subsection:

(1) The utility allowance established by the applicable Public Housing Authority (PHA) for the Section 8 Existing Housing Program. The Department will utilize Texas Local Government Code Chapter 392 to determine which PHA is the most applicable to the Development. If the PHA publishes different schedules based on building type, the Owner is responsible for implementing the correct schedule based on the Development's building type(s). *Example 607_(2)*: The applicable PHA publishes a separate utility allowance schedule for Apartments (5+ units), one for Duplex/Townhomes and another for Single Family Homes. The Development consist of twenty buildings, ten of which are Apartments (5+ units) and the other ten buildings are Duplexes. The Owner must use the correct schedule for each building type. In the event the PHA publishes a utility allowance schedule specifically for energy efficient units, the Owner must demonstrate that the building(s) meet the housing authority's specifications for energy efficiency on an ongoing basis. If the applicable PHA allowance lists flat fees for any utility, those flat fees must be included in the calculation of the utility allowance if the resident is responsible for that utility. If an Owner chooses to implement a methodology as described in paragraph (2), (3), (4), or (5) of this subsection, for Units occupied by Section 8 voucher holders, the utility allowance remains the applicable PHA utility allowance established by the PHA from which the household's voucher is received. In general, if the property is located in an area that does not have a municipal, county or regional housing authority that publishes a utility allowance schedule for the Section 8 Existing Housing Program, Owners must select an alternative methodology. In the event the property is located in an area without a clear municipal or county housing authority the Department may permit the use of another housing authority's utility allowance schedule on a case by case basis. Prior approval from the Department would be required and the owner would be required to obtain approval on an annual basis.

(2) A written estimate from a local utility provider. If there are multiple utility companies that service the Development, the local provider must be a residential utility company that offers service to the residents of the Development requesting the methodology. The Department will use the Texas Electric Choice website: <http://www.powertochoose.org/> to verify the availability of service. If the utility company is not listed as a provider in the Development's ZIP code, the request will be denied. Additionally, the estimate must be signed by the utility provider representative and specifically include all "component charges" for providing the utility service. Receipt of the information from the utility provider begins the ninety (90) day period after which the new utility allowance must be used to compute gross rent.

(3) The HUD Utility Schedule Model. A utility estimate can be calculated by using the "HUD Utility Schedule Model" that can be found at <http://www.huduser.org/portal/resources/utilmodel.html> (or successor Uniform Resource Locator). The rates used must be no older than the rates in effect sixty (60) days prior to the beginning of the ninety (90) day period in which the Owner intends to implement the allowance. For Owners calculating a utility allowance under this methodology, the model, along with all back-up documentation used in the model, must be submitted to the Department, on a CD, within the timeline described in subsection (f) of this section. The date entered as the "Form Date" on the "Location" tab of the spreadsheet will be the date used to begin the ninety (90) day period after which the new utility allowance must be used to compute gross rent.

(4) An energy consumption model. The utility consumption estimate must be calculated by a properly licensed mechanical engineer or an individual holding a valid Residential Energy Service Network (RESNET) or Certified Energy Manager (CEM) certification. The individual must not be related to the Owner within the meaning of §267(b) or §707(b) of the Code. The utility consumption estimate must, at minimum, take into consideration specific factors that include, but are not limited to, Unit size, building orientation, design and materials, mechanical systems, appliances, and characteristics of building location. The ninety (90) day period after which the new utility allowance must be used to compute gross rent will begin sixty (60) days after the end on the last month of the twelve (12) month period for which data was used to compute the estimate.

(5) An allowance based upon an average of the actual use of similarly constructed and sized Units in the building using actual utility usage data and rates, provided that the Development Owner has the written permission of the Department. This methodology is referred to as the "Actual Use Method."

(e) For a Development Owner to use the Actual Use Method they must:

(1) provide a minimum sample size of usage data for at least five (5) Continuously Occupied Units of each Unit Type or 20 percent of each Unit Type whichever is greater. *Example 607(3)*: A Development has twenty three bedroom/one bath Units, and eighty (80) three bedroom/two bath Units. Each bedroom/bathroom equivalent Unit is within 120 square feet of the same floor area. Data must be supplied for at least five of the three bedroom/one bath Units, and sixteen of the three bedroom/two bath Units. If there are less than five Units of any Unit Type, data for 100 percent of the Unit Type must be provided;

(2) scan the information in subparagraphs (A) - (E) of this paragraph onto a CD and submit it to the Department no later than the beginning of the ninety (90) day period in which the Owner intends to implement the allowance, reflecting data no older than sixty (60) days prior to the ninety (90) day implementation period. *Example 607 (4)*: The utility provider releases the information regarding electric usage at Westover Townhomes on February 5, 2010. The data provided is from February 1, 2009 through January 31, 2010. The Owner must submit the information to the Department no later than March 31, 2010 for the information to be valid;

(A) An Excel spreadsheet listing each Unit for which data was obtained to meet the minimum sample size requirement of a Unit Type, the number of bedrooms, bathrooms and square footage for each Unit, the household's move-in date, the actual kilowatt usage for each month of the 12 month period for each Unit for which data was obtained, and the rates in place at the time of the submission;

(B) A copy of the request to the utility provider (or billing entity for the utility provider) to provide usage data;

(C) All documentation obtained from the utility provider (or billing entity for the utility provider) and/or copies of actual utility bills gathered from the residents, including all usage data not needed to meet the minimum sample size requirement and any written correspondence from the utility provider;

(D) The rent roll showing occupancy as of the end of the month for the month in which the data was requested from the utility provider;

(E) Documentation of the current utility allowance used by the Development;

(3) Upon receipt of the required information, the Department will determine if the Development Owner has provided the minimum information necessary to calculate an allowance using the Actual Use Method. If so, the Department shall calculate the utility allowance for each bedroom size using the guidelines described in subparagraphs (A) – (E) of this paragraph:

(A) If data is obtained for more than 20 percent or five (5) of each Unit Type, all data will be used to calculate the allowance;

(B) If more than twelve (12) months of data is provided for any Unit, only the data for the most current twelve (12) months will be averaged;

(C) The allowance will be calculated by multiplying the average units of measure for the applicable utility (i.e. kilowatts over the last twelve (12) months by the current rate) for all Unit Types within that bedroom size. For example, if sufficient data is supplied for eighteen (18) two bedroom/one bath Units, and twelve (12) two bedroom/two bath Units, the data for all 30 Units will be averaged to calculate the allowance for all two bedroom Units;

(D) The allowance will be rounded up to the next whole dollar amount. If allowances are calculated for different utilities, each utility's allowance will be rounded up to the next whole dollar amount and then added together for the total allowance;

(E) If the data submitted indicates zero usage for any month, the data for that Unit will not be used to calculate the Utility Allowance;

(4) The Department will complete its evaluation and calculation within forty-five (45) days of receipt of all the information requested in paragraph (2) of this subsection;

(5) Receipt of approval from the Department will begin the ninety (90) day period after which the new utility allowance must be used to compute gross rent; and

(6) For newly constructed Developments or Developments that have Units which have not been continuously occupied, the Department, on a case by case basis, may use consumption data for Units of similar size and construction in the geographic area to calculate the utility allowance.

(f) Effective dates. If the Owner uses the methodologies as described in subsection (b), (c), or (d)(1) of this section, any changes to the allowance can be implemented immediately, but must be implemented for rent due ninety (90) days after the change. For methodologies as described in subsection (d)(2) - (5) of this section, the allowance cannot be implemented until the estimate is submitted to the Department and is made available to the residents by posting in a common area of the leasing office at the Development. This action must be taken by the beginning of the ninety (90) day period in which the Owner intends to implement the utility allowance. With the exception of the methodology described in

subsection (d)(5) of this section, if a response is not received from the Department within the ninety (90) day period, the Owner may temporarily use the submission as a safe harbor until the Department provides written authorization (the Owner cannot assume that the allowance is approved by the Department but can operate in good faith prior to notification). Failure to submit the proposed utility allowance to the Department and make it available to the residents will result in a finding of noncompliance.

(g) Requirements for Annual Review. Owners utilizing the methods described in subsections (b) and (c) of this section must demonstrate that the utility allowance has been reviewed annually. Any change in the method described in subsection (d)(1) of this section can be implemented immediately, but must be implemented for rent due ninety (90) days after the change. Owners utilizing the methods described in subsection (d)(2) - (5) of this section must submit to the Department, once a calendar year, copies of the utility estimate and simultaneously make the estimate available to the residents by posting the estimate in a common area of the leasing office at the Development. Changes in utility allowances cannot be implemented until the estimate has been submitted to the Department and made available to the residents by posting in the leasing office for a ninety (90) day period. The back-up documentation required by the methodology the Owner has chosen must be submitted to the Department for approval no later than October 1st; however, the Department encourages Owners to submit documentation prior to the October 1st deadline in order to ensure that the Department has adequate time to review and respond to the Owner's estimate.

(h) Combining Methodologies. With the exception of HUD regulated buildings and RHS buildings, Owners may combine any methodology described in this section for each utility service type paid directly by the resident and not by or through the Owner of the building (electric, gas, etc.). For example, if residents are responsible for electricity and gas, an Owner may use the appropriate PHA allowance to determine the gas portion of the allowance and use the Actual Use Method to determine the electric portion of the allowance.

(i) Increases in Utility Allowances for Developments with HOME and NSP_funds. Unless otherwise instructed by HUD, the Department will permit owners to implement changes in utility allowance in the same manner as Housing Tax Credit (HTC) Developments.

(j) The Owner shall maintain and make available for inspection by the tenant the data upon which the utility allowance schedule is calculated. Records shall be made available at the resident manager's office during reasonable business hours or, if there is no resident manager, at the dwelling Unit of the tenant at the convenience of both the Owner and tenant.

(k) In general, the Department permits Owners to select the method for establishing a utility allowance. However, in accordance with the HOME final Rule 24 CFR §92.252(c) and as adopted by Texas NSP the Department has the right to calculate the utility allowance for HOME rental Developments. In addition, the Department will select the method for establishing the utility allowance for Housing Tax Credit properties who's LURA terminated early.

(l) If Owners want to utilize the HUD Utility Schedule Model or the Energy Consumption Model to establish the initial utility allowance for the Development, prior to the commencement of leasing activities, the Owner must submit utility allowance documentation for Department approval.

(m) The Department will review utility allowances for reasonableness by comparing the allowance to other available data. If the allowance does not appear reasonable or appears understated, the Department may require additional support and/or deny the request.

§10.608. Lease Requirements.

(a) Eviction, termination, refusal to renew a lease. For HTC Developments, Revenue Ruling 2004-82 prohibits the eviction or termination of tenancy of low income households for other than good cause throughout the entire Affordability Period, and for three (3) years after termination of an extended low-income housing commitment. Owners executing or renewing leases after November 1, 2007 shall specifically state in the lease or in an addendum attached to the lease that evictions or terminations of tenancy for other than good cause are prohibited.

(b) For HOME and NSP Developments, the HOME Final Rule (and as adopted by Texas NSP) prohibits Owners from evicting low income residents or refusing to renew a lease except for serious or repeated violations of the terms and conditions of the lease, for violations of applicable federal, state or local law, for completion of the tenancy period for transitional housing, or for other good cause. To terminate tenancy, the Owner must serve written notice to the tenant specifying the grounds for the action at least thirty (30) days before the termination of tenancy. Owners executing or renewing leases after November 1, 2007 shall specifically state in the lease or in an addendum attached to the lease that evictions or non-renewal of leases for other than good cause are prohibited (24 CFR §92.253).

(c) The Department does not determine if an Owner has good cause or if a resident has violated the lease terms. If there is a challenge to a good cause eviction, that determination will be made by a court of competent jurisdiction or an agreement of the parties in arbitration. The Department will rely on the court decision or the agreement of the parties.

(d) HTC and BOND Developments must use a lease or lease addendum that requires households to report changes in student status.

(e) Owners of HTC Developments are prohibited from locking out or threatening to lock out any Development resident, except by judicial process, unless the exclusion is necessary for the purpose of performing repairs or construction work, or in cases of emergency. Owners are further prohibited from seizing or threatening to seize the personal property of a resident except by judicial process unless the resident has abandoned the premises. These prohibitions must be included in the lease or lease addendum.

(f) All owners must provide prospective households with a Department approved fair housing disclosure notice. This notice must be executed by the household no more than thirty days and no less than three days prior to the effective date of the lease. This requirement pertains to all households taking initial occupancy of a unit on a Development administered by the Department, including households transferring units within the same Development.

(g) For HOME and NSP Developments, properties that were initially built for occupancy prior to 1978 must include in their lease or lease addendum a Lead Warning Statement. To demonstrate compliance, the Department will monitor that, all households at HOME and NSP Developments have signed the Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards (24 CFR §92.355 and 24 CFR 570.487(c))

§10.609. Annual Recertification for All Programs and Student Requirements for HTC, Exchange, TCAP, and BOND Developments.

(a) Recertification Requirements for 100 percent low income HTC, Exchange and TCAP Developments:

(1) Regardless of the requirements stated in a LURA, the Department will not monitor to determine if 100 percent low income HTC Developments perform annual income recertifications. Households will maintain the designation they had at initial certification;

(2) To comply with HUD reporting requirements, once every calendar year, the Development must collect a self certification from each household that reports the number of household members, age, ethnicity, race, disability status, rental amounts and rental assistance (if any). In addition, the self certification will collect information about student status to establish ongoing compliance with the HTC program. The Development must collect this self certification information on the Department's Annual Eligibility Certification form (AEC) and must maintain the certification in all household files; and

(3) One-Hundred percent low income HTC Developments that are not required to complete annual income recertifications but voluntarily continue to do so must obtain the AEC form described in paragraph (2) of this subsection and maintain it in all household files. The Department will not review recertification documentation during a monitoring review unless noncompliance is identified with the initial certification. Failure to complete the AEC form will result in a noncompliance finding under, "Failure to maintain or provide Annual Eligibility Certification" and scored in the Department's Compliance Status System as applicable.

(b) Recertification Requirement for Mixed Income HTC, Exchange and TCAP Developments. HTC projects (as defined on Part II question, 8b of IRS form 8609) with Market Units must complete annual income recertifications. Section 10.610 of this subchapter (relating to Managing Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments) sets out the requirements for maintaining compliance with the Available Unit Rule.

(c) Student Requirements for HTC, Exchange and TCAP Developments. Changes to student status reported by the household at anytime during their occupancy or on the AEC require the Owner to determine if the household continues to be eligible under the HTC program. During the Compliance Period, if the household is comprised of full-time students, the household must qualify for a HTC program exception, and supporting documentation must be maintained in the household's file. The Development must have a statement in a lease addendum (or in their lease contract) that requires households to report changes in their student status. During the Compliance Period, Noncompliance with this section will result in the issuance of IRS form 8823 reporting noncompliance under, "Low-income Units occupied by nonqualified full-time students" and scored in the Department's Compliance Status System as applicable. Regardless of the requirements stated in a LURA, after the Compliance Period, the Department will not monitor to determine if households meet the student requirements of the Housing Tax Credit program.

(d) Recertification Requirements for 100 percent low income BOND Developments. If 100 percent of the Units are set aside for households at 60 percent or 50 percent of Area Median Income, regardless of the requirements in the LURA, recertifications are not required.

(e) Recertification Requirement for mixed income BOND Developments. If less than 100 percent of the Units are set aside for households at 60 percent or 50 percent Area Median Income, Low Income households must be recertified to establish compliance with the Available Unit Rule. Regardless of the requirements stated in the LURA, Eligible Tenants (as defined in the Development's LURA) do not need to be annually recertified.

(f) Student Requirements for 100 percent low income BOND Developments. One hundred percent (100 percent) low income Bond Developments must continue to annually screen households for student status. Bond Developments that do not also have Housing Tax Credits must use the Department's Certification of Student Eligibility form and it must be maintained in the household's file. Bond developments layered with HTC's may use the Annual Eligibility Certification to annually screen for student status. Changes to student status that the household reports at anytime during their occupancy or during annual screening for student status, require the Owner to determine if the household continues to be eligible under the Bond program. If the household is comprised of full-time students then the household must meet a program exception, which must be documented and maintained in the household's file.

(g) Student requirements for mixed income BOND Developments. Mixed Income Bond Developments must annually screen low income households for student status during the recertification process. If the household is not an eligible student household, it may be possible to re-designate the full-time student household to an Eligible Tenant (ET). The Development must have a statement in a lease addendum (or in their lease contract) that requires households to report changes in their student status. Noncompliance with this section will result in a noncompliance finding under, "Low-income Units occupied by nonqualified full-time students" and scored in the Department's Compliance Status System as applicable.

(h) Recertification Requirements for HOME Developments.

(1) For HOME Investment Partnership Developments, in accordance with 24 CFR §92.203 and §92.252 of the HOME Final Rule, regardless of the requirements stated in a LURA, recertification requirements will be monitored as shown in paragraph (2)(A) - (F) of this subsection.

(2) HOME Developments must complete a recertification with verifications of each HOME assisted Unit every sixth year of the Development's affordability period. The recertification is due on the anniversary of the household's move in date. For purposes of this section the beginning of a HOME Development affordability period is the effective date on the first page of the HOME LURA. For example, a HOME Development with a LURA effective date of May 2001 will have the sixth year of the affordability period determined in *Example 609(1)*:

(A) Year 1: May 15, 2001 - May 14, 2002;

(B) Year 2: May 15, 2002 - May 14, 2003;

(C) Year 3: May 15, 2003 - May 14, 2004;

(D) Year 4: May 15, 2004 - May 14, 2005;

(E) Year 5: May 15, 2005 - May 14, 2006;

(F) Year 6: May 15, 2006 - May 14, 2007;

(G) Year 7: May 15 2007- May 14, 2008;

- (H) Year 8: May 15, 2007- May 14, 2009;
- (I) Year 9: May 15 2009- May 14, 2010;
- (J) Year 10: May 15 2010- May 14, 2011;
- (K) Year 11: May 15 2011- May 14, 2012;
- (L) Year 12: May 15 2012- May 14, 2013;

(3) In the scenario in paragraph (2) of this subsection, all households in HOME Units must be recertified with source documentation between May 15, 2006 to May 14, 2007 and between May 15, 2012 and May 14, 2013. In the intervening years the Development must collect a self certification by the effective date of the original Income Certification from each household that is assisted with HOME funds. Example 609 (2): a household moved into a HOME unit on June 10, 2010; the household's self certification must be completed by June 10, 2011 and the household must be recertified with source documentation effective June 10, 2012. The Development must use the Department's Income Certification form, unless the property also participates in the Rural Development or a project Based HUD program, in which case, the other program's income certification form will be accepted. Noncompliance with this section will result in a noncompliance finding of, "Owner failed to maintain or provide tenant annual income recertification" and scored in the Department's Compliance Status System as applicable. If the household reports on their self certification that their household income is above the current 80 percent applicable income limit or there is evidence that the household's written statement failed to completely and accurately provide information about the household's characteristics and/or income, then a recertification with verifications is required.

(i) Recertification Requirements for One-Hundred Percent HTF Developments. Regardless of the requirements stated in a LURA, the Department will not monitor to determine if 100 percent low income HTF Developments performed annual income recertifications. The household will maintain its initial low-income designation at move in and throughout the household's occupancy i.e., Extremely Low Income (ELI), Very Low Income (VLI) and Low Income (LI) provided that the Owner does not charge gross rent in excess of the applicable rent limit.

(j) Recertification Requirements for HTF Developments with Market units. HTF Developments with Market Units in one or more buildings (as evidenced in their LURA) must perform annual income recertifications of all households residing in HTF Program Units. The HTF program requires Developments to comply with the Available Unit Rule. If a household's income exceeds 140 percent of the recertification limit (highest income tier), the household must be redesignated as OI and the Next Available Unit on the Development must be leased to a household with an income and rent less than the EVI, VLI, and LI limit depending on what designation the Development needs to maintain compliance with the LURA. The OI household may be redesignated in accordance with lease terms as Market once the OI Unit is replaced with another low-income Unit.

(k) Recertification Requirements for HTF Developments with Market units and other Department administered multifamily rental programs. HTF Developments with other Department administered programs will comply with the requirements of the other program. Example 609(3): If a Development is a mixed income HTF and 100 percent low income HTC, all households must be certified at move in. Then, once a calendar year, in accordance with the HTC requirements, the AEC must be obtained. It is not necessary to complete a full income recertification of the households designated under the HTC program.

(l) Recertification Requirements for NSP Developments. NSP Developments are not required to perform annual recertifications unless the LURA specifically requires recertifications.

(m) If a Development is required to perform an annual income recertification of a low-income household for a TDHCA program, the AEC is not also required. Example 609(4): If a Development has TDHCA HOME funds and Housing Tax Credits, the owner must obtain an Income Certification form from each household designated under the HOME program. Since the property is required to obtain the Income Certification form, the AEC is not required. Example 609(5) a mixed income Development was awarded Housing Tax Credits in 1990 and in 2011. Since the 2011 allocation requires all low-income households to be recertified, §10.620 (b)(12) does not apply.

§10.610. Managing Additional Income and Rent Restrictions for HTC, Exchange and TCAP Developments.

(a) Under the Code, HTC Development Owners elect a minimum set-aside requirement of 20/50 or 40/60 (20 percent of the Units restricted to the 50 percent income and rent limit, or 40 percent of the Units restricted at the 60 percent income and rent limits). The minimum set-aside elected sets the maximum income and rent limits for the low-income units on the Development. Many Developments have additional income and rent requirements (i.e. 30 percent, 40 percent and 50 percent) that are lower than the minimum set-aside requirement. This requirement is referred to as "additional occupancy restrictions" and is reflected in the Development's Land Use Restriction Agreement (LURA). The Department will examine the actual gross rent and income levels of all households to determine if the additional income and rent requirements of the LURA are met.

(b) For 100 percent HTC Developments that are not required to perform annual recertification, regardless of the requirements stated in the Development's LURA, the additional rent and occupancy restrictions will be monitored as follows:

(1) Households initially certified at the 30 percent income and rent limits. Households will maintain their designation they had at initial move-in. The Unit will continue to meet the 30 percent set-aside requirement provided that the Owner does not charge gross rent in excess of the 30 percent rent limit. When the household vacates the Unit, the next available Unit on the Development is leased to a household with an income and rent less than the 30 percent limit;

(2) Households initially certified at the 40 percent income and rent limits. Households will maintain their designation they had at initial move in. The Unit will continue to meet the 40 percent set-aside requirement provided that the Owner does not charge gross rent in excess of the 40 percent rent limit. When the household vacates the Unit, the next available Unit on the Development is leased to a household with an income and rent less than the 40 percent limit; and

(3) Households initially certified at the 50 percent income and rent limits. Households will maintain their designation they had at initial move in. The Unit will continue to meet the 50 percent set-aside requirement provided that the Owner does not charge gross rent in excess of the 50 percent rent limit. When the household vacates the Unit, the next available Unit on the Development is leased to a household with an income and rent less than the 50 percent limit.

(c) Mixed Income HTC Developments with Market Units will be monitored as follows:

(1) The HTC program requires Mixed Income Developments with Market Units to comply with the Available Unit Rule. When a household's income at recertification exceeds 140 percent of the applicable current income limit elected by the minimum set-aside, the owner must comply with the Available Unit Rule and lease the next available unit (same size or smaller) in the building to a low-income household to maintain compliance. For HTC Developments that are required to perform annual recertifications, the additional rent and occupancy restrictions will be monitored as follows:

(A) Households initially certified at the 30, 40 or 50 percent income and rent limits;

(B) Households will maintain the designation they had at initial move in unless the household's income exceeds 140 percent of the highest income tier established by the minimum set-aside. The Unit will continue to meet the designation that had at initial certification provided that the Owner does not charge gross rent in excess of the additional rent and occupancy rent limit;

(C) The household will not be required to vacate the Unit for other than good cause. When the household vacates the Unit, the next available Unit on the Development must be leased so as to meet the Development's additional rent and occupancy restrictions;

(D) If the household's income exceeds 140 percent of the highest income tier established by the minimum set-aside the household must be redesignated as over income (OI) and the Next Available Unit Rule must be followed. *Example 610 (1)*: A household was initially certified at the 40 percent income limit at move in. The household's income increases at recertification above the 40 percent income limit to the 50 percent income limit. The Unit will continue to meet the 40 percent set-aside requirement provided that the Owner does not charge rent in excess of the 40 percent rent limit. When the household

vacates the Unit, the Next Available Unit on the Development is leased to a household with an income and rent less than the 40 percent limits; and

(2) This subsection does not require HTC Developments to lease more Units under the additional occupancy restrictions than established in their LURA. Example 610(2): If a Development is required to lease 10 units at the 40 percent income and rent levels and has satisfied the requirement, the owner is not required to offer the 40 percent rent to other households, even if their income is less than the 40 percent income limit.

(d) Units at 80 percent area median income and rent on HTC developments. In certain years, the Department's Qualified Allocation Plan provided incentives to lease 10 percent of the development's Market Rate units to households at 80 percent income and rents. This section provides guidance for implementation. If the LURA requires 10 percent of the Market Rate units be leased to households at 80 percent income and rent limits, the owner must certify the 80 percent households at the time of move in only. Recertifications will not be required. Student rules do not apply to units occupied by 80 percent households. Noncompliance with the requirement to lease to 80 percent households is not reportable to the IRS on form 8823 but will be cited and scored as noncompliance under the event "Development failed to meet additional State required rent and occupancy restrictions".

§10.611. Household Unit Transfer Requirements for All Programs.

(a) Household Transfers for One-Hundred percent HTC, Exchange, and TCAP Developments. For HTC Developments that are 100 percent low-income, a household may transfer to any Unit within the same project, as defined as a multiple building project on Part II, question 8b of the IRS form 8609. If the Owner elected to treat each building as a separate project, as defined on Part II, question 8b of the 8609 form, households must be certified as low-income (determined by the Development's minimum set-aside election) prior to moving to another building on the Development.

(b) Household Transfers for Mixed Income HTC, Exchange and TCAP Developments. For HTC Developments that are Mixed Income with Market Units, a household may transfer to another building in the same project, as defined as a multiple building project on Part II of the IRS form 8609 if the household was not over income (OI) at the time of the last annual income recertification. If the Owner elected to treat each building as a separate project, as defined on Part II of the IRS form 8609, households must be certified as low-income (determined by the Development's minimum set-aside election) prior to moving to another building on the Development.

(c) Household transfers for BOND, HTF, HOME, and NSP. For BOND, HTF, HOME, and NSP Developments, households may transfer to any Unit within the Development. A certification is not

required at the time of transfer. If the Development is required to perform annual income recertifications, the recertification is due on the anniversary date the household originally moved onto the Development. If the Development is layered with Housing Tax Credits, default to transfer guidelines under the HTC rules.

(d) Household Transfers in the Same Building for all Programs. A Household may transfer to a new Unit within the same building (for the HTC program within the meaning of IRS Notice 88-91). The unit designations will swap status. *Example 611 (1)*: Building 1 has 4 low-income Units. Units 1 through 3 are occupied by low-income households and Unit 4 is a vacant low-income unit. The household in Unit 2 moves to Unit 4 and the Unit designations swap status. Unit 2 is now a vacant low-income unit.

§10.612. Requirements Pertaining to Households with Rental Assistance.

(a) The Department will monitor to ensure Development Owners comply with Texas Government Code, §2306.269 and §2306.6728, regarding residents receiving rental assistance under Section 8, U.S. Housing Act of 1937 (42 U.S.C. §1437f).

(b) The policies, standards and sanctions established by this section apply only to:

(1) multifamily housing developments that receive assistance described in subparagraphs (A) and (B) of this paragraph, from the Department on or after January 1, 2002; (§2306.185)

(A) a loan or grant in an amount greater than 33 percent of the market value of the Development on the date the recipient took legal possession of the Development; or

(B) a loan guarantee for a loan in an amount greater than 33 percent of the market value of the Development on the date the recipient took legal title to the Development;

(2) multifamily rental housing Developments that applied for and were awarded housing tax credits after 1992;

(3) housing developments that benefit from the incentive program under Texas Government Code, §2306.805; and

(4) housing Developments that receive funding from the NSP program or the HOME program (24 CFR §92.252(d)).

(c) Owners of multifamily rental housing developments described in subsection (b) of this section are prohibited from:

(1) excluding an individual or family from admission to the Development because the individual or family participates in the HOME Tenant Based Rental Assistance Program, the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1437f), or other federal rental assistance program and

(2) using a financial or minimum income standard for an individual or family participating in the voucher program that requires the individual or family to have a monthly income of more than 2.5 times the individual's or family's share of the total monthly rent payable to the Owner of the Development. A household participating in the voucher program or receiving any other type of rental assistance may not be required to have a minimum income exceeding \$2,500 per year.

(d) To demonstrate compliance with this section, Owners shall:

(1) State in their leasing criteria that the Development will comply with state and federal fair housing and antidiscrimination laws;

(2) Apply screening criteria uniformly (rental, credit, and/or criminal history), including employment policies, and in a manner consistent with the Texas and Federal Fair Housing Acts, program guidelines, and the Department's rules;

(3) Approve and distribute an Affirmative Marketing Plan that will be used to attract prospective applicants of all minority and non-minority groups in the housing market area regardless of their race, color, religion, sex, national origin, disability, familial status, or religious affiliation. Racial groups to be marketed to may include White, African American, Native American, Alaskan Native, Asian, Native Hawaiians or Other Pacific Islanders. Other groups in the housing market area who may be subject to housing discrimination include, but are not limited to, Hispanic or Latino groups, persons with disabilities, families with children, or persons with different religious affiliations. The Affirmative Marketing Plan must be provided to the property management and onsite staff. Owners are encouraged to use HUD Form 935.2A, and may use any version of this Form as applicable. The Affirmative Marketing Plan must identify:

(A) which group(s) the Owner believes are least likely to apply for housing at the Development without special outreach. All Developments must select persons with disabilities as one of the groups identified as least likely to apply. When identifying racial/ethnic minority groups the Development will market to, factors such as the characteristics of the housing's market area should be considered. *Example 612(1):* An Owner obtains census data showing that 6.5 percent of the city's total population are identified as Asian Americans. However, the Owner's demographic data for the Development shows that zero Asian American households are represented. The Owner chooses to identify Asian American groups as one of the groups least likely to apply at the Development without special outreach;

(B) procedures that will be used by the Owner to inform and solicit applications from persons who are least likely to apply. Specific media and community contacts that reach those groups designated as least likely to apply must be identified (community outreach contacts may include neighborhood, minority, or

women's organizations, grass roots faith-based or community-based organizations, labor unions, employers, public and private agencies, disability advocates, or other groups or individuals well known in the community that connect with the identified group(s). *Example 612 (2)*: An Owner has identified the disabled as least likely to apply and has decided to send letters on a quarterly basis to the Case Manager at a non-profit organization coordinating housing for developmentally disabled adults. Additionally, the Owner will advertise upcoming vacancies in a monthly newsletter circulated by an organization serving the hearing impaired;

(C) how the Owner will assess the success of Affirmative Marketing efforts. Affirmative Marketing Plans should be reviewed on an annual basis to determine if changes should be made and plans must be updated every five (5) years to fully capture demographic changes in the housing's market area;

(D) records of marketing efforts must be maintained for review by the Department during onsite monitoring visits. *Example 612(3)*: The Owner keeps copies of all quarterly correspondence mailed to the contacts or community groups identified in the Affirmative Marketing Plan. The letters are dated and addressed and show that the Owner is actively marketing vacancies, or a waiting list to the groups identified in the Owner's plan. Failure to maintain a reasonable Affirmative Marketing Plan and documentation of marketing efforts on an annual basis will result in a finding of noncompliance;

(E) if a Development does not have any vacant units, Affirmative Marketing is still required and Owners must maintain a waiting list. If a Development does not have any vacancies and the waiting list is closed, Affirmative Marketing is not required; and

(F) in accordance with 24 CFR §92.253(d) of the HOME Final Rule and as adopted by Texas NSP, Owners of HOME and NSP Developments must maintain a written waiting list and tenant selection criteria. Failure to maintain these documents will result in a finding of noncompliance.

§10.613. Onsite Monitoring.

(a) The Department may perform an onsite monitoring review of any low income Development, and review and photocopy all documents and records supporting compliance with Departmental programs through the end of the Compliance Period or the end of the period covered by the LURA, whichever is later. The Development Owner shall permit the Department access to the Development premises and records.

(b) The Department will perform onsite monitoring reviews of each low income Development. The Department will conduct:

(1) the first review of HTC, Exchange and TCAP Developments by the end of the second calendar year following the year the last building in the Development is placed in service;

(2) the first review of all other Developments as leasing commences;

- (3) subsequent reviews at least once every three years during the Affordability Period;
- (4) a physical inspection of the Development including the exterior of the Development, Development amenities, and an interior inspection of a sample of Units; and
- (5) limited reviews of physical conditions, including follow-up inspections to verify completion of reported corrective action, may be conducted without prior notice (unless access to tenant units is required, in which case at least forty-eight (48) hours notice will be provided).

(c) The Department will perform onsite file reviews and monitor:

- (1) a sampling of the low income resident files in each Development, and review the income certifications;
- (2) the documentation the Development Owner has received to support the certifications; and
- (3) the rent records and any additional information that the Department deems necessary.

(d) At times other than onsite reviews, the Department may request for review, in a format designated by the Department, information on tenant income and rent for each Low Income Unit and may require a Development Owner to submit copies of the tenant files, including copies of the income certification, the documentation the Development Owner has received to support that certification, and the rent record for any low income tenant.

(e) The Department will select the Low Income Units and tenant records that are to be inspected and reviewed. Original records are required for review. The Department will not give Development Owners advance notice that a particular Unit, tenant record, or a particular year will be inspected or reviewed. However, the Department will give reasonable notice to the Development Owner that an onsite inspection or a tenant record review will occur so the Development Owner may notify tenants of the inspection or assemble original tenant records for review. If a credible complaint of fraud or other egregious noncompliance is received, the Department reserves the right to conduct unannounced onsite monitoring visits.

§10.614. Monitoring for Social Services.

(a) If a Development's LURA requires the provision of social services, the Department will confirm this requirement is being met. Owners are required to maintain sufficient documentation to evidence that services are actually being provided. Documentation will be reviewed during onsite visits beginning with the second onsite review, and must be submitted to the Department upon request. *Example 614 (1)*: The Owner's LURA requires provision of on-site daycare services. The Owner maintains daily sign in

sheets to demonstrate attendance and keeps a roster of the households that are regularly participating in the program. The Owner also keeps copies of all newsletters and fliers mailed out to the Development tenants that reference daycare services. *Example 614_(2)*: The Owner's LURA requires a monetary amount to be expended on a monthly basis for supportive services. The Owner maintains a copy of an agreement with a Supportive Service provider and documents the amount expended to evidence compliance with this requirement.

(b) A substantive modification of the scope of tenant services requires Board approval. Such requests must comply with procedures in §10.404 (relating to Material Amendments to Land Use Restriction Agreements). It is not necessary to obtain prior written approval to change the provider of services unless the scope of services is being changed. Failure to comply with the requirements of this section shall result in a finding of noncompliance.

§10.615. Monitoring for Non-Profit Participation or HUB Participation.

(a) If a Development's LURA requires the material participation of a non-profit or Historically Underutilized Business (HUB), the Department will confirm this requirement is being met throughout the development phase and ongoing operations of the Development. Owners are required to maintain sufficient documentation to evidence that a non-profit or HUB is in good standing with the Texas Secretary of State and/or IRS as applicable and materially participating. Documentation may be reviewed during onsite visits or must be submitted to the Department upon request.

(b) If an Owner wishes to change the non-profit, or HUB, prior approval from the Department is necessary. The Annual Owner's Compliance Report also requires Owners to certify to compliance with this requirement. Failure to comply with the requirements of this section shall result in a finding of noncompliance. In addition, the Internal Revenue Service will be notified if the non-profit is not materially participating on a HTC Development during the Compliance Period.

(c) The Department does not enforce partnership agreements or determine equitable fund distributions of partnerships. These disputes are matters for a court of competent jurisdiction.

§10.616. Property Condition Standards.

(a) All Developments funded by the Department must be decent, safe, sanitary, in good repair, and suitable for occupancy throughout the Affordability Period. The Department will use HUD's Uniform

Physical Condition Standards (UPCS) to determine compliance with property condition standards. In addition, Developments must comply with all local health, safety, and building codes. The Department may contract with a third party to complete UPCS inspections.

(b) HTC Development Owners are required by Treasury Regulation 1.42-5 to report (through the Annual Owner's Compliance Report) any local health, safety, or building code violations. HTC Developments that fail to comply with local codes shall be reported to the IRS.

(c) The Department will evaluate UPCS reports in the manner described in paragraph (1) of this subsection:

(1) A finding of Major Violations will be cited if:

(A) Life threatening health, safety, or fire safety hazards are reported on the Notification of Exigent and Fire Safety Hazards Observed form and are not corrected within twenty-four (24) hours of the inspection with notification of correction submitted to the Department within seventy-two (72) hours of the inspection. Failure to notify the Department of correction within seventy-two (72) hours of the correction of any exigent health and safety or fire safety hazards listed on the Notification will result in a finding of Major Violations of the Uniform Physical Condition Standards for the Development; or

(B) An overall UPCS score of less than 70 percent (69 percent or below) is reported;

(2) A finding of Pattern of Minor Violations will be assessed if an overall score between 70 percent and 89 percent is reported; or

(3) Findings of both Major and Minor Violations will be assessed if deficiencies reported meet the criteria for both.

(d) The Department is required to report any HTC Development that fails to comply with any requirements of the UPCS or local codes at any time (including smoke detectors and blocked egresses) to the IRS on Form 8823. Accordingly, the Department will submit Form 8823 for any UPCS violation. However, if the violation(s) does not meet the conditions described in subsection (c)(1) or (2) of this section, the issue will be noted in the Department's compliance status system as Administrative Reporting and no points will be assigned in the Department's compliance status evaluation of the Development. Non-HTC Developments that do not meet thresholds for Major and Pattern of Minor Violations as described in subsection (c)(1) or (2) of this section and correct all life threatening health, safety, and fire safety hazards noted at the time of inspection as directed in subsection (c)(1)(A) of this section will not receive findings for UPCS inspections. Items noted that do not exceed thresholds for Major and Pattern of Minor Violations must be corrected by submission of an Owner's Certification of Repair within the ninety (90) day corrective action period.

(e) Acceptable evidence of correction of deficiencies is a certification from an appropriate licensed professional that the item now complies with the inspection standard or other documentation that will allow the Department to reasonably determine when the repair was made and whether the repair sufficiently corrected the violation(s) of UPCS standards (examples of such documentation include work orders, photographs, and/or invoices to third party repair specialists).

(f) The Department will provide to the Owner in writing a ninety (90) day corrective action period to respond to a notice of noncompliance for violations of the UPCS. The Department will not grant extensions unless there is good cause and the Owner clearly requests an extension during the corrective action period. The Department will respond to an owner's request for an extension within five (5) business days. Under no circumstances will the corrective action period exceed six (6) months.

(g) 24 CFR §92.251 of the HOME Final Rule requires rental property assisted with HOME funds to be maintained in compliance with all local codes and HQS (24 CFR §982.401). To meet this requirement, beginning the second year after completion of construction or rehabilitation, all HOME rental Development Owners must annually complete an HQS inspection of all HOME assisted Units. Any noted deficiencies must be repaired. The Department will review HQS inspection sheets for all Units for compliance with this requirement during onsite monitoring visits.

(h) Selection of Units for inspection:

(1) Vacant Units will not be inspected (alternate Units will be selected) if a Unit has been vacant for fewer than thirty (30) days.

(2) Units vacant for more than thirty (30) days are assumed to be ready for occupancy and will be inspected. No deficiencies will be cited for inspectable items if utilities are turned off and the inspectable item is present and appears to be in working order.

§10.617. Notice to Owners.

The Department will provide written notice to the Development Owner if the Department does not receive the Annual Owner Compliance Report (AOCR) or discovers through audit, inspection, review or any other manner that the Development is not in compliance with the provisions of the deed restrictions, conditions imposed by the Department, or program rules and regulations, including §42 of the Code. Correspondence from the Department may be sent electronically to the email addresses in the Compliance Monitoring Tracking System. If sent electronically, a paper copy will not be mailed unless specifically requested. The notice will specify a correction period during which the Development Owner may respond to the Department's findings, bring the Development into compliance, or supply

any missing documentation or certifications. The Department may extend the correction period for up to six (6) months from the date of the notice to the Development Owner only if there is good cause for granting an extension and the owner requests an extension during the original ninety (90) day corrective action period. If any communication to the Development Owner under this section is returned to the Department as refused, unclaimed or undeliverable, the Development may be considered not in compliance without further notice to the Development Owner. The Development Owner is responsible for providing the Department with current contact information, including address(es) (physical and electronic)_and phone number(s). The Development Owner must also provide current contact information to the Department as required by §1.22 of this title (relating to Providing Contact Information to the Department).

§10.618. Special Rules Regarding Rents and Rent Limit Violations.

(a) Rent or Utility Allowance Violations of the maximum allowable limit (HTC). Under the HTC program, the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees, cannot exceed the maximum applicable limit (as determined by the minimum set-aside elected by the Owner) published by the Department. If it is determined that a HTC Development, during the Compliance Period, collected rent in excess of the rent limit established by the minimum set-aside, the owner must correct the violation by reducing the rent charged. The Department will report the violation as corrected on January 1st of the year following the violation. The refunding of overcharged rent does not avoid the disallowance of the credit by the IRS.

(b) Rent or Utility Allowance Violations of additional rent restrictions (HTC). If the Owner agreed to lease Units at rents less than the maximum allowed under the Code (additional occupancy restrictions), the Department will require the Owner to refund to the affected residents the amount of rent that was overcharged. This applies during the entire Affordability Period. The noncompliance event will be considered corrected on the date which is the later of the date the overcharged rent was refunded/credited to the resident or the date that the rent plus the utility allowance is equal to or less than the applicable limit. *Example 618(1)*: For Code §42 purposes, the maximum allowable limit is 60 percent. However, the Owner agreed to lease some Units to households at the 30 percent income and rent limits. It was discovered that the 30 percent households were overcharged rent. The Owner will be required to reduce the current amount of rent charged and refund the excess rents to the households.

(c) Rent Violations of the maximum allowable limit due to application fees (HTC). Under the HTC program, Owners may not charge tenants any overhead costs as part of the application fee. Owners must only charge the actual cost for application fees as supported by invoices from the screening company the Owner uses. The amount of time Development staff spends on checking an applicant's income, credit

history, and landlord references may be included in the Development's application fee. Development Owners may add \$5.50 per Unit for their other out of pocket costs for processing an application without providing documentation. *Example 618(2)*: A Development's out of pocket cost for processing an application is \$17 per adult. The property may charge \$22.50 for the first adult and \$17 for each additional adult. Should an Owner desire to include a higher amount to cover staff time, prior approval is required and wage information and a time study must be supplied to the Department. Documentation of Development costs for application processing or screening fees must be made available during onsite visits or upon request. The Department will review application fee documentation during onsite monitoring visits. If the Department determines from a review of the documentation that the Owner has overcharged residents an application fee, the noncompliance will be reported to the IRS on Forms 8823 under the category Gross rent(s) exceeds tax credit limits. The noncompliance will be corrected on the later of January 1st of the next year. Owners are not required to refund the overcharged fee amount. If the Development refunds the overcharged fee in full or in part, the units will remain out of compliance until January 1st of the next year.

(d) Rent or Utility Allowance Violations on Non-HTC Developments and foreclosed HTC properties for three years after foreclosure. If it is determined that the Development collected rent in excess of the allowable limit, the Department will require the Owner to refund to the affected residents the amount of rent that was overcharged.

(e) Trust Account to be established. If the Owner is required to refund rent under subsection (b) or (d) of this section and cannot locate the resident, the excess rent collected must be deposited into a trust account for the tenant. The account must remain open for the shorter of a four (4) year period, or until all funds are claimed. If funds are not claimed after the four year period, the unclaimed funds must be remitted to the Texas Comptroller of Public Accounts Unclaimed Property Holder Reporting Section to be dispersed as required by Texas unclaimed property statutes.

(f) Rent Adjustments for HOME Developments.

(1) 100 percent HOME assisted Developments. If a household's income exceeds 80 percent at recertification, the owner must charge rent equal to 30 percent of the household's adjusted income.

(2) HOME Developments with any Market Rate units. If a household's income exceeds 80 percent at recertification, the owner must charge rent equal to the lesser of 30 percent of the household's adjusted income or the comparable Market rent.

(3) HOME Developments layered with other Department affordable housing programs. If a household's income exceeds 80 percent at recertification, the owner must charge rent equal to the lesser of 30 percent of the household's adjusted income or the rent allowable under the other program.

(g) Special conditions for NSP Developments. To determine if a Unit is rent restricted, the amount of rent paid by the household, plus an allowance for utilities, plus any rental assistance payment must be less than the applicable limit.

(h) Employee Occupied Units (HTC Developments). Revenue Rulings 92-61 and 2004-82 provide guidance on employee occupied units. Provided that all the criteria in the Rulings are met, if the owner of the Development does not charge the employee for rent, the unit will be removed from the numerator and denominator of the applicable fraction to determine compliance. If the owner charges the employee any amount of rent, the Department will evaluate the eligibility of the household. If the household's income exceeds the maximum allowable limit or there is any other noncompliance, the event will be cited, scored and reported to the IRS on form 8823 as appropriate.

§10.619. Notices to the Internal Revenue Service (HTC Properties).

(a) Even when an event of noncompliance is corrected, the Department is required to file IRS Form 8823 with the IRS. IRS Form 8823 will be filed not later than forty-five (45) days after the end of the correction period specified in the Notice to Owner (including any extensions permitted by the Department) but will not be filed before the end of the correction period. The Department will indicate on IRS Form 8823 the nature of the noncompliance and will indicate whether the Development Owner has corrected the noncompliance.

(b) The Department will retain records of noncompliance or failure to certify for six (6) years beyond the Department's filing of the respective IRS Form 8823. The Department will retain the AOCRs and records for three years from the end of the calendar year the Department receives the certifications and records.

(c) The Department will send the Owner of record copies of any IRS Forms 8823 submitted to the IRS. Copies of Forms 8823 will be submitted to the syndicator for Developments awarded tax credits after January 1, 2004. The Development Owner is responsible for providing the name and mailing address of the syndicator in the Annual Owner's Compliance Report.

§10.620. Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period.

(a) HTC properties allocated credit in 1990 and after are required under the Code (§42(h)(6)) to record a LURA restricting the Development for at least thirty (30) years. Various sections of the Code specify monitoring rules State Housing Finance Agencies must implement during the Compliance Period.

(b) After the Compliance Period, the Department will continue to monitor HTC Developments using the rules detailed in paragraphs (1) - (12) of this subsection.

(1) The frequency and depth of monitoring household income, rents, social services and other requirements of the LURA will be determined based on risk. Factors will include changes in ownership or management, compliance history, timeliness of reports and timeliness of responses to Department request.

(2) At least once every three (3) years the property will be physically inspected including the exterior of the Development, all building systems and 10 percent of Low Income Units. No less than five but no more than thirty-five of the Development's HTC Low Income Units will be physically inspected to determine compliance with HUD's Uniform Physical Condition Standards.

(3) Each Development shall submit an annual report in the format prescribed by the Department.

(4) Reports to the Department must be submitted electronically as required in §60.105 of this title (relating to Reporting Requirements).

(5) Compliance monitoring fees will continue to be submitted to the Department annually in the amount stated in the LURA.

(6) All HTC households must be income qualified upon initial occupancy of any Low Income Unit. Proper verifications of income are required, and the Department's Income Certification form must be completed unless the Development participates in the Rural Rental Housing Program or a project based HUD program, in which case the other program's certification form will be accepted.

(7) Rents will remain restricted for all HTC Low Income Units. After the Compliance Period, utilities paid to the Owner can be accounted for in the utility allowance. The tenant paid portion of the rent plus the applicable utility allowance must not exceed the applicable limit.

(8) All additional income and rent restrictions defined in the LURA remain in effect.

(9) For Additional Use Restrictions, defined in the LURA (such as supportive services, nonprofit participation, elderly, etc), refer to the Development's LURA to determine if compliance is required after the completion of the Compliance Period.

(10) The Owner shall not terminate the lease or evict low income residents for other than good cause.

(11) The total number of required HTC Low Income Units must be maintained Development wide.

(12) The Annual Eligibility Certification must be collected for all low income households on an annual basis. See §10.609 of this chapter (relating to Annual Recertification for All Programs and Student Requirements for HTC, Exchange, TCAP, and BOND Developments).

(c) After the first fifteen (15) years of the Extended Use Period, certain requirements will not be monitored as detailed in paragraphs (1) - (5) of this subsection.

(1) The student restrictions found in §42(i)(3)(D) of the Code. An income qualified household consisting entirely of full time students may occupy a Low Income Unit. If a Development markets to students or leases more than 15 percent of the total number of units to student households, the property will be found in noncompliance unless the LURA is amended through the Material Amendments procedures found in §60.130 of this title (relating to Material Amendments to Land Use Restriction Agreements).

(2) The building's applicable fraction found in the Development's Cost Certification and/or the LURA. Low income occupancy requirements will be monitored Development wide, not building by building.

(3) All households, regardless of income level or 8609 elections, will be allowed to transfer between buildings within the Development.

(4) The Department will not monitor the Development's application fee after the Compliance Period is over.

(5) Mixed income Developments are not required to conduct annual income recertifications.

(d) Regardless of the requirements stated in a LURA, the Department will monitor in accordance with this section.

(e) Unless specifically noted in this section, all requirements of this chapter, the LURA and §42 of the Code remain in effect for the Extended Use Period. These Post-Year fifteen (15) Monitoring Rules apply only to the HTC Developments administered by the Department. Participation in other programs administered by the Department may require additional monitoring to ensure compliance with the requirements of those programs.

§10.621. Material Noncompliance Methodology.

(a) The Department maintains a compliance history of each monitored Development in the Department's Compliance Status System. Developments with more than one program administered by the Department are scored by program. The Development will be considered in Material Noncompliance if the score for any single program exceeds the Material Noncompliance threshold for that program.

(b) A Development will not be assigned the scores noted in this section until after the Owner has been provided a written notice of the noncompliance and provided a corrective action deadline to show that either the Development was never in noncompliance or that the noncompliance event has been corrected.

(c) This section identifies all possible noncompliance events for all programs monitored by the Physical Inspection and Compliance Monitoring Sections of the Compliance Division. However, not all issues listed in this section pertain to all Developments. In addition, only certain noncompliance events are reportable on Form 8823. Those events that are reportable under the HTC program on Form 8823 are so indicated in subsections (h) and (i) of this section.

(d) For HTC Developments, all Forms 8823 issued by the Department will be entered into the Department's Compliance Status System. However, Forms 8823 issued prior to January 1, 1998 will not be considered in determining Material Noncompliance.

(e) For all programs, a Development will be in Material Noncompliance if the noncompliance event is stated in this section to be Material Noncompliance. The Department may take into consideration the representations of the Owner regarding monitoring notices and Owner responses; however, unless an Owner can prove otherwise, the compliance records of the Department shall be presumed to be correct.

(f) All Developments, regardless of status, that are or have been administered, funded, or monitored by the Department, are scored even if the Development no longer actively participates in the program, with the exception of properties in the CDBG disaster recovery and Federal Deposit Insurance Corporation's (FDIC) Affordable Housing Disposition Program.

(g) Noncompliance events are categorized as either "Development events" or "Unit/building events". Development events of noncompliance affect some or all the buildings in the Development; however, the Development will receive only one score for the noncompliance event rather than a score for each Unit or building. Other noncompliance events are identified individually by Unit and will receive the appropriate score for each Unit cited with an event. The Unit scores and the Development scores accumulate towards the total score of the Development. Violations under the HTC program are identified by Unit; however, the building is scored rather than the Unit and the building will receive the noncompliance score if one or more of the Units in that building are in noncompliance.

(h) Uncorrected noncompliance events, if applicable to the Development, will carry the maximum number of points until the noncompliance event has been reported corrected by the Department. Once reported corrected by the Department, the score will be reduced to the "corrected value." Corrected noncompliance will no longer be included in the Development score three (3) years after the date the noncompliance was reported corrected by the Department.

(i) Each noncompliance event is assigned a point value. The possible events of noncompliance and associated "corrected" and "uncorrected" points are listed in subsections (j) and (k) of this section.

(j) Figure: 10 TAC §10.621(j) lists events of noncompliance that affect the entire Development rather than an individual Unit. The first column of the chart identifies the noncompliance event. The second column identifies the number of points assigned this event while the issue is uncorrected. The Material Noncompliance threshold for a HTC and Exchange Developments is thirty (30) points. The Material Noncompliance threshold for a non-HTC Development with one (1) to fifty (50) Low Income Units is thirty (30) points. The Material Noncompliance threshold for a non-HTC Development with fifty-one to two hundred Low Income Units is fifty points. The Material Noncompliance threshold for non-HTC Developments with two hundred and one or more Low Income Units is eighty points. The third column lists the number of points assigned to the event from the date the issue is corrected until three (3) years after correction. The fourth column indicates which programs the noncompliance event applies. The last column indicates if the issue is reportable on Form 8823 for HTC Developments.

Attached Graphic

Figure: 10 TAC §10.621 (j)				
Noncompliance Event	Uncorrected Points	Corrected Points	Programs	If HTC, on Form 8823?
Major property condition violations	Material Noncompliance	10	All programs	Yes
Pattern of minor property condition violations	10	5	All programs	Yes
Administrative reporting of property condition violations	0	0	HTC	Yes
Owner refused to lease to a holder of rental assistance certificate/voucher because of the status of the prospective tenant as such a holder	Material Noncompliance	10	See §10.612	Yes
Owner failed to approve and	10	3	See §10.612	No

distribute an Affirmative Marketing Plan as required under §10.612 of this chapter				
Development failed to comply with requirements limiting minimum income standards for Section 8 residents	10	3	See §10.612	No
Development is not available to general public	10	0	HTC	Yes
HUD or DOJ notification of possible Fair Housing Act violation	0	0	HTC	Yes
Determination of a violation under the Fair Housing Act	Material Noncompliance	10	All programs	Yes
Development is out of compliance and never expected to comply/ Foreclosure	Material Noncompliance	NA correction not possible	All programs	Yes
Owner did not allow on-site monitoring review	Material Noncompliance	5	All programs	Yes
LURA not in effect	Material Noncompliance	5	All programs	Yes
Development failed to meet minimum set aside	20	10	HTC Bonds	Yes
No evidence of, or failure to certify to, material participation of a non-profit or HUB, if required by the Land Use	10	3	HTC	Yes

Restriction Agreement				
Development failed to meet additional State required rent and occupancy restrictions	10	3	All programs	No
The Development failed to provide required supportive services as promised at Application	10	3	HTC Bonds	No
The Development failed to provide housing to the elderly as promised at Application	10	3	All programs	No
Failure to provide special needs housing	10	3	All programs	No
Changes in Eligible Basis or Applicable Percentage	3	NA, No correction possible	HTC	Yes
Failure to submit part or all of the AOCR or failure to submit any other annual, monthly, or quarterly report required by the Department	10	3	All programs	Yes
Utility Allowance not calculated properly	20	10	All programs	Yes
Owner failed to execute required lease provisions, including language required by §10.608 of this subchapter or exclude prohibited lease language	10	3	All programs	No

Failure to provide annual Housing Quality Standards inspection	10	3	HOME	NA
Development has failed to establish and maintain a reserve account in accordance with §10.405 of this chapter	Material Noncompliance	10	All programs	No
Development substantially changed the scope of services as presented at initial Application without prior Department approval	10	3	HTC	No
Failure to provide a notary public as promised at Application	10	3	HTC	No
Violations of the Unit Vacancy Rule	3	1	HTC	Yes
Casualty loss	0	0	All programs	Yes
Failure to provide pre-onsite documentation as required	10	3	All programs	No
Failure to provide amenity as required by LURA	10	3	HTC	No
Failure to pay compliance monitoring or asset management fee	10	3	HTC, TCAP, Exchange_Bond	No
Change in ownership without Department approval	30	10	All programs	No
Failure to provide Fair Housing Disclosure	<u>10</u>	<u>3</u>	All programs	No

(k) Figure: 10 TAC §10.621 (k) lists ten events of noncompliance associated with individual Units. The first column of the chart identifies the noncompliance event. The second column identifies the number of points assigned this event while the issue is uncorrected. The Material Noncompliance threshold for a HTC or Exchange Development is thirty (30) points. The Material Noncompliance threshold for a non-HTC property with one (1) to fifty (50) Low Income Units is thirty (30) points. The Material Noncompliance threshold for a non-HTC Development with fifty-one (51) to two hundred (200) Low Income Units is fifty (50) points. The Material Noncompliance threshold for non-HTC properties with two hundred one (201) or more Low Income Units is eighty (80) points. The third column lists the number of points assigned to the event from the date the issue is corrected until three (3) years after the event is corrected. The fourth column indicates what programs the noncompliance event applies to. The last column indicates if the issue is reportable on Form 8823 for HTC Developments.

Attached Graphic

Figure: 10 TAC §10.621				
Noncompliance Event	Uncorrected Points	Corrected Points	Programs	If HTC, on Form 8823?
Unit not leased to Low Income Household	5	1	All programs	Yes
Low Income Units occupied by nonqualified full-time students	3	1	HTC during the compliance period and Bond	Yes
Low Income Units used on transient basis	3	1	HTC Bond	Yes
Household income increased above the re-	3	1	HTC During the compliance	Yes

certification limit and an available Unit was rented to a market tenant			period Bonds HOME HTF	
Gross rent exceeds the highest rent allowed under the LURA or other deed restriction	5	1	All programs	Yes
Failure to maintain or provide tenant income certification and documentation	3	1	All programs	Yes
Unit not available for rent	3	1	All programs	Yes
Failure to maintain or provide Annual Eligibility Certification	3	1	All programs	No
Development evicted or terminated the tenancy of a low income tenant for other than good cause	10	3	HTC, HOME, and NSP	Yes
Household income increased above 80 percent at recertification and	3	1	HOME	NA

Owner failed to properly determine rent				
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§10.622. Alternative Dispute Resolution.

(a) It is the Department's policy to encourage the use of appropriate Alternative Dispute Resolution (ADR) procedures to assist in resolving disputes under the Department's jurisdiction. If at any time an applicant or other person would like to engage the Department in an ADR process, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at §1.17 of this title.

(b) In all phases of monitoring, (construction and throughout the entire Affordability Period) if a potential issue of noncompliance has been identified, Owners will be provided a written notice of noncompliance. In general, the Department will provide up to a ninety (90) day corrective action period which can and will be extended for an additional ninety (90) days if there is good cause and the Owner requests an extension during the corrective action period.

(c) Owners must respond to the Department's notice of noncompliance. If an Owner does not respond, this ADR process which is explained in this section cannot be initiated.

(d) If an Owner does not agree with the Department's assessment of compliance, they should clearly explain their position and provide as much supporting documentation as possible. If the position is reasonable and well supported, the issue of noncompliance will be cleared with no further action taken, i.e. for HTC properties, Form 8823 will not be filed with the IRS and the issue will not be scored in the Department's compliance status system.

(e) If an Owner's response indicates disagreement with the Department's assessment of noncompliance, but does not appear to be a valid concern to the Department, staff will notify the Owner in writing of their right to engage in ADR. The Owner must respond in five (5) days and request ADR. In addition, the Owner must request an extension of the corrective action deadline, if one is still available. If the Owner does not respond to the staff's invitation to engage in ADR, the Department's assessment of the violation is final.

(f) The Department must meet the Treasury Regulation requirement found in §1.42-5 and file Form 8823 within forty-five (45) days after the end of the corrective action period. Therefore, it is possible that the Owner and Department may still be engaged in ADR. In this circumstance, the Form 8823 will be filed. However, it will be sent to the IRS with an explanation that the Owner disagrees with the Department's assessment and is pursuing ADR. All Owner supplied documentation supporting their position will be supplied to the IRS. Although the violation will be reported to the IRS within the required timeframes, it will not be scored in the Department's compliance status system pending outcome of ADR.

(g) ADR is not an appropriate format for matters regarding interpretations of laws, regulations and rules. ADR can only be used when parties could reach consensus.

§10.623. Liability.

Compliance with the program requirements, including compliance with §42 of the IRC, is the sole responsibility of the Development Owner. By monitoring for compliance, the Department in no way assumes any liability whatsoever for any action or failure to act by the Development Owner, including the Development Owner's noncompliance with §42 of the IRC, the Fair Housing Act, §504 of the Rehabilitation Act of 1973, HOME program regulations, BOND program requirements, and all other programs monitored by the Department.

§10.624. Applicability.

Unless otherwise noted, these provisions apply to all Developments administered by the Department.

§10.625. Temporary Suspension of Other Sections of this Subchapter.

(a) Temporary suspensions of other sections of this subchapter may be granted by the Executive Director if there are extenuating circumstances which make it not possible or an undue administrative burden to comply with a requirement of this subchapter as long as substantial compliance is still in effect. For example, the Executive Director could suspend the requirement to report online or use Department approved forms, or alter the sample size for calculating a utility allowance using the actual use method.

- (b) Under no circumstances can the Executive Director or the Board suspend for any period of time compliance with the HOME Final Rule or regulations issued by HUD when required by federal law.
- (c) Under no circumstances can the Executive Director or the Board suspend for any period of time Treasury Regulations, IRS publications controlling the submission of Form 8823, or any sections of 26 U.S.C. §42.

Attachment 2: Preamble and proposed repeal of 10 TAC Chapter 60, Subchapter A.

The Texas Department of Housing and Community Affairs (the “Department”) proposes repeal of 10 TAC Chapter 60, Subchapter A, §§60.101 - 60.130, concerning Compliance Administration. The purpose of this proposed repeal is to reorganize the Department’s rule in the Texas Administrative Code. The proposed new Chapter 10, concerning 2013 Uniform Multifamily Rules, is published concurrently with this repeal in this issue of the *Texas Register*.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repealed sections are in effect, enforcing or administering the repealed sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repealed sections are in effect, there will be no change in the public benefit anticipated as a result of the repeal. There will be no economic impact to any individuals required to comply with the repealed sections.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 22, 2012 to receive input on the repealed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Patricia Murphy, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-3359. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 22, 2012.**

STATUTORY AUTHORITY. The repealed sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed repeal affect no other code, article, or statute.

§60.101. Purpose and Overview.

§60.102. Definitions.

§60.103. Construction Monitoring.

§60.104. Recording of Land Use Restriction Agreements (HTC Properties).

§60.105. Reporting Requirements.

§60.106. Record Keeping Requirements.

§60.107. Notices to the Department.

§60.108. Determination, Documentation and Certification of Annual Income.

§60.109. Utility Allowances.

§60.110. Lease Requirements (HTC, NSP and HOME Developments).

- §60.111. Annual Recertification for All Programs and Student Requirements for HTC, Exchange, TCAP and BOND Developments.
- §60.112. Managing Additional Income and Rent Restrictions for HTC, Exchange and TCAP Developments.
- §60.113. Household Unit Transfer Requirements for All Programs.
- §60.114. Requirements Pertaining to Households with Rental Assistance.
- §60.115. Onsite Monitoring.
- §60.116. Monitoring for Social Services.
- §60.117. Monitoring for Non-Profit Participation or HUB Participation.
- §60.118. Property Condition Standards.
- §60.119. Notice to Owners.
- §60.120. Special Rules Regarding Rents and Rent Limit Violations.
- §60.121. Notices to the Internal Revenue Service (HTC Properties).
- §60.122. Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period.
- §60.123. Material Noncompliance Methodology.
- §60.124. Previous Participation Reviews.
- §60.125. Alternative Dispute Resolution.
- §60.126. Liability.
- §60.127. Applicability.
- §60.128. Temporary Suspension of Previous Participation Reviews.
- §60.129. Temporary Suspension of Other Sections of this Subchapter.
- §60.130. Material Amendments to Land Use Restriction Agreements.

7h

BOARD ACTION REQUEST
COMPLIANCE DIVISION
SEPTEMBER 6, 2012

Presentation, Discussion, and Possible Action on proposal of a new 10 TAC Chapter 1, Subchapter A, §1.5 regarding Previous Participation Reviews.

RECOMMENDED ACTION

WHEREAS, the rules regarding previous participations reviews have been located in Title 10, Chapter 60, Subchapter A, the majority of which is being incorporated into a new Chapter 10 to address multifamily rules, and

WHEREAS, previous participation reviews pertain to all Department programs, not just multifamily programs, it is hereby

RESOLVED, that 10 TAC Chapter 1, Subchapter A, §1.5 regarding Previous Participation Reviews is proposed for public comment and publication in the *Texas Register* together with the preamble presented at this meeting

FURTHER RESOLVED, that the Executive Director and his designees be and each of them is hereby authorized, empowered and directed, for and on behalf of the Department, to cause the proposal of the new rule in the form presented to this meeting, to be published in the *Texas Register* for public comment, and in connection therewith, to make such nonsubstantive corrections as they may deem necessary to effectuate the foregoing.

BACKGROUND

Previous Participation reviews are currently addressed in two sections of the Chapter 60, Subchapter A, §60.124 and §60.128. All of Chapter 60, Subchapter A is proposed for repeal in Board item 7(g). This item is the proposal of a new section to be added to the Department's general administrative rules.

Most of the content is the same as the existing rule with the following significant clarifications:

§1.5(c) lists out each time a previous participation review will be conducted and adds that a previous participation review will be conducted prior to approving an entity for participation in the reservation system. Note that in the past, previous participation reviews were not conducted prior to awarding Community Service Block Grant funds. However, §2306.057 indicates that the assessment should be made and, if there are compliance issues, they need to be reported to the Board.

§1.5(d) lists the criteria reviewed during a previous participation review and adds a review to determine if the entity is on cost reimbursement with a Community Affairs Program. Staff recommends that this criteria be added to the list of reasons a request for assistance would be terminated.

§1.5(g)(8) is a clarification to existing procedures to expressly provide consideration for work out developments. Without this paragraph, there could be situations where it would be difficult to modify or amend loans or LURAs in a work out situation.

§1.5(h) addresses the Department procedures for completing “partial previous participation reviews” and lists out times when staff will check for issues, but on limited basis. For example, if an entity controls 25 Developments and applies for a new allocation of credit, staff will review the status of all 25 of those developments to determine if any are in Material Noncompliance, owe fees etc. Whereas, if one of those developments submits their cost certification and requests 8609s, a “partial previous participation review” will be conducted and only the status of the subject property will be reviewed.

§1.5(n) expands the Board’s ability in regards to Temporary Suspensions of Previous Participation reviews. Under the proposed rule the Board may provide a suspension of previous participation reviews for a single award or action or, at their discretion, for set period of time. In the event that the Board chooses to suspend previous participation reviews for a set period of time, the conditions existing at the time the reviews were suspended will not be taken into consideration. However, if there are any new events of noncompliance or any new issues identified, staff would bring the matter back before the Board for consideration.

Attachment 1, Preamble for Proposed new 10 TAC Chapter 1, Subchapter A, §1.5 regarding Previous Participation Reviews.

The Texas Department of Housing and Community Affairs (the “Department”) proposes new 10 TAC Chapter 1, Subchapter A §1.5, concerning Previous Participation Reviews. The purpose of this proposed new section is to provide notice to entities applying to participate in Department Programs that the Department will examine and evaluate their past performance.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be compliant affordable housing. There will be no change in the economic cost to any individuals required to comply with the new section.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no change in the economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held September 21, 2012 to October 21, 2012 to receive input on the new section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Patricia Murphy, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 22, 2012.

STATUTORY AUTHORITY. The new section is proposed pursuant to Texas Government Code §2306.057 and §2306.053, which authorizes the Department to adopt rules.

The proposed new section affects no other statutory provisions.

§1.5. Previous Participation Reviews.

(a) Purpose and Overview. The Texas Department of Housing and Community Affairs (the “Department”) intends to administer programs with compliant partners. Development owners, sub-recipients, non-profit, and for-profit organizations who have previously received Department funding and failed to comply with state, federal, and/or program rules may be excluded from participation.

(b) Definitions. Capitalized terms are defined in §10, Subchapter A, §10.003 of this title (relating to Definitions). Any capitalized terms not specifically defined in §10.003 of this title, shall have the meaning as defined in Texas Government Code, Chapter 2306, §42 of the Internal Revenue Code, 24 CFR Part 92 (HOME Final Rule), and other Department rules as applicable.

(c) Applicability. A review of applicants' previous participation in all Department programs will be conducted prior to:

(1) awarding any Department funding, with the exception of individuals awarded funds through Household Commitment Contracts and Participating Lenders in the Department's Texas Homeownership Division Programs;

(2) approving an ownership transfer request of a Development monitored by the Department;

(3) executing a Carryover Allocation;

(4) modifying a Loan;

(5) modifying a contract that results in additional funding;

(6) closing a loan or executing a contract if more than one-hundred-twenty (120) days have elapsed from the date of Board approval; or

(7) processing a request for a Qualified Contract; or

(8) approving an Entity as a Reservation System Participant.

(d) Scope. During the previous participation review, it will be determined if the requesting entity or any person controlling the requesting entity:

(1) owes the Department any fees;

(2) is sixty (60) days or more delinquent on a loan payment;

(3) has failed to provide proof of taxes paid or insurance as required by a Deed of Trust;

(4) has a past due single audit or single audit certification form;

(5) has any unresolved monitoring findings and/or disallowed expenditures identified by the Contract Monitoring or Community Affairs Monitoring sections of the Compliance Division;

(6) is on cost reimbursement with a Community Affairs program;

(7) is on the Department's or any federal agency's debarred, suspended or excluded list;

(8) controls a Development monitored by the Department that is in Material Noncompliance;

(9) controls a HOME Development with any uncorrected issue of noncompliance required by the HOME Final Rule (even if the property is not in Material Noncompliance);

(10) controls an NSP Development with any uncorrected issue of noncompliance required by FR-5447-N-01, October 19, 2010, as amended (even if the property is not in Material Noncompliance); or

(11) has a Department contract that is suspended at the time of the Previous Participation review.

(e) Issues identified during review. If any of the criteria listed in subsection (d) of this section are met, the entity requesting assistance will be notified of the issue and provided five (5) business days to submit all necessary corrective action to resolve the issue(s). The notification will be in writing and may be delivered by email. For rental Developments in Material Noncompliance, the effective score will be at the end of the five (5) business days. If the requesting entity does not resolve the issue(s), the request for assistance will be terminated. If the request for assistance is terminated, the Board has the ability to reinstate the request for assistance for consideration as provided in subsections (j) and (k) of this section.

(f) Timing. Previous participation reviews may be conducted prior to the Board meeting when funds will be awarded. If the previous participation review cannot be completed prior to the Board meeting when funds will be awarded, the award will be contingent upon the requesting entity successfully clearing the previous participation review. If the action is not subject to Board approval, the previous participation review will be conducted prior to the Department executing an agreement for assistance.

(g) Exceptions.

(1) The previous participation of an individual elected official affiliated with an application or request from a city, county, or local government will not be considered provided that they are not the contract executor.

(2) In general, the previous participation of a member of a nonprofit Board will not be considered unless they are the Executive Director, Chair of the Audit Committee, Board Chair, or any member of the Executive Committee. However, if it is determined that any member of the Board of the Nonprofit is on the Department's or federal agency's debarred list, the request for assistance will be terminated. If within the five (5) business day period referenced in subsection (e) of this section, the party with noncompliance resigns from the Board of the nonprofit, the noncompliance will not be taken into consideration.

(3) The Department will not take into consideration the score of a Development that the requesting entity has not controlled for at least three (3) years.

(4) The Department will not take into consideration the score of a Development for which the Affordability Period ended over three (3) years ago.

(5) The Department will not take into consideration the points associated with events of noncompliance during the period of time that the requesting entity did not control the Development.

(6) The Department will not take into consideration the score attributed to a Development for noncompliance with the CDBG Disaster Recovery Program or the FDIC's Affordable Housing Disposition Program.

(7) If a requesting entity no longer controls a Development but has controlled the Development at any time in the last three (3) years, the Department will determine the score for the noncompliance events with a date of noncompliance identified during the time the requesting entity controlled the Development. If the points associated with the noncompliance events identified during the requesting entity's control of the Development exceed the threshold for Material Noncompliance, the request for assistance will be terminated but may be subject to reinstatement by the Board as provided in subsections (j) and (k) of this section.

(8) Work Out Developments. The fees, loan payments or events of noncompliance affiliated with a work out development may or may not be taken into consideration. Example: a Work-Out Development is more than sixty (60) days delinquent on loan payments. If the entity and Department staff are actively working to modify and restructure the loan and have entered into a written agreement to modify the loan this would enable the Development to come into compliance.

(h) Partial Previous Participation reviews.

(1) A full previous participation review will not be conducted at the time an owner requests IRS Form 8609. However, HTC Developments with any uncorrected issues of noncompliance or with pending notices of noncompliance will not be issued Form 8609s, Low Income Housing Credit Allocation Certifications, until all events of noncompliance are corrected.

(2) A full previous participation review will not be conducted prior to a Land Use Restriction Agreement (LURA) amendment. However, LURAs will not be amended if the subject Development has any uncorrected issues of noncompliance (other than a provision being amended) or owes fees. No previous participation review will be conducted to amend a technical error to a LURA or other use agreement.

(3) A full previous participation review will not be conducted prior to a contract extension. However, contract extension requests may be denied if there are uncorrected issues of noncompliance with the subject contract or if a response to a department notification is pending.

(i) Previous participation review for ownership transfers. Consistent with this section, the Department will perform a previous participation review prior to approving any transfer of ownership of a Development or any change in the Owner of a Development. The previous participation review shall be conducted with respect to the Developments controlled by the person coming into ownership, not with respect to the Development or Owner being transferred. If the property being transferred has any uncorrected issues of noncompliance or is in the corrective action period, the proposed incoming owner must provide a corrective action plan identifying dates of correction for any outstanding issues. The Department may deny the transfer of ownership based on financial capacity or lack of adequate relevant experience. The Department may require incoming owners to attend program training.

(j) Temporary Suspension of Previous Participation reviews. An entity whose request for assistance is terminated may request reinstatement. This process is separate and distinct from the waiver and appeals processes outlined in Chapter 10 of this title. The request must be in writing and must be submitted to the Department within five (5) business days of the date of the Department's letter notifying the requesting entity of the termination/denial. A timely filed request for reinstatement shall be placed on the agenda for the next Board meeting for which it can be properly posted.

(k) If an Application for assistance was terminated, the Board may consider reinstatement of the application only in the event that it determines, after consideration of the relevant, material facts and circumstances that:

- (1) it is in the best interests of the Department and the state to proceed with the award;
- (2) the award will not present undue increased program or financial risk to the Department or state;
- (3) the applicant is not acting in bad faith; and
- (4) the applicant has taken reasonable measures within its power to remedy the cause for the termination.

(l) Reinstatement of a terminated Application or request for assistance merely makes the Application eligible to be considered and does not, in and of itself, constitute approval.

(m) A request for assistance properly terminated because the requesting entity or any person controlling the requesting entity is on the Department's or a federal agency's debarred list cannot be reinstated for consideration. The request for assistance can be re-submitted, if the person or entity that is on the debarred list is no longer part of the requesting entity.

(n) The Board may provide a suspension of previous participation reviews for a single award or action or at their discretion for set period of time. In the event that the Board chooses to suspend previous participation reviews for a set period of time, the conditions existing at the time the reviews were suspended will not be taken into consideration. However, if there are any new events of noncompliance or any new issues described in this subsection (d) of this section, the matter will be brought back to the Board for consideration.

(o) An entity may not request a suspension of previous participation reviews prior to applying for funding or requesting assistance.