TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD MEETING

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

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

MEMBERS:

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

STAFF:

TIMOTHY K. IRVINE, Executive Director

ON THE RECORD REPORTING
(512) 450-0342
CALL TO ORDER, ROLL CALL
CERTIFICATION OF QUORUM

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

LEGAL
a) Presentation, Discussion, and Possible Action regarding adoption of Agreed Final CMTS 30), Island Palms Apartments (HTC 95034/CMTS 1341), Vida Que Canta Apartments (HTC 05091/CMTS 4257), La Estancia Apartments (HTC 1031/CMTS 274), and La Herencia Apartments (HTC 97047/ CMTS 1697)
b) Presentation, Discussion, and Possible Action regarding adoption of Agreed Final Order concerning Southeast Texas Community Development Corporation (HOME 537606/CMTS 2680)
c) Presentation Discussion, and Possible Action regarding adoption of Agreed Final Order concerning Bread of Life, Inc. (Emergency Shelter Grants Contract # 42110001270)

COMMUNITY AFFAIRS
d) Presentation, Discussion, and Possible Action on Approval of Draft Federal Fiscal Year ("FFY") 2015 Department of Energy ("DOE") Weatherization Assistance Program ("WAP") State Plan for Public Comment

ASSET MANAGEMENT
e) Presentation, Discussion, and Possible Action regarding Housing Tax Credits Application Amendments
   11202  Hunter's Chase      Rockdale
   12065  La Ventana         Abilene
   14150  Eagles Rest        San Antonio

HOME PROGRAM
f) Presentation, Discussion, and Possible Action regarding amendment to HOME CHDO Single Family Development Contract Number 1001522 for development of eight single family homes by Architecture for Charity of Texas located in Los Fresnos, Cameron County

RULES
  g) Presentation, Discussion, and Possible
Action regarding adoption of the final 2015 State of Texas Low Income Housing Plan and Annual Report, and order adopting amendments to 10 TAC Chapter 1, Subchapter A, General Policies and Procedures '1.23 concerning State of Texas Low Income Housing Plan and Annual Report, and directing their publication in the Texas Register.

CONSENT AGENDA REPORT ITEMS:

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:
   a) TDHCA Outreach Activities - February 2015
   b) Status Report on Section 811 PRA Program
   c) Report on National Housing Trust Fund
   d) Report from Deputy Executive Director for Single Family, Community Affairs, and Metrics
   e) Executive Report of Multifamily Program Amendments, Extensions, and Ownership Transfers

ITEM 3: OTHER REPORT ITEMS, INCLUDING POSSIBLE ACTION WITH RESPECT THERETO:
   a) Presentation, Discussion, and Possible Action withdrawing proposed amendments to 10 TAC '1.5, Previous Participation
   b) Update and Possible Action regarding status Of Urban League of Greater Dallas submittal Of required single audit

ACTION ITEMS:

ITEM 4: COMMUNITY AFFAIRS
   a) Presentation, Discussion, and Possible Action regarding Denial of Program Year 2015 Low Income Housing Energy Assistance Program ("LIHEAP"), and PY 2014 and 2015 Department of Energy Weatherization Assistance Program ("DOE-WAP") Awards to Cameron and Willacy Counties Community Projects, Inc. And for LIHEAP the Commencement of the 30-day Notification Period required by '2105.203 of the Texas Government Code
   b) Presentation, Discussion, and Possible Action to Authorize the Procurement of a Single Audit Firm for performance of an Audit for Cameron and Willacy Counties Community Projects, Inc. ("CWCCP")

ITEM 5: MULTIFAMILY FINANCE
   a) Presentation, Discussion, and Possible Action to Timely Filed Appeals and Waivers under any of the Department's Program Rules

ON THE RECORD REPORTING
(512) 450-0342
b) Presentation, Discussion, and Possible Action to a Request for Reissuance of Competitive (9%) Housing Tax Credits to Royal Gardens Mineral Wells (#12074), including any necessary waivers

ITEM 6: REAL ESTATE ANALYSIS
Presentation, Discussion, and Possible Action on proposed amendments to 10 TAC Chapter 10 "10.302(c)(2), 10.302(d)(3), 10.302(d)(4)(D), 10.302(c)(9), 10.302(e)(11), 10.302(e)(12), and 10.302(i)(4) concerning Underwriting and Loan Policy and directing their publication for public comment in the Texas Register

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

ADJOURN

ON THE RECORD REPORTING
(512) 450-0342
MR. OXER: All right. Good morning, everyone.

I'd like to welcome you to the -- what day is this -- March 12th meeting of the Texas Department of Housing and Community Affairs. So let's begin with our call to order and the roll call.

So Ms. Bingham.

MS. BINGHAM: Here.

MR. CHISUM: Present.

MR. OXER: Mr. Chisum.

MR. MUÑOZ: Present.

MR. GOODWIN: Here.

MR. CHISUM: Mr. Goodwin.

MR. OXER: Mr. Thomas is not with us today. Mr. Goodwin. I am here. That gives us five, we have a quorum. We are in business. So Tim, lead us in the flag.

(Pledge of Allegiance was recited.)

MR. OXER: Okay, I think we have a recognition this morning, do we know, Tim? To the State of Texas, has decided to retire. And Eric is one of those incomparable folks who's done not a little of
everything but a lot of everything. He's worked at the Department in a number of programs, he's worked in the HOME Program, the CDBG, he's experienced it all.

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

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

And, man, you're going to be missed. And I got to say that not only has Eric accomplished a ton and given a ton, he has really personified and embodied what it means to be a team player. Eric has mobilized Cathy and Sharon and Dena to just go above and beyond to do phenomenal things when unique opportunities and challenges presented themselves. They've been the crowd down there working 24/7 to get extraordinary funding opportunities.
realized, and people don't do that kind of thing unless
the guy that's asking them to do it really speaks with
passion and cooperation and that team sensibility.

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

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

(Applause.)

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

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

MR. PIKE: Well, good morning. And again I
just wanted to thank everyone for the kind words. I also
wanted to thank the Board as well as the executive
management of the Department for its continued support of
our Homeownership Programs over the past years. Together
we have been able to create two very successful programs,
well as our Mortgage Credit Certificate Program, which Tim referred to earlier. It happens to be one of the largest and most successful in the country. And I'm very proud of both of these two accomplishments.

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

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

(Applause.)

Sharon Everett.

(Applause.)

And Dina Gonzalez here in the front of the room.

(Applause.)

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

MR. OXER: Thanks for what you did, Eric.
(Applause.)

MR. IRVINE: And even though he's not here officially to be recognized, I would like to call out Joe Burkhart with Information Systems. Joe is a public servant who's given, what, 14-plus years to the State of Texas, and he's been just the most incredible resource managing our website and also helping to ensure that it's accessible so that all Texans can access our information. And I would like to thank Joe for his incredible service and wish him all the very best in the next stage, so.

(Applause.)

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

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

(No response.)

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

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

MR. OXER: Okay. Motion by Ms. Bingham. Is
there a second?

MR. CHISUM: Second.

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

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

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

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

The National Housing Trust Fund was created in 2008 by the Housing and Economic Recovery Act, and it provided for funding to be coming from Fannie and Freddie. And there have been some hiccups on the launch pad, but now I think we're to the point where the funding issues have been pretty much settled. We would anticipate that once this fund is up and running Texas could be receiving on the magnitude of $50 million a year.

But, you know, that's probably a year or two down the road, but right now we're in the process of digging in and understanding the newly promulgated interim
rule that HUD has put out there to provide guidance on this program. This program primarily is to serve extremely low and very low income households, especially with regard to rental property development and rehabilitation.

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

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

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

MR. IRVINE: The rental side and to very low and extremely low income households. It's, as I recall it's 75 percent very low and below, so it's going to -- that will line up with the 50 percent and under. And a significant portion of that will go to extremely low, which is is the 30 percent and under. These have
traditionally been very hard populations to serve in our
rental housing activities, so this is a very positive
step.

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

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

MR. OXER: Megan, come talk to us.

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

MR. OXER: Give us a quick summary.

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

MR. OXER: Tell us who you are.

MS. SYLVESTER: Megan Sylvester with the Legal
Department.

MR. OXER: Thanks. Good morning.

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

MR. OXER: Okay.

MS. SYLVESTER: Are there any other questions?

MR. IRVINE: And these properties assisted such
as the first-time homebuyer would have extended
affordability restrictions. So, you know, I think one of
the big challenges is going to be putting this all
together in a way where down payment assistance works
along with, in a complementary manner with first lien
assistance. And we, frankly protect ourselves against
having to repay HUD should a deal not achieve its required
affordability, so.

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

MR. IRVINE: Totally.

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

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

MR. IRVINE: It' a report.

MR. OXER: Great. Okay, Brooke.

MS. BOSTON: Brooke Boston, one of our Deputy
Executive Directors. I'd like to share with you some of
the accomplishments of the agency. For you new Board
members, I periodically come up to share some of the parts
of the agency that you guys don't see. You know, a huge
part of what we do just goes on behind the scenes and
doesn't necessarily ever come to need Board action. And
so I like to come and brag about that occasionally.
One thing I wanted to mention about Eric and his area, two things that particularly stand out over some of his tenure are the -- as foreclosure issues were really coming to a peak he had taken on the funding for five different iterations of national foreclosure mitigation counseling. It was a huge effort. It was similar to the idea of train the trainer, and it was a partnership with Neighbor Works. And so that was an amazing effort.

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

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

One of the other things I wanted to talk about is the 811 Program. We've had a lot of great activity with that program. First, there's been a management
change in that area. Kate Moore, who had been the manager of 811 for -- since its inception, she left in January and she's done a phenomenal job getting us to where we were. We're very sad to see her go.

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

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

Then another big thing that has happened very recently is, as you recall, the QAP has points for participation in the 811 Program. And one of the ways that tax credit applicants are able to pursue that is through using existing properties in their portfolio. So instead of putting it on their new 2015 application, if they're successful they can say hey, I'm going to do 811 units on this other property that I already have. One of
our tax credit applicants -- and they get this, excuse me, they get those approved in advanced.

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

MR. OXER: Very good. Kudos for all.

MR. CHISUM: Hear, hear,

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

So a few other areas. I'm going to take advantage of being up here. Within our Section 8 Program, as some of you know we're a public housing authority and we provide tenant-based vouchers in certain parts of the state that don't have other coverage. That's been led recently by a manager named Andre Adams, who's done a wonderful job of improving efficiencies, modernizing the program, switching to direct deposit, which may have
seemed intuitive, but has really moved towards a lot of improvements and is actually able to staff down while increasing the work that we're doing.

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

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

So that has been a huge accomplishment. And I think we're at a point where we'll be able to keep doing that and as the waiting list goes we can keep depleting it, so.
Another person that I'd like to give some accolades to is Sharon Gamble. She has oversight for all of the planning and training aspects of our Community Affairs Division. One of the activities in that program is the Emergency Solutions Grant Program, which is a homeless funding source that we receive federally and then pass it down to our communities. We usually do that by funding local nonprofits.

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

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

Another thing -- and I'm almost done, I promise -- is our Housing Trust Fund Program. It's one of
our general revenue programs. And over the years we have
tried our best to get our fund balances kind of depleted.
Especially as we're going into a session we always want
to be able to show that we are spending our general
revenue quickly.

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

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

MR. OXER: Wait, not yet.
Are there any questions from the Board?
(No response.)
MR. OXER: I have a couple.
MS. BOSTON: Okay.
MR. OXER: All right. You said you had an
innovative, a unique way of getting through, get the 140
vouchers.
MS. BOSTON: I knew you were going to ask me
about that.

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

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

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

MR. OXER: Cover the gap?

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

MR. OXER: Right.

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

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

   MR. OXER:  Cool.

   MS. BOSTON:  Yes.

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

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

   MR. OXER:  And just, you know, you're doing a good job for it. On the 811 program you said that there's -- what was the total volume in it? You had a $12 million that you were going to serve a total of 600?
MS. BOSTON: Well, it will be 24 million. We have the first 12 million award that we got several years ago, and then we have a new $12 million award. So we'll have the 24 million serving roughly 600 people.

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

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

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

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

MR. OXER: Managing --

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

MR. OXER: Managing conservatively.

MS. BOSTON: Yes.

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

MS. BOSTON: Yes.

MR. OXER: So good.

Any questions from other members?
(No response.)

MR. OXER: Good. Thanks, Brooke.

MS. BOSTON: Thank you.

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

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

MS. MURPHY: No.

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

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

So previous participation is the process that we use to evaluate someone's compliance history before we...
award them funds or enter into a contract with them. The Department made sweeping changes to our rule in January of 2014, eliminating a material noncompliance scoring system and implementing a different process where our Executive Award Review Advisory Committee receives information and makes recommendations to you about awarding funds.

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

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

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

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

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

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

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

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

(No response.)

MR. OXER: Okay. Motion to consider?

MR. GOODWIN: I'll make a motion.

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

MR. MUÑOZ: Second.

MR. OXER: Second by Dr. Muñoz.

Is there any public comment?

(No response.)

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

(A chorus of ayes.)

MR. OXER: Opposed?
MR. OXER: There are none. It's unanimous.
Okay. Is the -- is 3(b)?

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

MR. OXER: So you want to essentially --

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

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

Okay, Michael, I think you're next.

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

And subsequent to that you tabled a decision on DOE and LIHEAP funds with the provision to staff that we could go out and award 25 percent of the LIHEAP funds to
an alternate provider in an adjacent area to provide continuity of services for the utility assistance component within the LIHEAP grant. And if I haven't thoroughly confused you, just hold on a few minutes.

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

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

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

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

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

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

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

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

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

MR. DeYOUNG: Not necessarily.

MR. OXER: Could be through another --
MR. DeYOUNG: We have to establish a process about how we go about doing this.

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

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

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

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

MR. MUÑOZ: They could also --

MR. DeYOUNG: It is possible they could.

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

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

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

MR. DeYOUNG: There could be other entities, other nonprofits in the area. In many of these block
grants from the federal government when you are looking
for an alternate provider in an area you are encouraged to
look for other providers who have similar funding sources,
who have the benefit of community services block grant
funds.

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

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

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

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

MR. IRVINE: Which one?

MR. DeYOUNG: -- awaiting --

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

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

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

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

MR. MUÑOZ: It's just not our memory.

MR. DeYOUNG: I got it.

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

MS. SYLVESTER: While he's doing that, Megan Sylvester of Legal Services. I want to clarify something Michael said. The notice requirement under the State government code that he cited is only applicable to the
LIHEAP Program. But this action is actually concerning both the LIHEAP and the DOE funding.

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

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

MR. OXER: They have them too?

MS. SYLVESTER: Yeah, they have them too.

Chapter 2105 deals with block grant programs, but it has a very specific definition for a block grant. So for the programs that are -- the TDHCA administered, it only covers the little bit of CDBG that we have, CSBG and LIHEAP. HOME, ESG, and DOE are not a block grant for the purposes of that chapter, and then therefore none of the things in that chapter apply to those programs.

MR. OXER: Okay. Michael?

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

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

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

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

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

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

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

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

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

As Michael explained, we have received
correspondence from them saying that they -- and they line out where they have other expenses. But their administrative expenses that appears, and there's no documentation, there's just correspondence from them saying that we have these other amounts.

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

MR. DeYOUNG: Quality improvement plan?

MR. MUÑOZ: Yes. What does that mean approved?

Approved by who?

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

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

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

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

MS. MURPHY: That's correct.

MR. MUÑOZ: Sixty days hasn't expired.
MS. MURPHY: The 60 days was up on February the 24th. So we -- prior to the last Board meeting they were in their 60-day period to provide their quality improvement plan.

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

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

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

MS. MURPHY: Okay.

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

MS. MURPHY: Yes, okay. In December we wrote to them and said you're required to submit a quality improvement plan. Their deadline to do that was February the 9th. They sent in something in -- before February 9th. We reviewed it and said your deadline has not come up yet but I'm telling you now if this is your plan it's
not going to be approved. Please supplement your quality improvement plan to address the following Department concerns, and we extended the deadline to February the 24th. Does that answer your question?

MR. MUÑOZ: Yes.

MS. MURPHY: They had more than 60 days.

MR. MUÑOZ: Yes. Yes, it does.

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

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

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

MR. OXER: Any other questions of the Board?

(No response.)

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

MR. GOODWIN: So moved.

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

MR. CHISUM: Second.

MR. OXER: I hear a second by Mr. Chisum.

Okay. We'll take public comment now.

Ms. Garza, would you like to speak?

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

And the general ledger, part of the information was given at the meeting that we had with the Department. The -- I'm sorry, I don't want to say IRAQ. EARAC is it?

MR. OXER: EARAC.

MS. GARZA: EARAC. That was given at that meeting --
MR. OXER: Think of it as an earache. Okay?

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

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

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

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

So again the information is available.

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

MR. MUÑOZ: Can we ask questions?

MR. OXER: Absolutely.

MR. MUÑOZ: I'm just -- I'm misunderstanding
something, and I apologize for my feeble comprehension.

But you say they've had access to some of the general
ledger. You've heard the representative from the agency
state fairly unequivocally, we have not had access to the
general ledger. I'm not sure how to reconcile.

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

MR. MUÑOZ: But at the last meeting I'm fairly
certain, it's in the transcript, we said access to the
general ledger. Not a portion, not a percentage, but
access, which I believe we were assured they would have
access. Which seems to be the basis of some of this
convolution, as you stated.
MS. GARZA: Yes. And excuse me for my misunderstanding. We're willing to come in and sit down with the Department and go over the general ledger. Again though it's got to be supplemental to the documentation we have in the office. And it's a lot of information.

MR. OXER: Ms. Garza?

MS. GARZA: Yes, sir.

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

MS. GARZA: I'm sorry.

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

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

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

Patricia?

MS. MURPHY: Yes?

MR. OXER: Okay. Tell me the access that you've had to those records that she's talking about.
MS. MURPHY: In our August 2014 monitoring what we found was that money was being moved from our staff account into their equalization fund. And that my staff said, you know, I need to see, you know, the information, the accounting records from the equalization fund to determine its final disposition, where does the money go after you move it into the equalization fund.

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

MR. OXER: Okay. Megan?

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

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

Is that not correct, Megan?
MS. SYLVESTER: Megan Sylvester, Legal. Yes, that is correct.

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

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

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

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

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

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

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

(No response.)

MR. OXER: Any more?

(No response.)
MR. OXER: Michael?

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

MR. OXER: Ms. Bingham?

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

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

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

So, you know, I don't like the way this is...
headed, but my general sense is the ball was in your court
to bring the -- and when we left here we thought that --
and I'm not trying to chastise you, I think I'm just
trying to say we're all on the same side here. What we
wanted was for the folks to continue to get the funds.

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

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

MS. GARZA: May I ask the Board for some time?
I'll get it to you by tomorrow. I'll have it delivered
overnight.

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

MR. IRVINE: Mr. Chairman, actually this is a
much longer-standing issue than this. I have had
discussions with staff that have been working in this program for a number of years, and I believe that requests for access to this information go back as far as seven years.

Is that correct, Mr. DeYoung?

MR. DeYOUNG: Correct.

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

And so because the ex parte prohibition, in which you can only communicate with Board members about a pending application, and I think that would include this, at a meeting, that there can't be outside communications. And by statute that includes a written communication. And the statute even goes so far to be so strict as to say even on breaks, you know, the Board members can't have --
can't communicate about these pending issues.

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

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

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

But, you know, perhaps others may not be as familiar with it. So just so you'll know if you want to get something in front of them, you know, follow the
process. If you have questions about that, I would be glad to answer any of those questions ahead of time so you can make sure that, you know, you've gotten the information to them.

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

MR. OXER: Okay. Michael?

Thank you, Ms. Garza.

MS. GARZA: Thank you.

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


MS. GARZA: Yes, sir.

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

MS. GARZA: Yes.

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

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

MS. GARZA: The general ledger has been made available to monitors when they go into monitor the agency. It's always been there. We give the monitors a
manual of information and we urge them to ask us questions. That in formation, sir, has always been available.

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

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

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

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

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

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

    MR. CHISUM: Okay.

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

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

    MS. MURPHY: That is correct.

    MR. OXER: All right.

    MS. MURPHY: Can I say just one thing?

    MR. OXER: Please.

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

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

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

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

So are there any other questions or --

MR. CHISUM: Thank you, Mr. Chairman.

MR. OXER: Okay.

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

MR. OXER: Ms. Garza, you said that you did not send the general ledger after you said you would three weeks ago and told us that would be -- because that was one of the conditions. You did not send the general
ledger because there were documentation in support of that
that you felt like were necessary. But yet while the
folks were down there you didn't provide that while the
monitors were in place. Can you explain that?

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

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

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

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

When we did get the grant, that grant went to
pay some of that line of credit. We had a contract, we
had a CF contract or a LIHEAP contract at that point. An
auditor again would be able to decipher all this
information. Believe me, it's there. It is there. Every
cent that this agency has ever handled, at least while
I've been there, is accounted for, sir.

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

MS. GARZA: Yes, sir.

MR. OXER: But yet --

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

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

MS. GARZA: All right.

MR. OXER: One of the two of you is lying.

Okay? And I'm expecting that we're going to get to the
bottom of this and there'll be some --

MS. GARZA: Absolutely. Absolutely. I have
not been able to have one comforting moment because this
is hanging over our head. And the money, sir, is there.
Through documentation, it is all there. We're so busy
working in the Valley that sometimes we might have become
neglectful, but we are meticulous with our documentation.
I will not have anything less. I expect the Finance
Director to show me everything that was spent, and it'd
better be program-related.

MR. OXER: Is there any other questions for Ms.
Garza?
MS. BINGHAM: I'd --

MR. OXER: Ms. Bingham?

MS. BINGHAM: -- like to, Mr. Chair, just make

one comment. I just -- no regrets and I -- we have to

respect, you know, that we may not share the same position

on this one topic. I just wish that the energy that had

been spent putting the binders together would have been

spent on putting the general ledger and the documents that

were actually requested and sending those.

Because, you know, I think Ms. Murphy and you,
you're both very detail oriented. I'm going to speak for

us and say we're -- you know, we made a request that to us

was a very perfunctory surface-level request, which was

just give it. Worse case, it would have bought you a

little bit more time and the agency still would have had
to look in, dig into more details. But at least you would

have that good faith effort of we sat here together, we

asked for something.

But I guess what it sounds like to me is after

that meeting you decided for some other reason that you

were not going to -- it sounds like, you know, you have

some rationale, which you decided that you weren't going
to provide it because you believe that supplemental

information is needed to clarify the general ledger or

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

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

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

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

(No response.)

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

MS. GARZA: Thank you.

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

MR. DeYOUNG: Okay. So staff recommendation is that staff --
MR. OXER: You can bullet point the whole thing if you like.

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

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

MR. DeYOUNG: Yeah.

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

MR. DeYOUNG: Yes.

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

MR. DeYOUNG: And the DOE.

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

MR. DeYOUNG: Right.

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

MR. DeYOUNG: That was action last month.
Wasn't it?

Yeah, we got that approved the last time.

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

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

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

MR. DeYOUNG: Correct.

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

(No response.)

MR. OXER: Okay. Motion --

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

MR. OXER: Correct.

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

MR. OXER: Correct. The resolution --

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

MR. OXER: Yeah.

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

        MR. OXER: Correct.

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

        MR. OXER: Ms. Bingham.

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

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

        MS. SYLVESTER: Megan Sylvester. I want to clarify that you're not awarding the funds to someone else today. What this is doing for the LIHEAP funds is 2105 says specifically you have to deny the award. Now, you can go ahead and deny a part of the award, but then when you -- if you would go -- you'd have to go back and start that 30-day notification clock for the remainder. So
after those 30 days are over the staff could come with a
new provider of services. So does that answer --

    MR. OXER: So the real --
    MS. SYLVESTER: -- your question?
    MS. BINGHAM: I think it really does.

Because -- yeah.

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

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

    MR. OXER: Okay.
    MS. BINGHAM: Is there such a thing as denying
it and then turning around and awarding it back to the
original recipient?

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

    MS. BINGHAM: Okay.

    MR. OXER: And let me ask another question
here, Megan. If we deny it now, we go through the
process, because this audit -- based on the evidence of
the availability of data, the audit that we will
invariably get to is going to take awhile, can this
process be so we have an interim manager for a portion of
the fund and then return to Cameron/Willacy?

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

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

So given that that's the case, we've got to
move on to another position that provides the services to
those folks down in the Valley, Ms. Bingham, but also
maintains the integrity of the management and monitoring
structure that we have in place.
Now, that said, I think it's going to become evident eventually, and if -- the sooner the better this is going to happen, if we have access to these funds or this information, these data, then I'd like to make sure that we get that as soon as possible.

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

MR. DeYOUNG: Yes.

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

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

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

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

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

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

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

MR. DeYOUNG: Yes. I think, you know -- of course it all depends on who applies in and the application process for the request for applications. But if it's an existing provider who is already administering
the program in another area, you're talking about
replicating a delivery service model, which isn't as
difficult as starting up new. If you have a new provider,
I would tell you we are late to the table if we are
starting a new provider.

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

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

MR. OXER: Priority?

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

MR. OXER: Because part of the background
context for this issue is in the need to -- in my
estimation, the rest of the Board has their own position
and perspective on this, but in my estimation that they
improve their robustness, the capacity of these providers
on every one of these major programs to provide these at a
level of service and a level of administrative excellence
that let's just say we're going to raising the bar as
the -- as we progress.
So you're confident that we can find somebody who can implement this program, because we've already started, within the period with which this 25 percent of funding exists so we get them on -- there'd be no disconnect on the service provided to those residents in that area.

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

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

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

MR. Oxer: Okay. Any questions, any other questions from the Board?

(No response.)

MR. Oxer: No other public comment?

(No response.)

MR. Oxer: Okay. Regarding Item 4(a), there's been a motion by Mr. Goodwin and seconded by Mr. Chisum to
approve staff recommendation regrading Item 4(a). Those in favor.

(A chorus of ayes.)

MR. OXER: And opposed?

(No response.)

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

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

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

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

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

Do you have one more, Michael?

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

MR. OXER: Dual capacity here?

MR. DeYOUNG: Yep. And it is -- I had a conversation this morning with the Partnership, and I
think that's obviously the path we're going to pursue, and
we hope that that will come to fruition. But this is a
backup plan.

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

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

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

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

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

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

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

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

MR. OXER: They do this everywhere else.
Right?

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

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

MR. IRVINE: That's --

MR. OXER: That's a different matter.

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

MR. OXER: Better them than us.

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

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

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

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

MR. DeYOUNG: If we granted approval by the
Board, we would have an RFP together by I believe middle of next week and probably --

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

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

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

(No response.)

MR. OXER: For our federal funding response.

Hi, Megan.

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

MR. CHISUM: Mr. Chairman?

MR. OXER: Mr. Chisum.
MR. CHISUM: Since our staff has that responsibility of oversight and monitoring and --

MR. OXER: And that skill set.

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

MR. OXER: Okay. Let me ask a question. Mark, I got a question of you, if you can come up for a second.

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

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

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

MR. OXER: -- meat and potatoes auditing, isn't it?
MR. SCOTT: Correct. The A133 audit that was done, they should have looked at the allowability of expenditures. They should have asked them how do they get paid. They should have said, you know, we get paid based on reimbursement. They should have looked at the contract to determine if they were charging in a manner that was allowable. So that's basically what we need to do.

The advantage of having SAO or OIG, they can well, they will not be denied the records, and they can get all the records they need, including bank statements. Even if we got -- the general ledger should not be -- is a very simple thing to print out. To do a proper audit you'd have to have the general ledger and their bank statements to see where the money went. But it's a simple thing. And I can definitely advise on it if our staff does it.

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

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

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

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

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

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

MR. SCOTT: Correct.
MR. OXER: Okay. Any other questions? Mr. Chisum?

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

MR. OXER: Very good point, noted.

Ms. Sylvester.

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

MR. OXER: Yeah, one of the things that we had talked about, for the benefit of the entire Board, one of the things we had talked about some months ago was -- and in the internal audit process there will be times when there's a lot of auditing demands and there's some -- so we were looking to have on contract some surge capacity, somebody benched up, you know, a pinch hitter come in and help us out.
And then I still contend and believe that that would be wise to have that availability. I agree that the precedent that's set for this, what I don't want to have set is to every agency out here that has a conflict with us thinks they get a third party audit that we pay for. That's not going to be the case. That's just not going to be the case. But we are going to get to the bottom of this, and if it takes us hiring somebody from the outside to go dig, then we're getting ready to hire them, so.

All right. Michael?

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

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

And while our staff can and will do that kind of an audit, I do think there's a lot of value in this third party audit in this circumstance. I -- it's going to take, you know, a full reconciliation of all of their records to determine what is that disallowed amount. And
they, you know, estimate it can take them about five days
to get through this agency's books and records. And I
think there'd be a lot of value in having Wipfli perform
this audit, although I see your point that it would set
some sort of a precedent.

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

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

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

MR. OXER: Mr. Chisum?

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

MS. MURPHY: When I spoke with Wipfli this
morning and explained the circumstances and what we have and what we're looking at, they expected it would take five days.

MR. CHISUM: And the estimated cost?

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

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

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

MR. OXER: Right. Okay.

MR. CHISUM: Thank you.

MR. OXER: Michael, anything else?

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

MR. OXER: Okay, any other questions?

(No response.)

MR. OXER: Okay. Motion to consider?

MR. MUÑOZ: So moved.

MR. OXER: Okay. We'll give that one to Dr. Muñoz. Okay, motion by Dr. Muñoz. Second by Mr. Goodwin. There's no request for public comment. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?
(No response.)

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

Okay, Jean. Good morning.

MS. LATSHA: Good morning. Still is --

MR. OXER: It is still morning.

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

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

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

MR. OXER: That's even better.

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

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

MS. LATSHA: But I thought about it too and I
was really pleased that we actually have two new Board
members in this situation. I think although the write-up here you'll see does speak to some precedents with similarly situated full applications and pre-applications in previous cycles that you haven't had the benefit of hearing all of those appeals. I think it -- and the applicant in their appeal talks about how this was a new system this year, and that's true too. So I kind of went back and forth on, you know, is precedent important here or not.

And I think whether you consider precedent or you don't in this situation, you know, staff kept coming to the same conclusion, which was we couldn't accept this pre-application because it simply wasn't submitted timely. The fact that this was the first year for this system I started to find a bit irrelevant. We could have had this system in place for the past 10 years and this could have been a new application who didn't maybe also, admittedly, have the benefit of hearing similar appeals.

We might hear this exact same -- if we keep this system in place exactly as it is I wouldn't be surprised if we hear the exact same appeal next year from someone who entered Texas, thought this was a new system, and didn't know that this very situation had come up prior, made the same mistakes, found himself in the same position. So --
MR. OXER: It's not a new system, it's a new system to them.

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

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

But just to give you the story of what happened here. On I think it was January 6th the applicant went to the web page, which is you click on a link, go to that web page and you fill out a bunch of forms related to the pre-application. When you get to one part of that form and it's what we've all seen a million times on the internet. Right? A little rectangle that says upload your site control document here. And gives you the opportunity to find a file on your own computer, and you hit a button that says upload. You do that a couple times, and then
you get to the bottom of this form and you click on a button that says submit.

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

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

Some folks maybe it didn't work. Or we eventually said we need to just tell people to click on their link, they're going to be able to double-check this without calling Kathryn. But the fact is this was a double check that was going on with several applicants. They were not in a position like they had been in the past where what you did was you put some files on a CD, some PDF files on a CD and then you would pop that CD out of
your computer, pop that CD back into your computer, click on those files and make sure they can open. Right? That was the double check.

So is the double check required in the QAP?

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

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

MS. LATSHA: That's right.

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

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

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

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

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

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

MR. OXER: Any questions from the Board?

(No response.)

MR. OXER: I have a question for Kathryn.

MR. CHISUM: I have a question.

MR. OXER: Mr. Chisum has a question.

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

MS. LATSHA: Right around 300.

MR. CHISUM: 300?

MS. SAAR: 326, I believe, seven.

MR. CHISUM: 326?

MR. OXER: And you are?

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

MR. OXER: Right, okay.

Is that it?

MR. CHISUM: Right.

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

MS. SAAR: In general we received very positive
feedback from the development community. They liked the ease of the system, they liked that they could check their own -- the information that they submitted. And, you know, there's always room for improvement in these things, and we always welcome feedback from the development community. So if there's something specific that we can do better next year, we certainly will. But the system was largely received very positively.

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

All right. Jean?

MS. LATSHA: Yes, sir.

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

MS. LATSHA: Yes, sir.

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

(No response.)

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

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

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

MR. CHISUM: Second.

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

Well, it looks like somebody wants to talk.

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

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

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

I was approached by HCS to look into the issue regarding the submission and what appeared to be corruption with one of the PDF files that they submitted. The file, as was declared earlier, was submitted electronically by a form. That form was provided by a web
service called JotForm. And I've looked at the actual file on the HCS server, and it's intact. It hasn't been changed or modified since the time of its submission so I know that it's a true and accurate copy of the file.

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

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

So that would lead me to believe that the issue was on the JotForm submission itself, on JotForm's side, rather than HCS's side. And kind of to go along with that whenever you look on the JotForm support forums there are, there's an abundance of issues that you find in those support forums where people have gone in and said
specifically in relation to PDF files that there's been corruption, it hasn't uploaded properly, there's been this issue and that issue, and JotForm said on several occasions that it's something which they're trying to resolve.

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

MR. OXER: Any questions of the Board?
(No response.)

MR. OXER: Okay. Thanks for your comments.

MR. WHITFIELD: Thank you.

MR. McMURRAY: Brad McMurray, Director of Development for Housing and Community Services. Chairman and Board members, I appreciate, and Executive Director, I appreciate the opportunity to speak with you this morning. And I wanted to share our concerns about the implementation of this new pre-application process.

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

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

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

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

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

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

Now, I'd also like to say that we strongly disagree with the position staff took in their response on a couple of things. First, staff states in the response that the file had to be corrupted when we uploaded it. But we just had the forensics expert describe, and what we learned ourselves from asking on these forums, is that actually you upload to a temporary server on JotForm, then internally they transfer it to the place where your product is actually stored. So as the forensic expert has
said, we uploaded it, it must have uploaded correctly because we got a confirmation email. But for some reason when it was transferred from the temporary storage server to the main server it was corrupted.

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

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

Now we look at -- you know, I have the highest
respect for staff, but I think in this instant the proper process and timely guidance for the process were not in place. And the reason I say that is because there was no guarantee from the vendor that when they transferred it from the temporary server to the place where it was stored that it wouldn't be corrupted, and ours was.

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

And then we talk about, well, we did tell staff. You know, she described exactly that I didn't know it happened. People are calling in how do we confirm it. Clearly nobody knew from the webinar, from the workshop, from the procedures manual, so people were calling in. And she said we decided to tell them. Okay. Well, in previous things when things changed, when a tab on a multifamily application was changed or anything changed, it's TDHCA update, get your attention.

This was actually shared through -- you know, and this guidance that was provided was actually eight words in the third and final paragraph added that said
"and can be opened from the confirmation email." It was said, it was there. We got the email. But it's in a reminder email on the third paragraph.

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

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

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

So I just say, close in saying that the fact that a change to this process that conflicts with previous guidance, was provided in such an obscure and last-minute
fashion, is against all established procurement protocol, unfair regardless of the number affected, and counter to the precedent of quality and transparency established by TDHCA staff and yourselves as the Board of the Texas Department of Housing and Community Affairs.

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

MR. OXER: Any questions of the Board?

(No response.)

MR. OXER: Thanks, Mr. McMurray.

MR. McMURRAY: Thank you.

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

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

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

What we know about HCS, with the help of an unrelated third-party forensic expert, is that they submitted a clean, readable file. The corruption we believe, with as much certainty as possible, occurred when it got to that JotForm server and then was being uploaded to TDHCA.
So if your rules say that the applicant must ensure that all digital media is readable by the Department but if they can't do that because they can't control the process from JotForm to TDHCA, all they can control is the process from their submission into the JotForm system, then they've done their job.

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

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

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

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

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

So we thank you for your time.

MR. OXER: Thanks, Cynthia.

Other comment?
MR. OXER: Okay. So you're covering for them, Cynthia?

Okay. Any response, Jean?

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

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

MR. OXER: No two-step transfer.

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

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

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

Those folks that did call, that prompted us to
send that listserv, they did that with no direction. They
simply said, you know what, I better double-check this and
I don't know how. Right? I mean when you burn a CD you
know how to double-check it, you pop it back in your
computer and you see if you can open it up. Right? But
they didn't know how to double-check it. But they knew
that that's an important aspect of submitting these pre-
And so I would ask what would have been enough. I think that had it been no listserv and a statement buried in the 45-page manual that we would be up here having the exact same discussion, that they would be claiming, well, sure, the manual 45 pages long though and you didn't tell me to double-check it.

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

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

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

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

MS. LATSHA: No, sir.

MR. OXER: Anymore --

MS. LATSHA: But Kathryn dealt with them quite
a bit so I think could answer --

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

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

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

   MR. GOODWIN: But TDHCA receive a notification

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

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

MR. GOODWIN: From JotForm.

MS. SAAR: -- from JotForm --

MR. GOODWIN: To them.

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

Correct.

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

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

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

MS. SAAR: Right. We --

MR. GOODWIN: -- submitted --

MS. SAAR: -- knew that they had submitted
their application. And, you know, I was also logged into
the JotForm system as the applications were coming in and
could see in real time as applications were being submitted.

MR. GOODWIN: Okay.

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

So when you receive your confirmation email there's an edit submission link at the top of the email. It's a hyperlink, it's underlined blue, everyone knows that that's clickable, that you can click on that. So if people know that the edit submission underlined -- highlighted in blue and underlined, you can click on that. When you scroll down to the bottom of your confirmation email, that same formatting is used for the file.

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

MR. GOODWIN: I'm also curious when you said you received phone calls. Did you receive five phone
calls or was it 50, a hundred?

MS. SAAR: No. So I was receiving phone calls throughout the entire week. I think the application went live on January 2nd and closed on January 8th, I believe. So I, as the person who designed the system and implemented the system, I got a lot of phone calls, just because people are nervous. It is new. And the phone calls that I did get were, hey, there's a hyperlink to my file at the bottom of -- am I supposed to click on that? And my response was yes. If you can click on that file and it's openable, then I can click on the file and I can see it.

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

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

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

MR. OXER: Okay. Any other questions?

MR. CHISUM: Yes, sir.
MR. OXER: Mr. Chisum.

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

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

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

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

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

MS. SAAR: It wasn't until after the close of the application acceptance period. Once we downloaded all
the files from the JotForm server, that's when we
discovered that this one file out of 714 was corrupted.
So it's unfortunate that it happened, but it was one of
714 files. So a very, very minute percentage.

MR. CHISUM: But 100 percent to the presenter.
MS. SAAR: Correct. That's correct.
MR. CHISUM: Do you have another -- something else you wanted to say?

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

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

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

Now, this is from JotForm. This is saying that
the process that they use is we upload it, it goes to a
temporary server, then it's transported to the storage
space. That is what they do. And we've got our technical support that says that you get an email only if it uploads properly.

MR. OXER: Thank you.

Kathryn, did you have something on that?

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

MR. OXER: Good morning, Curtis.

MR. HOWE: Good morning, members of the Board.

This is Curtis Howe, Director of Information Systems. I just want to make one quick comment. I believe when JotForm says that the possibility is that the transfer didn't occur from your temporary storage -- from our temporary storage space to your space, they mean not our servers within our network, not TDHCA servers but Amazon Cloud -- our space within JotForm that is Amazon -- run by Amazon Cloud services, not in our network.

MR. CHISUM: Right.

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

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

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

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

MR. IRVINE: No. Thank you.

MR. OXER: Okay. Any other comments?

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

MR. OXER: Okay. Thanks for your comments.

Kathryn?

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

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

MR. OXER: I think he signed in right here, You can tell who he is right there.
MS. SAAR: Oh. I'm sorry, I did -- I was unaware that this is not the same forensic investigator that issued the statement that's in your Board book. I was unaware of that.

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

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

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

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

MR. OXER: So they did --

MS. SAAR: They did edit --
MR. OXER: -- they did go in --

MS. SAAR: Correct.

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

MS. SAAR: Correct.

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

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

MS. SAAR: Correct. So --

MR. GOODWIN: -- that it successfully downloaded?

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

MR. GOODWIN: Right.

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

MR. OXER: To say that --

MS. SAAR: Correct.

MR. OXER: -- you accepted those.
MR. GOODWIN: So maybe I'm a little lost here. I apologize.

MS. SAAR: That's okay.

MR. OXER: That's okay.

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

MS. SAAR: Right.

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

MS. SAAR: Correct.

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

MS. SAAR: Correct.

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

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

MR. GOODWIN: Successfully submitted.

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

MR. GOODWIN: Okay.

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

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

MR. GOODWIN: Yes.


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

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

They did not -- because they saw these two file names here and they matched the file names that were the files that they submitted, they didn't change these two
submitted PDF files at all. Thank you for the clarification.

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

MS. DEANE: Mr. Chair?

MR. OXER: Madam General Counsel.

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

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

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

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

MS. BAST: Certainly --

MS. DEANE: -- can you kind of address that for us?
MS. BAST: Certainly, Ms. Deane. Again Cynthia Bast. And when I looked at this I thought about several ways to resolve this problem. One was an administrative deficiency. I know that staff has indicated that they believe that because this is material information that it can't be cured with an administrative deficiency. Staff indicated in their writeup that a waiver would certainly be a possibility.

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

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

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

FEMALE VOICE: That's correct.

MS. BAST: Okay. So we got a good file. In terms of, you know, meeting the requirements of state law, I believe that the state law establishes a competitive
system, that is intended to give everyone an equal opportunity. As I mentioned in the rules, the rules are rigorous about, you know, an applicant is supposed to be responsible for their application. And in this way this applicant has been responsible for its application.

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

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

MR. OXER: Thanks, Cynthia.

MS. BAST: Thank you.

MR. OXER: Jean?

Tim, do you have something?

MR. IRVINE: I just wanted to add two things.

One, I believe somewhere else in our QAP we do clarify saying that something is an administrative deficiency and
asking for a five-day response is not determinative that it was in fact an administrative deficiency. And if it proves to be material, then it's treated as material.

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

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

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

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

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

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

(A chorus of ayes.)

MR. OXER: And opposed?

MR. GOODWIN: No.

MR. OXER: One no registered by Mr. Goodwin.

Okay, it's four to one.

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

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

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

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

That is a rule that exists in the 2015 QAP but it did not exist in the 2014 QAP. So this action is twofold, really. It is, first, asking the Board to make a determination as to whether the return of these credits,
whether we could apply the 2015 QAP to the return of these
credits, and should we apply the 2015 QAP additional
action with respect to the additional requirements of that
force majeure provision.

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

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

MS. LATSHA: For a while -- to consider the
2015 QAP to have taken effect at anytime in 2014. And
this is why it's a very practical consideration. You
know, we make awards in late summer and then continuing
into the fall as things move around a bit, and execute
carryover allocation agreements as late as December 31st.

Just because these tend to be moving parts.

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

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

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

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

I think the applicant has quite a bit to say about that. After that decision with respect to the application of the 2015 QAP, like I said, then staff would
have some further recommendations. It would take some
time for us to determine whether or not the other
requirements under the force majeure provision have been
met. They relate to underwriting and things like that.

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

MR. OXER: Any questions from the Board?
(No response.)

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

I think applying a new standard to an old
project doesn't work. It doesn't cycle very well, it's
just a product of the process that we use to approve the
QAP, which requires that we get it to the Governor's
Office so that they approve it by December 1st so that we
can implement the program beginning on January 1st is what
determines our scheduling on that. It could just as
easily have been we get it to the Governor on January 1st
so it can be done by December -- or January 31st and apply
it to the rest of that actual calendar year.

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

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

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

MS. LATSHA: That is true.

MR. OXER: Well, and we're also constantly
aware that in large part the contribution this Board makes
is in defining or developing and creating a policy under
which we operate. And as we've identified before in
resolving those issues in the QAP, there were a lot of quirks in them. I mean quirks kind of got to be a sport around the building for a couple years while we straightened all that out.

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

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

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

MS. LATSHA: I don't think so.

MR. OXER: -- I was doing that?

MS. LATSHA: I think staff's recommendation will stand, and that way we can -- I'm sure -- I know that these folks have some -- a few words to say about it.
MR. OXER: The staff recommendation is -- let's quantity this -- is not subject to the 2015 QAP but would be -- and being not subject to 2015, then do not come under the force majeure components of the 2015. Is that what you're saying?

MS. LATSHA: That's correct.

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

MS. LATSHA: Yes, sir.

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

MS. LATSHA: That's correct.

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

MS. LATSHA: In 2015.

MR. OXER: Correct.

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

MR. OXER: Right. So you were unable to reallocate those -- say that again, Jean. You were unable to -- because of the late date on the return, voluntary
though it was, on December 31st, 2014, you were unable to 
reallocate those during the last round? Do they -- 

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

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

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

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

MS. LATSHA: That's right. 

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

MS. LATSHA: Goes back into the region. 

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

MS. LATSHA: Yes, sir. 

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

(No response.) 

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

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MR. CHISUM: So moved.

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

MR. GOODWIN: Second.

MR. OXER: Second by Mr. Goodwin.

Okay, Claire, jump on it.

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

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

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

This project was clearly an affordable housing project that was needed. It was granted credits in 2012. The project was constructed. The City of Mineral Wells clearly supported it. If it was possible to file a new application and start over we would have done that. But because the QAP changes year to year, this project no longer is point scoring competitive.

So everyone knows -- we worked on this for a year. The force majeure language that was added to the 2015 QAP was added specifically to deal with this
particular set of circumstances and this project. And what this says is "for purposes of this paragraph credits returned after September 30 of the preceding year," which would be 2014, "may be considered to have been returned on January 1 of the current year in accordance with the federal law."

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

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

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

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

MR. OXER: Okay.

MS. PALMER: Thank you.

MR. OXER: Thanks for your comments.

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

MS. LATSHA: Sure. So Claire is correct in her reading of the rule. The problem is that she's still reading from a 2015 rule. The real problem here is that it's as if this rule didn't exist at all when that credit
return happened. And so it's difficult for us to look at a 2015 rule and then apply it back in time.

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

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

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

You guys clear on that?

(No response.)

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

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

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

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

MR. OXER: Tim, you have a comment?

Thanks, Claire.

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

MR. IRVINE: I mean I think that the statement Claire made that there's legal precedent is -- it's got some truth to it. I mean, for example, when I go to my bank and I deposit something at four o'clock it says deposits made after four o'clock will be posted tomorrow. And I think that there's no doubt that this physical return of the credits occurred too late to do anything under the 2014 rules.

I don't think staff acting alone has the latitude to make a decision to apply something involving
those facts under the 2015 rules. And I think it really comes down to largely a policy question whether in order to, you know, achieve an equitable result you want to treat this as being subject to the force majeure provisions.

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

So there are those facts to consider. I also want to underscore that if, for the sake of argument, it were to be determined that the force majeure provision should apply to this return, it still is incumbent upon the applicant to prove up financial feasibility, viability, and that they can in fact get this development done as approved, which, you know, frankly is a challenge. Simply reissuing the credits will not in and of itself make everybody whole. There's going to need to be significant financial --

MR. OXER: Issuing the credits won't make the project work but not reissuing the credits will definitely make it fail. Is that a statement?
MS. DEANE: Let me just provide a couple of legal thoughts. And if you want more than this, I would suggest an Executive Session --

MR. OXER: Want more opining?

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

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

I do think, however, that legally if you wanted to then say, well, we're going to -- okay, we're going to go ahead and extend that to a general statement that it was returned on X date and find that 2015, I think you
could probably do that. I don't think you are required to
do that. I think the other position would also be legally
supported that we are not going to make that extension of
the 2015 QAP. But I think that that alone is -- would be
the pathway if that was something you wanted to do.

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

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

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

MR. OXER: No.

MS. DEANE: Okay.

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

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

MS. LATSHA: Yes.
MR. OXER: Okay. And the project was constructed at or near completion? Okay.

MS. LATSHA: Eighty percent.

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

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

The other thing is too if they can't make it work financially, if they can't make the -- if the reemergence of that or the resurrection of that project can't be made financially viable, so those credits -- assuming we issue those credits back to them again, you know, we come back again here, we're at the end of 2017, which gloriously will be the end of my tenure here, we come to the end of 2017, the last thing I get to vote on, Claire, is say, no, you don't get them back again. Okay?
So what -- not yet, I want her to respond first.

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

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

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

MS. LATSHA: That's right. Our Real Estate Analysis Division would be involved in that determination. And so there's little chance there then that we would reissue these credits in a few months to this development and that it not work out again at the end of 2017. Did that answer your question?

MR. OXER: So that would -- so essentially -- most of it. Okay. So essentially what we're saying is if we allowed this opportunity, and we're not reissuing the credits. Okay?
MR. OXER: Because they're having to make a new application.

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

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

MS. LATSHA: That's right.

MR. OXER: Okay.

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

The reason that we put a deadline on that date, you'll see in your Board book, is because at some point before we allocate the rest of the 2015 cycle we would like to know if we have those credits to allocate to a 2015 active application or not. So this isn't, it's not --
MR. OXER: So rather than reserve them for then, we -- that's a resource that we have, we'd like to know if it's not going to go, if you can't prove up the financial viability of your project, then we get to assign them someplace else.

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

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

MR. OXER: Clear?

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

MR. IRVINE: And likewise if they were awarded at July 30th to this development, then they would get a commitment notice like everybody else and they would have
to prove it up within the usual commitment time frame. And if they couldn't prove it up, then it would go to somebody on the wait list in the 1015 round.

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

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

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

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

MR. GOODWIN: I'll withdraw my second.

MR. OXER: Okay.

MR. CHISUM: I'll withdraw my motion.

MR. OXER: Okay. Now we got a clean slate. Let's start over here, because I'm inclined -- this is one of those things that, you know, the -- and not -- I appreciate that the project team has taken the effort to work through this, figure out a force majeure provision. Okay?
And, yes, we can twist all this around and figure out when the dates apply and that sort of thing, but from a policy standpoint it seems to make sense to me to try to make this work.

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

MS. PALMER: Very clear.

MR. OXER: Okay.

MR. MUÑOZ: So then -- just a minute.

MR. OXER: Hold on a second.

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

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

MR. IRVINE: I would submit that you frame it with a finding that with a policy reason of providing certainty to the investment and lending community and continuing with the objective of serving the persons who would be served by the award already granted, that you make a determination that it is appropriate to apply the 2015 force majeure provision to this situation. And in
doing so you remind them that this is not an award of the credits but merely a finding that the provisions apply and that they're required to prove up financial feasibility and all the other requirements on or before some early date.

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

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

MS. LATSHA: Sure.

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

MS. LATSHA: No, right.

MR. IRVINE: Correct.

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

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

MS. LATSHA: Yes, sir.

MR. OXER: Right? Okay.

And, Brent, your team is going to have to make sure that they're financially viable.
MS. LATSHA: Yes, sir.

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

MR. CHISUM: With a sunset of July?

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

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

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

MS. PALMER: Claire Palmer representing the applicant. We have mediation with our insurance on the insurance issue on April 12. I don't see any reason in the rule that this has to come back to the Board. I mean
I think July 1 is a good date because this is going to simply be -- if we meet all the criteria and get through underwriting analysis, this will just be a reissue or an issue just like it would be --

MR. OXER: Well, let me --

MS. PALMER: -- with any normal applicant.

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

MS. PALMER: Okay.

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

MS. PALMER: Okay.

MR. OXER: -- come back.

MS. PALMER: Okay.

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

MS. PALMER: Could I have May 30?

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

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

MR. OXER: Jean?

MS. LATSHA: If you'll allow me. The reason we thought June 16th should be the last date that we should
bring it before you if staff determination is actually 
that we should not be reissuing those credits and we wind 
up in a discussion about that with the application and 
then -- and need to come back and revisit the Board, that 
would give us time to visit it twice, if you will. If the 
Board, let's say, at the June meeting said, staff, will 
you please go out and get some additional information and 
then we'll decide on this, it allows for one set of 
tabling, if you will.

MR. OXER: Okay. All right.

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

MR. OXER: Okay. Hold your --

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

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

Claire?

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

MR. OXER: Wait, hold on.

MS. PALMER: Claire Palmer --

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

MS. PALMER: Oh.

MR. OXER: No, no. You come back, it's going
to be one shot.
MS. PALMER: Right. And that's why I'd like until May 30th to submit. This is just --

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

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

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

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

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

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

MR. OXER: Brent, come here.

MS. PALMER: -- we will do anything in our power to work with them. We have through this whole process. I think staff would agree that we have done everything that we possibly could to work with staff on --
MR. OXER: And I'm sure you have. And I recall making -- trying to make this work and get some discussion going and working through this last year and coming up with a new provision in the rule and making it apply to 2015. Yes, I understand all of that. But we're getting down to the sharp edges here --

MS. PALMER: Right.

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

MS. PALMER: And that --

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

MS. PALMER: That's right.

MR. OXER: You good with that, Jean?

MS. LATSHA: I think we could probably do that. I imagine that Brent would need 30 to 45 days to probably review whatever it is that they submitted by May 30th, which will put us at mid-June.

MR. OXER: Perilously close perhaps.

MS. LATSHA: Right. Or would put us at mid-July.
MR. OXER: Yeah, mid-July.

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

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

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

MR. OXER: May 15th?

MR. IRVINE: When=s the May meeting?

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

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

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

MR. OXER: Well, and this is one of those things, I know, Brent, I know you got a thousand things to do on these applications. There's a lot of them. This is one that's a unique circumstance and, you know, personally amongst the Board it's my position is to allow
considerable perspective on this and latitude to help try to make this work. But in the end there's a drop dead date. Okay? And what I want to know is can you guys agree on that drop dead date. May 1.

MS. LATSHA: May 1 it is.

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

Did Dr. Muñoz vaporize?

MR. CHISUM: Yeah, he had to leave.

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

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

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

MS. BINGHAM: Second.

MR. OXER: And a second by Ms. Bingham.

Anybody else want to say anything?

(No response.)
MR. OXER: Right answer. All right. Motion by me, second by Ms. Bingham. All in favor.

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

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

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

MR. OXER: Into the pool. Right.

MS. DEANE: Into the pool.

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

MS. LATSHA: Yes, sir.

MR. OXER: Okay. All right. Back to the vote.

Motion by me, second by Ms. Bingham to which I just alluded. All in favor.

(A chorus of ayes.)

MR. OXER: Those opposed?

(No response.)

MR. OXER: And there are none. It's unanimous.

Thank you for the Board. And thank you for that. Good
luck, folks.

    Okay, Tom. Tom? One more item. And you're standing in the way of these people and their tuna fish sandwich, so I warn you.

    MR. DORSEY: Good afternoon now. Sorry, I was a little bit distracted because there was actually a bill filed that does very -- just in the last few minutes that does very similar things to what I'm about to talk about here.

    This item is a set of proposed amendments to our Subchapter D of Chapter 10, which is the Uniform Multifamily Rules. That subchapter is our real estate analysis and underwriting rules. It's also the rules we underwrite transactions. We use these rules at cost certification as well.

    In accordance with Section 42, the Department is required to underwrite tax credit deals at three key points in time. At the time of application before we award tax credits, at the time of carryover, which is generally later in the year that we award those credits, and then at the time of cost certification.

    Cost certification occurs once the development has been constructed. They submit a package that includes their actual development costs. Everything that we were working off of that was kind of pro forma at the beginning
of the process at application, working off of conceptual architectural plans, pro forma rent schedule, and operating pro forma, all of that information should be much more settled and solidified. Then to the closing process, constructed, done constructing, got COs. So we're a lot further down the road.

Historically we have applied the exact same criteria at the time at all three stages. During the rule-making process -- you all know this is a fairly unusual thing for staff to be proposing at this point in the year. Typically this would, these types of changes would be proposed during our annual rule-making cycle for our multifamily programs that occurs, you know, prior to November 15th of each year. Then the QAP goes to the Governor and the Governor decides whether or not to sign off on it or make amendments or what have you. So this is outside that time frame.

We did have a discussion with folks in the development community that expressed some concerns about the application of these rules at the cost certification stage prior to approval of those rules in November, and we committed, staff committed to them that we would work with them in a little bit more of a deliberate manner, hold some discussions with them. We held a roundtable in the past couple months on these issues.
And so now we're bringing a set of proposed very limited amendments that are -- that affect how we underwrite at the cost certification stage.

The reason these are so limited and the reason we wanted to keep these very limited is it's not part of this annual rule-making process. We have 172 applications, 9 percent applications in-house right now. We're reviewing those, we've already sent some over to Underwriting so they're starting the process. We want to keep these if we can to just changes that impact the cost certification process so that we're not, during the underwriting process for the 9 percent cycle, the current 9 percent cycle, you know, we don't want to be in the business of making midstream changes while that underwriting is occurring --

MR. OXER: You don't want to be moving the goalpost.

MR. DORSEY: -- and a bunch of different -- right, exactly. So the proposed changes that I'm about to lay out apply only to, materially only to the cost certification stage of the underwriting process.

The proposed changes do a couple things. One is that there are a few changes that codify much of what we do now but that is not currently in a rule specifically. I think as we've had folks come to the
State that haven't worked here for years and years and years, you know, I think that there was a desire to have clarity in terms of what our internal processes are, how we utilize, for example, the actual rents being achieved at a property during the cost certification underwriting. Folks wanted clarity in the rules with respect to how that's going to occur.

And so we're proposing a series of changes to clarify some of those existing practices in the rules so it's transparent so everyone can take a look at those and see them. In addition, we're -- Brent frequently refers to kind of the underwriting box. We create a series of parameters and then we expect applicants to submit applications that -- where the financing structure, the debt coverage ratio, all these types of things fall within this box.

On the one end of the box we have -- we want to make sure we're awarding financially viable transactions. On the other side of the box we want to make sure that we're fiscally responsible with the resources we have available to us. So, you know, we lay out this box in the rules.

What we're proposing is moving a couple components of that box or a couple of the sides of that box at the time of cost certification to account for
changes that can occur between the point of initial
underwriting and when an actual development places in
service and starts operating.

One example would be the 65 percent expense-to-
income ratio. At the time of underwriting we want to make
sure that's a tool that we use to make sure there's enough
cushion in the deal so that a deal that's actually
constructed can survive a period of -- where, you know,
maybe rents don't go up that much, these properties are
subject to rent limits. They're not just subject to the
market, they're subject to sometimes both rent limits and
the market. So you might have flat rents, for example,
over a series of years.

Well, your expenses might be rising at the same
time. So the expense-to-income ratio is designed to help
ensure that there's sufficient buffer there so that a deal
can survive a period, a sustained period where conditions
aren't favorable for operations and you have this kind of
rising expenses and flat rents and what have you.

At the time of cost certification, however,
your expenses are what they are and your rents are what
they are. And hopefully we were prudent enough in the
beginning to underwrite the deal to, you know, reasonably
anticipate what rents and expenses would be such that it's
still below 65 percent. But in the event it is not, we're
creating kind of an alternative.

We're suggesting that we're proposing not to apply a 65 percent expense-to-income ratio at cost certification and we're raising the top end of the -- or we're proposing to raise the top end of the debt coverage ratio band from a 135 to 145. And so what that does is there's -- you know, again moving pieces here, let's say your expenses are -- your rent and expenses show that you're above a 65 percent. One possible way to mitigate that would be to start with a higher debt coverage ratio than a 135.

And so we're -- again, we're doing a couple of things. We're clarifying existing practice so that we're transparent and everyone can see exactly how we're going to underwrite these at cost cert. The lenders and syndicators can gain a level of comfort without -- it's going to be treated after they close. In addition, we're looking at making some changes that recognize that sometimes things change between application and cost certification and there may be instances in which different parameters, applying different parameters make some sense.

So again we held some discussions, small group and a roundtable in the past couple months, and these are the set of changes that staff is comfortable recommending.
One thing I left out. In addition to those couple of changes, in the event that we still reach a point where let's say, for example, that when we originally underwrote a transaction they were anticipating they were going to be able to sell the credits at a price of, say, 90 cents on a dollar, and they actually were able to achieve 95. We -- before we would go through the process of adjusting the amount of credit that's allocated at cost certification we would provide some options that could provide benefit to tenants.

There are two options laid out in the proposed rules. One is that they can use some of the additional funding that they didn't originally anticipate to provide additional amenities on site for use by the tenants. So directly making sure that that additional funding accrues to the benefit of the tenants. And then they could set up a special reserve account that is also managed to the benefit of tenants.

We do have already some provisions in another portion of our rules that, you know, anytime a special reserve account is set up they need to submit a plan for exactly how those funds are going to be utilized to benefit tenants. An example might be something like it might provide the owner an ability to satisfy more costly reasonable accommodations requests that they wouldn't
otherwise be able to satisfy because of financial constraints, operating constraints on the property.

So that would be an example where a special reserve account, funds in a special reserve account could accrue to a person with a disability that's looking for a reasonable accommodation and make that a viable option where it might not otherwise be a viable option.

So that in whole are the set of changes that are being recommended. And I see that there are several folks who would like to speak on this.

MR. OXER: Okay. So staff recommendation is?

MR. DORSEY: To approve the publication of these proposed changes in the Texas Register. They would go out for public comment, and we would hopefully bring back a final version in May.

MR. OXER: So this is not an approval of the final version, this is a posting of the this is what we're suggesting as a change?

MR. DORSEY: That's right. So to the extent, for example, that there's suggestions that maybe this should be tweaked or that should be tweaked, I'm probably going to come back -- unless I know exactly what the consequences of tweaking it in that way are, I'll probably come back and say that's, you know, a valid public comment, let folks make that during the public comment
period, and let's have an opportunity to evaluate the effect.

MR. OXER: Okay. All right. We'll need a motion to consider to take public comment.

MS. BINGHAM: I'll move to approve staff's recommendation to print the -- to submit the proposed amendments for public comment in the Texas Register.

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

MR. CHISUM: Second.

MR. OXER: Second by Mr. Chisum. It appears we have several requests for comment.

MR. AIYER: Good afternoon. Mahesh Aiyer on behalf of the -- on behalf of TAAP [phonetic]. I just wanted to say I think we're supportive of that dialogue that it's gone through. And just simply appreciate the willingness for consideration.

MR. OXER: Great. Thanks, Mahesh.

Okay.

MS. ANDERSON: Good afternoon. Terri Anderson, Anderson Capital. I definitely wanted to congratulate staff and thank them for listening to the development community. It was a difficult process to get through a cost certification on a particular transaction. I think they've done a very good job in listening to the community and listening to the concerns. So thank you all, and
definitely congratulate staff. Thank you.

MR. OXER: Great. Thanks, Terri.

Ms. Dula. Nice to see you back.

MS. DULA: Good afternoon. Thank you. It's been a couple months.

MR. OXER: It has.

MS. DULA: Tamea Dula with Coats Rose law firm.

I am going to raise a question that I hope will flesh out how something will be addressed, and maybe limit the public comment accordingly.

In the first summary dealing with the gap and debt coverage ratio methods of determining how many tax credits should be allocated, there is an alteration being made that says that "in making this determination and based upon specific conditions set forth in the report, the underwriter may assume adjustments to the financing structure --" this is new language hereafter -- "including treatment of cash-flowed loans as fully amortizing over its term," and then original language, "or make adjustments to any department financing such as the cumulative DCR conforms to the standards -- such that the cumulative DCR conforms to the standards described in this section."

And my question is am I correct in thinking that this means that the underwriter can theoretically...
amortize a cash-flowed loan over the term of that loan if
the DCR, the debt coverage ratio, is too high based upon
the Department's standards? Clearly if the DCR is too low
this would be inappropriate because you'd be reducing the
amount of net operating income.

So I want to know if that's the sole purpose
for the reamortization and if it's theoretical for the
purpose of underwriting. Thank you.

MR. OXER: Okay. Thank you, ma'am.

Cameron, you got a shot at that?

MR. DORSEY: Yes. The point here is that in
instances in which a transaction might be over the top end
of the debt coverage ratio we would account for the cash
flow loan and we would assume that if this were a fully
amortizing loan, would that annual cumulative set of
payments put that transaction under the maximum debt
coverage ratio such that we would need -- we would not
need to make alternative adjustments.

   We wouldn't do that in an instance in which,
say, a transaction is at 115 debt coverage ratio. We
wouldn't include the theoretical cash flow payment such
that it put them under a 115 and made the transaction
infeasible.

MR. OXER: Okay. Bobby, you got a thought?

MR. BOLDING: Yes, Bobby Bolding, builder/
developer from El Paso representing Tropicana Building. I was pretty loud at the roundtable, so I thought it appropriate I be pretty loud here to say that this is a very good compromise, it's a very good balance. It helps both the applicant community and the citizens of Texas, and I wanted to also thank staff and commend them for their work.

And as with -- I missed the 811 thing this morning, the same thing with that. It was really a good process having the roundtables, listening to feedback from the community. And on that I also want to thank and commend staff.

MR. OXER: Great. Thanks, Bobby.

Yeah, Cameron and Patricia said they had a wonderful time at the roundtable, so I don't know what your problem was.

Okay, no other comments? Okay, we had -- yeah, Bobby, did you need -- or all of you make sure to sign in up there. Okay?

Okay. Any other questions?

MS. BINGHAM: Just a question back to Ms. Dula's comment and Cameron's response. So are you suggesting that we change any of our language or just be ready to clarify when there comes public comment about the DCR?
MS. DULA: Tamea Dula. I just wanted it reflected on the record what the intent was so that we don't have to send you a dozen letters with regard to that intent.

MS. BINGHAM: Great. Thank you. That's my question.

MR. OXER: Okay. Thanks for your comment. Okay, any other questions of the Board?

MR. CHISUM: Yes.

MR. OXER: Mr. Chisum.

MR. CHISUM: Talk about the cash flow amortization. What would be the amortization? What time frame?

MR. DORSEY: We would generally use the -- we would look at the actual terms of the cash flow loan. So, for example, a loan that's subject to cash flow might be, you know, let's say it's a million-dollar loan with a 30-year term and they'll pay 80 percent of the cash flow toward that loan on an annual basis. So we would instead of calculating the 80 percent amount of cash flow that would be paid toward that principal, we would instead just amortize it over that term that's stated in the loan documents and look at the effect on the debt coverage ratio.

MR. CHISUM: Thank you.
MR. OXER: Okay. Any other questions?

(No response.)

MR. OXER: Okay. All right. There's a motion by Ms. Bingham, second by Mr. Chisum to approve staff recommendation on item 6. Those in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. So it's unanimous.

Okay. By the way, with respect to this last item, we're always glad to hear that the staff get kudos. We give them kudos all the time because they keep us out of trouble most days. We really appreciate that the community that works with the programs that we're involved with appreciate the effort that the staff puts forth.

All right. We are at the end of our posted agenda. We'll accept public comment for items other than for which we had posted agenda items. Is there anybody here wish to make a comment? Ms. Dula, please step up.

MS. DULA: And thank you again. Tamea Dula with Coats Rose. And now I'm appearing on behalf of the Housing Authority of El Paso. Unfortunately, the rules that we just talked about were very, very specifically posted and so I could not bring this up during the discussion of those rules with any hope of it being heard.

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But I wanted to point out to you all that there is a little known or recognized provision under the identity of interest rules. Identity of interest is when the seller of the land is also a player in the development.

And that rule, which you can see on page 12 of the provisions that were provided in the rules we were just passing, that states that "in the case of a transaction requesting that position housing tax credits, no developer fee attributable to an identity of interest acquisition of the development will be included."

Now, there may be some very real and appropriate reasons for doing this in a 9 percent transaction where everything is very competitive. The agency does get those in an appraisal and is entitled to see all of the closing costs for the land as held by the seller so that they can ascertain if the payments being made for the land and the improvements, which is what I am concerned about, is an appropriate one.

However, it works a hardship in a certain kind of situation. My firm represents lots of Housing Authorities. And they are currently in the midst of doing a lot of RAD conversions. These are changes in the status of various housing projects from being public housing projects, which are subsidized with HUD money under

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Section 9 of the National Housing Act, to being project-based voucher subsidized projects, which comes under Section 8 of that same Act. And basically what you are doing is changing the funding because the Government is trying to get out of the public housing business and instead will provide subsidization for housing.

Recently a whole lot of money was made available by HUD for these RAD conversions, and the Housing Authority of El Paso received a huge chunk, about 25 percent of what was available for the entire country. They have a lot of rehabilitation to do. Because of this one provision here they would not be able to receive $3.9 million in equity financing. Because they cannot consider the acquisition developer fee as part of the eligible basis.

Now, this is -- when you have a competitive scenario I can understand that. But when you have a 4 percent transaction and you're not competing for the number of tax credits there, and the State has more tax credits that it can give away, more volume cap than it can give away currently, why are we giving this up? It doesn't make sense.

And so I would ask that as soon as possible, and definitely before the 2016 rules are adopted, that we make a change to provide that that one provision does not
apply to developments using 4 percent housing tax credits
that is sponsored by a public housing authority.

And the reason for this in particular is the
public housing authorities are dealing with HUD-related
property. When you bring HUD into the deal you have huge
costs that other developers do not have. You have to go
through a mixed finance proposal provision, you have to
deal with declarations of trust that are already on the
property, and all of this creates much more expense than
you would have with the regular project.

So here you have money lying on the ground in
the form of 4 percent equity and why should our public
housing authorities not take advantage of it. It doesn't
hurt anybody else.

MR. OXER: Thanks for your comments, Tamea.

MS. DULA: Thank you.

MR. OXER: And, everybody, I recognize that at
this point in the agenda we're accepting items for
consideration in the future. We will not be able to
respond or comment or question, we're simply taking those
for the agenda in the future.

Cameron?

MR. DORSEY: Sure. I just wanted to note that,
as I mentioned before, these are really targeted changes.

Brent and Tom and Raquel and their teams are going
through the real estate analysis rules in effect kind of on a line-by-line basis and looking at different things that might be warranted for the next rule-making cycle.

Given the volume of comment there, though, I just wanted to note that whether it's a competitive tax credit or 4 percent tax credit, it's taxpayer money. So we, you know, don't want to provide more developer fee on a transaction just because we can, we want to make sure we're providing a developer fee that's appropriately sized for the transaction and the particulars of the transaction.

And so that's the rationale for its existence as well as for its application to both the 9 percent and 4 percent tax credit programs. Although we are happy to look at the specifics of Ms. Dula's kind of writeup, we do have that in-house and we're happy to look through the specifics and see if there are any reasons therein that would warrant us re-looking at that particular issue and proposing any staff change or have any staff-recommended change to that provision.

Whether that occurs or not, the Board would in the next rule-making cycle be able to consider that type of change.

MR. OXER: Okay. Thank you.

All right. No other requests for comment? Any
other requests from staff? Any other requests from the Board or from members here?

(No response.)

MR. OXER: All right. Entertain a motion to adjourn.

MR. CHISUM: So moved.

MR. OXER: Okay, motion by Mr. Chisum.

MR. GOODWIN: Second.

MR. OXER: Second by Mr. Goodwin to adjourn.

All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. We'll see you in five weeks, folks.

(Whereupon, at 1:10 p.m. the meeting was adjourned.)
CERTIFICATE

MEETING OF:    TDHCA Board
LOCATION:      Austin, Texas
DATE:      March 12, 2015

I do hereby certify that the foregoing pages, numbers 1 through 167, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Housing and Community Affairs.

3/15/2015
(Transcriber) (Date)

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