TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

GOVERNING BOARD MEETING

Texas Capitol Building
Capitol Extension
Room E2.028
1100 Congress Avenue
Austin, Texas

October 11, 2018
8:03 a.m.

MEMBERS:

J.B. GOODWIN, Chair
LESLIE BINGHAM ESCAREÑO, Vice Chair
PAUL BRADEN, Member
ASUSENA RESENDIZ Member
SHARON THOMASON, Member
LEO VASQUEZ, Member

TIMOTHY K. IRVINE, Executive Director
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CONSENT AGENDA

ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS: 11

LEGAL
a) Presentation, discussion, and possible action regarding the adoption of an agreed final order concerning Falcon Pointe Apartments (HTC 98005/CMTS 1857)

b) Presentation, discussion, and possible action regarding the adoption of an agreed final order concerning Coral Hills Apartments (HTC 05623/Bond 05623B/CMTS 4311)

BOND FINANCE

c) Presentation, discussion, and possible action regarding an increase in authorization for Taxable Mortgage Purchase Program

d) Presentation, discussion, and possible action on Resolution No. 19-005 authorizing request to the Texas Bond Review Board for annual waiver of Single Family Mortgage Revenue Bond set-aside requirements; authorizing the execution of documents and instruments relating thereto; making certain findings and determinations in connection therewith; and containing other provisions relating to the subject

e) Presentation, discussion, and possible action on Inducement Resolution No. 19-006 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond

ON THE RECORD REPORTING
(512) 450-0342
Authority for McMullen Square Apartments

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f) Presentation, discussion, and possible action on awards for the 2017 HOME Investment Partnerships Program Single Family Programs Homebuyer Assistance and Tenant-Based Rental Assistance Notice of Funding Availability

g) Presentation, discussion, and possible action to authorize the issuance of the 2018 HOME Investment Partnerships Program Single Family Contract for Deed and Persons with Disabilities Set-Asides Reservation System Notice of Funding Availability and publication of the NOFA in the Texas Register

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HOUSING RESOURCE CENTER
j) Presentation, discussion, and possible action on the draft 2019 State of Texas Consolidated Plan: One-Year Action Plan

k) Presentation, discussion, and possible action on a draft substantial amendment of the 2015-2019 State of Texas Consolidated Plan

MULTIFAMILY FINANCE
l) Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits with another Issuer

18400 Anna Dupree Terrace Houston
18408 Sansom Bluff Sansom Park
18435 Eisenhower Apartments El Paso
18422 Elysium Grand Austin
18428 Sherman Plaza El Paso
18429 Light Rail Lofts Houston
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m) Presentation, discussion and possible action regarding amendments to the Construction Loan Agreements for ADC West Ridge, LP

n) Presentation, discussion and possible action regarding an Award of Direct Loan funds from the 2018-1 Multifamily Direct Loan Notice of Funding Availability

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MULTIFAMILY ASSET MANAGEMENT

o) Presentation, discussion, and possible action regarding a material amendment to the Housing Tax Credit Application

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17315 Provision at North Valentine Hurst
17316 Gala at Texas Parkway Missouri City
17317 Jubilee at Texas Parkway
Missouri City

p) Presentation, discussion, and possible action regarding a material amendment to the Housing Tax Credit Application and a change in the ownership structure of the Development Owner, Developer, and Guarantors prior to issuance of IRS Form(s) 8609

17334 Medano Heights El Paso

RULES

q) Presentation, discussion, and possible action on the proposed repeal and proposed new 10 TAC Chapter 10 Subchapter F, concerning Compliance Monitoring, and directing its publication for public comment in the Texas Register

r) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 1, Subchapter C, Previous Participation; and an order proposing new 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review and Advisory Committee, and directing their publication for public comment in the Texas Register

ON THE RECORD REPORTING
(512) 450-0342
CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

   a) TDHCA Outreach Activities, (September-October)
   b) Report on the closing of the Department's 2018 Series A Single Family Mortgage Revenue Bonds

ACTION ITEMS

ITEM 3: REPORT ITEMS

   a) Report on Recent Voucher Application Activity
   b) Quarterly Report on Texas Homeownership Division Activity
   c) Report on the process for appointment of a new Executive Director and actions of the Executive Director Committee

ITEM 4: BOND FINANCE

   a) Presentation, discussion and possible action regarding the Issuance of Multifamily Housing Revenue Bonds (Related RD Portfolio) Series 2018 Resolution No. 19-007 and Determination Notices of Housing Tax Credits

      18605 Bastrop Oak Grove Bastrop
      18606 Bay City Village Baytown
      18607 Burk Village Burk Burnett
      18608 Elgin Meadowpark Elgin
      18609 Evant Tom Sawyer Evant
      18610 Hondo Brian Place Hondo
      18611 Hondo Gardens Hondo
      18612 Lampasas Gardens Lampasas
      18613 Lantana Apartments Beeville

   b) Presentation, discussion and possible action regarding the Issuance of Multifamily Housing Revenue Bonds (Forestwood Apartments) Series 2018 A and Taxable Multifamily Housing Revenue Bonds (Forestwood Apartments) Series 2018B Resolution No. 19-008 and a Determination Notice of Housing Tax Credits

ITEM 5: MULTIFAMILY FINANCE

ON THE RECORD REPORTING
(512) 450-0342
Presentation, discussion and possible action on staff determinations regarding Undesirable Neighborhood Characteristics for Multifamily Direct Loan Application

18503 Eastern Oaks Apartments Austin (PULLED)

ITEM 6: RULES


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(512) 450-0342

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

none

EXECUTIVE SESSION

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OPEN SESSION

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ADJOURN

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MR. GOODWIN: Good morning. I call to order the Texas Department of Housing and Community Affairs Governing Board meeting for October 11, 2018, and we'll begin with the roll call.

Ms. Bingham?

MS. BINGHAM ESCAREÑO: Here.

MR. GOODWIN: Mr. Braden?

MR. BRADEN: Here.

MR. GOODWIN: Ms. Reséndiz?

MS. RESÉNDIZ: Present.

MR. GOODWIN: Ms. Thomason?

MS. THOMASON: Here.

MR. GOODWIN: Mr. Vasquez?

MR. VASQUEZ: Here.

MR. GOODWIN: Okay. We have a quorum.

If you will all rise and join as Tim leads us in the Pledge of Allegiance.

(The Pledge of Allegiance and the Texas Allegiance were recited.)

MR. GOODWIN: We'll begin the morning with Michael. We have a resolution recognizing October as Hispanic Heritage Month.

Michael, if you'll read that resolution into the record.
MR. LYTTLE: Yes, sir.

The resolution reads as follows:

"Whereas, September 15, 2018, through October 15, 2018, is Hispanic Heritage Month, and has a nationally designated theme of “Hispanics: One Endless Voice to Enhance our Traditions,” to reflect Hispanic Americans’ traditions, history, and cultures by using their voices to continue to share with the world the contributions of Hispanic Americans and their rich legacies of cultural tradition;

"Whereas, September 15th was chosen as the starting point for the celebration because it is the anniversary of independence of five Latin American countries: Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua. All declared independence in 1821. In addition, Mexico, Chile, and Belize celebrate their independence days on September 16th, September 18th, and September 21st, respectively;

"Whereas, the Texas Department of Housing and Community Affairs (the “Department”) recognizes the significance of Hispanic Heritage Month as an important time to celebrate the contributions and achievements of American citizens whose ancestors came from Spain, Mexico, the Caribbean, Central America, and South America in Texas history, American history, and world history;
"Whereas, the Department recognizes the deep historical importance of generations of Hispanic Americans to the American story and how Hispanic American history, cultures and traditions shape our character, define our beauty, strengthen our patriotism, and enhance our future; and

"Whereas, the Department recognizes that the contributions and achievements of the diverse cultures within the Hispanic community enrich and strengthen our nation as one diverse community of Americans;

"Now, Therefore, it is hereby resolved that the Texas Department of Housing and Community Affairs —

"(1) recognizes the significance of Hispanic Heritage Month as an important time to acknowledge, appreciate, and celebrate the history of Hispanic Americans, and encourages the continued celebration of this month to provide an opportunity for all Texans to learn more about Hispanic American history, culture, and tradition, and their significance in the past, present, and future of our Lone Star State, the United States, and the World; and

"(2) recognizes that in the pursuit of the goal and responsibility of providing equal housing opportunities for all, the Governing Board of the Texas Department of Housing and Community Affairs does hereby
celebrate September 15, 2018, through October 15, 2018, as Hispanic Heritage Month in Texas and encourages all Texas individuals and organizations, public and private, to join and work together in amplifying our voice to continue to observe Hispanic Americans’ history, cultures, and traditions and the importance of equal housing treatment and opportunity for all."

MR. GOODWIN: Thank you, Michael.

Do I hear a motion to approve this resolution?

MS. BINGHAM ESCAREÑO: Move to approve.

MR. GOODWIN: Move to approve. Second?

MR. VASQUEZ: Second.

MR. GOODWIN: Any discussion?

(No response.)

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: The resolution is passed.

Moving to the consent agenda, are there any items any Board members would like to have pulled from the consent agenda?

(No response.)

MR. GOODWIN: I have one request from someone in the audience to pull item 1(1) number 18422, Elysium

ON THE RECORD REPORTING
(512) 450-0342
Grand in Austin, so we will pull that off of the consent agenda. And with that being the only adjustment, I will accept a motion to approve the consent agenda and the consent agenda report items.

MR. VASQUEZ: So moved.

MR. GOODWIN: It's been moved. A second?

MS. THOMASON: Second.

MR. GOODWIN: Okay. Moved and seconded. Any discussion?

(No response.)

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Okay. So we will move on to the action items and we will start with item 1(l), Elysium Grand. I assume we know a little bit about why it's been pulled.

MS. HOLLOWAY: Good morning, Chairman Goodwin, members of the Board. I'm Marni Holloway. I'm director of the Multifamily Finance Division.

This item is presentation, discussion and possible action on a determination notice for housing tax credits with another issuer, application 18422 for Elysium Grand in Austin.
The proposed development is new construction of 90 units with 12 units rent and income restricted at 30 percent of AMI, 40 of them at 50 percent of AMI, and 17 of them at 60 percent of AMI, with the remaining 21 at market rate. Twenty-five project-based HUD Veterans Affairs supportive housing vouchers have been awarded to the project and it will serve the general population. The certificate of reservation will expire on December 8. The proposed issuer of the bonds is the Austin Housing Finance Corporation.

The proposed development site is located within 500 feet of an active railroad tract, and the applicant submitted an ordinance from the City of Austin that regulates proximity to a railroad easement which staff finds to be acceptable mitigation. The applicant's compliance history is designated as an extra large Category 3 and was deemed acceptable by EARAC. The Department has received two letters of opposition from members of the community and no letters of support.

Staff recommends that the site for Elysium Grand be found eligible and recommends the issuance of a determination notice in the amount of $391,757 in 4 percent housing tax credits be approved.

MR. GOODWIN: Okay. Any questions?

(No response.)
MR. GOODWIN: Any discussion? Did you want to speak, ma'am?

MS. DEEDS: Good morning.

MR. GOODWIN: Good morning.

MS. DEEDS: Good morning, Chairman and Board members. I'm Farida Deeds, representing the neighborhood.

Thank you for this opportunity to speak.

Hopefully you've had a chance to consider the information presented to you last month, some of which is also provided in the current board book. I will be happy to answer any questions you may have.

Our neighborhood has been berated because we have not supported this project with the fact being we would be opposed to any project of this stature at this site. The City of Austin seems to have some self-run initiative to have affordable housing west of MoPac Expressway, but is this desperation so blinding that all other considerations are to be overlooked?

Note that recently one mile south of this site and also just west of MoPac another project, Waters Park Studio, was recommended for the 9 percent housing tax credits in 2018. Our mayor referred to an Austin bargain in January 2017 where "We will not force density in the middle of neighborhoods." During a mayoral candidate forum this week, the mayor said, "We need to work on what
that transition is then between the corridors and the neighborhoods."

A five-story apartment building is hardly an appropriate transition between one- and two-story commercial and rental residential and single family homes. Refer to page 41 of 47 of your board book. I think it's a supplemental attachment. You'll be able to see the size of housing that's being proposed and the surrounding neighborhood.

As for the site, the city itself concluded that the site has a low walkability score. The state representative did not support the 9 percent application in 2016, one reason being the lack of adequate access to public transportation. Even one city council member questioned why we continue to place people in situations where they will be care dependent. This site is a few hundred feet from an active railroad track and the elevated MoPac Expressway. The sole access is on a neighborhood street that is known to flood. The site is in the 100-year flood plain, critical water quality zone and karst terrain. The current site plan had to resort to an adjusted critical water quality and has structures abutting a critical environmental feature that requires a 50-foot buffer perimeter. If you want to refer to your board book, that's about page 45.
Incompatible zoning of these taller residential structures near rental residential and single family homes and shorter structures that's being called for, affordable housing should not be the justification for incompatible zoning. Even apartments on major nearby streets are only three stories tall, and with this 4 percent application, this for-profit developer is attempting to forego paying property taxes. Please refer to page 72 and 73 of your board book.

And very recently it asked for the issuance of an even higher bond amount when just on August 23 the city set a public hearing for a bond amount not to exceed $10 million, and yet the hearing on September 20 was for an amount not exceeding $13 million.

I've got one more.

MR. GOODWIN: You keep going.

MS. DEEDS: Thank you very much.

With all these shortfalls, how much is a prospective resident really benefitting and at what cost to the city, state and taxpayer, especially if this for-profit developer needs a property tax exemption to make this project feasible?

We request that you deny the funding.

MR. GOODWIN: Any questions?

(No response.)
MR. GOODWIN: I've got a question for you. Having a little experience developing property in the City of Austin, how did they ever approve this? I mean, I'm not sure we have the authority to stop it. It seems like it should have been stopped at the city council from the zoning perspective level. I've known this area for 30 years. After you testified the last time, I drove out and took a look at it. There's no question in my mind this is an inappropriate use. I mean, commercial buildings aren't allowed that front onto MoPac to be as tall as what this is and it backs right up to houses.

How did this happen with the city? I assume you opposed it. That tract has been there for 30 years, we sold houses in that neighborhood when they were first being built. One of my best friends bought the second home built in the neighborhood.

MS. DEEDS: I don't know how to really answer that other than we're a little surprised too. I don't know if we all got on the wrong track or not, but originally when the application was going to be submitted for the 2016 application, the city wants to approve that, and at that time we had already seen the site plan and we could just tell so much of it was near that critical water quality zone, so at that point we kind of knew that the initial plan was not going to be feasible. Then they
ended up changing that plan, maybe because of that reason, and so to achieve the number of units they wanted the did seek now taller buildings and that was what the now requested zoning request was for.

So really, all along we have been opposed to this zoning. Now that the zoning is passed, now we're just trying to also be opposed to any funding to promote a project of this stature.

MR. GOODWIN: Do you believe if this wasn't affordable housing the city would have ever approved this structure to go in this location?

MS. DEEDS: So when we met with Marni Holloway and Tim Irvine, I think we were trying to express we can never know now. Right? We won't know. The way it was presented to the city was from this developer for an affordable housing project and it got approved. I'm not really sure. Again, we would have been against this whether it was affordable housing or otherwise, a commercial structure, even a single family five-story. It's not feasible.

MR. GOODWIN: So just to make sure I understand properly and the other Board members that don't live here might understand properly, if I'm a 30-percent-of-AMI tenant in this building, I have to walk down Oak Creek Boulevard, across a railroad track, it's not completely
sidewalked to get to MoPac, then I have to walk up about
two-tenths of a mile to Parmer Lane, which is a six-lane
road with traffic coming in each direction and two turn
lanes, and then walk across MoPac to get over to where the
bus might pick me up, over to the H-E-B.

MS. DEEDS: There's one bus route there,
there's another bus route that is across Parmer where you
wouldn't necessarily have to take that exact same route,
but to go to the grocery store, certainly what you were
stating, even though Parmer Lane is six lanes, you know
when you cross at an intersection it's going to be more
because there's left turn lanes, there's right turn lanes.
I mean, I really don't know what to say other than it's
also not accessible to the public transportation. I know
the developer claims, and it's true, the rail station is
one mile away, but in reality, if you look at Google Maps,
it's a 1.4 mile travel distance by walking or cycling, and
if you do decide to walk or cycle to that Howard Lane
station, you will be doing it along a sidewalk along 55
mile per hour traffic coming, and again, it's now 1.4
miles, and I think the smart housing was in a half a mile
of public transportation.

MR. GOODWIN: Any other questions?

MS. DEEDS: I appreciate you pointing that out.
We've tried to point out some of these things too, but
again, even if it was a luxury apartment complex, even if it was one person's home being four or five stories, it really wouldn't matter, we would still be opposing such a development.

MR. GOODWIN: With my experience with the City of Austin, you wouldn't have to oppose it if it were a luxury apartment building because they don't allow anything to be built at that height next to a neighborhood that's that restricted off of a major thoroughfare.

MS. DEEDS: So what kind of recourse do you think we have from here?

MR. GOODWIN: I don't know. I'm not sure that we have any as well because all the i's have been dotted and the t's have been crossed and they've got the zoning. We don't have the right to go back in, but I think that's where a fight would have been won had you wanted to wage that fight. I'm going to vote against it because it's a place that, in my opinion, affordable housing just has no business being in that location.

MS. DEEDS: And I believe the state representative was stating the same thing in 2016, another city council member had stated something similarly.

MR. GOODWIN: Right.

MS. DEEDS: Thank you. Anybody else have any questions?
MR. GOODWIN: Any other questions?

(No response.)

MS. DEEDS: Okay. Thank you very much.

MR. GOODWIN: Thank you.

Anybody else want to speak?

MS. LASCH: Hello. My name is Megan Lasch. I am with O-SDA and one of the owners, and I'll start by saying I don't feel good so I'm not going to touch anything. The reason why I am here versus some of my other partners is because I am the one that's been working tirelessly with the neighborhood and with the city for the past three years on this development through the approval process, and yes, I said three years and we haven't even broken ground.

I appreciate the fact that you took time to drive to the site. It is easy to hear five-story and get scared, but I will tell you that this particular zoning case was heavily sought out by the city. We went through numerous council hearings. The site plan itself, where you say five-story, we meet all compatibility requirements. We're really not that much difference in height than the commercial building next to us, so the five-story building that we have is actually right to our buildable property limits to the storage facility, and so the larger component of our development is away from the
neighborhood. We have a 75 foot setback for the two-story building that exceeds compatibility standards.

We've agreed to provide a restrictive covenant on the site per the communications and meetings that we've had with other members of this neighborhood association, so we're putting that restrictive covenant on the site as our effort to work with the neighborhood association. We've worked with them for years, the other folks that have agreed and provided these items as part of the restrictive covenant that we've all said we're here to work with you. I don't know what else I can do to work with them other than go away, and the city has made it clear they wanted to see affordable housing here.

Yes, the state rep didn't support it in 2016 but she did in 2017, and that's important, she did in a large way. It was supported unanimously by council for the zoning case, unanimously by planning and zoning, and they're issuing the bonds and have supported it all the way through.

There is a protected sidewalk on MoPac, so there is a sidewalk from our site. A portion of it is not there, we will be building it as part of our development, so there will be a sidewalk all the way to Howard Station, so it really concerns me when people say there's not public transportation, we're roughly a mile from Howard
Station. There's not that many stations in Austin to begin with; this is a prime location for affordable housing.

We've also offered to partner with a car share group in Austin if there are residents that need it, but this development is also partnered with the housing authority so that's part of the tax abatement that the resident mentioned.

I'm sorry I'm rambling but I'm doing my best to stand up here because I've been out all week. So if there's an other questions I'm happy to answer them, but I will tell you that this site has been heavily vetted by the city, they've heard it so many times I think they're sick of hearing it, but they want to see affordable housing here, as do we, otherwise, we wouldn't be doing it.

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: I want to clarify something that I said earlier, and that is that it's not the right site for affordable housing, I think it's not the right site for a five-story building in a neighborhood. I clarified that that is the thing.

But I'll also say to you, uncategorically, anyone without a car, that might be the most dangerous
walk to go get groceries you could have in the City of Austin, so I just disagree with you as to its appropriateness.

MS. LASCH: We honestly find that most of our residents have cars. It's more about getting roofs over their heads than cars. I mean, I find that day in and day out, and we have a good portfolio where we keep track of how many residents live with us, how many cars we have. It's about getting a roof over their head that they can afford, and that's why we do what we do.

But the five-story component, it's one building and the height limitation is 48 feet. That is not that much difference than that commercial building that we're adjacent to. So it sounds scary when we say five-story next to single family, but it's over 100 -- I can't remember if it's 125 --

MR. GOODWIN: Which building are you talking about?

MS. LASCH: That Texas Health building. So their floor plates are higher.

MR. GOODWIN: You're talking about at the front, that fronts onto MoPac?

MR. LASCH: Yeah. Right basically across from us there's a Texas Health center commercial building, so there's a storage facility and then there's a Texas Health
building.

MR. GOODWIN: And the church?

MS. LASCH: And the church is behind the Texas Health. Texas Health faces MoPac.

MR. GOODWIN: Right. I'm familiar with that and the zoning that went on that and the height restriction. One of my closest friends owned that property and sold it.

MS. LASCH: Our height restriction is actually 48 feet, 52 for the five-story building, 48 for the four-story building.

MR. GOODWIN: Just for the benefit -- and I don't mean to be argumentative with you, but for the benefit of the other Board members, because I hear this all the time when people are doing projects in Austin about we've worked with them for years and years and years. To give you an example for the other Board members of how difficult it is to do something in Austin, I had three three-quarter acre lots that I combined into one 2.25 acre lot to build a house my son and daughter-in-law and it took me three years to get through the City of Austin and Travis County. So that's combining three lots into one, so your experience here is not something that every homeowner and every person that owns property in this county doesn't experience when they're trying to deal
with the city and the county and this community itself.

MS. LASCH: Yes. I do a lot in the city so I understand that. But I will tell you, this site, our height limitations and where we're building meet all compatibility standards. We didn't get a variance, they meet all city compatibility standards for proximity to neighborhoods.

MR. GOODWIN: Okay.

Anybody else that wants to testify?

MS. JACKSON: Good morning, Board members. My name is Toni Jackson with Jones Walker. I represent the developer, and I just wanted to stand to again reiterate to the Board, my client has indicated, that when we did bring this project forward first we did have some issues with the state rep and the city, but we have worked with the city, we have worked with the community, and the city very much wants to see this development. And so, as we know, we have been asked by the QAP to look at areas to make certain that we are developing across the board, and so I just want to again reiterate that the City of Austin does want this development and we have worked with the community in Austin and we have met all the criteria as required.

Thank you.

MS. ANDRÉ: I like to build the suspense a
little bit, you know, what is she going to say.

Sarah André, and I'm here just speaking solely as a citizen of Austin and an affordable housing advocate which I have been for 25 years back before I even knew a thing about tax credits.

We have a dire shortage of affordable housing in Austin. Recently published studies show a need for 60,000 units. People in a bond development who earn 60 percent of the median income are working people. Dare I say they may work for the state or the city, they may be public employees, they have cars. This is an excellent location close to jobs, close to places where people can get around, where they can go to the store. You should definitely approve the development.

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: John, did you want to speak?

SPEAKER FROM AUDIENCE: No. I think it's all been said.

MR. GOODWIN: Okay. Do I hear a motion?

MR. VASQUEZ: I have a question internally here. So this has already been approved by everyone in the city and county that needs to be done?

MR. GOODWIN: Marni, do you want to answer those questions?
MS. HOLLOWAY: I am trusting what the applicant is telling us about what they've gone through with the local process. What I can tell you is that for our process, as the chairman mentioned, all the t's are crossed, all the i's are dotted, we did not find a reason to make a recommendation other than approval for this application.

MR. IRVINE: And if I might chime in just for sort of a view from 50,000 feet of the way that this process works, the statutes that create private activity bonds basically leave with the issuer the decision of whether to issue or not. When a development is funded with private activity bonds that provide half of the financing, then it becomes basically entitled once it's completed and it's gone through cost certification to seek the 4 percent credits.

What we are going through right now is the exercise of determining what that appropriate amount of credit would be. It is possible that after final construction is complete and 8609s are being sought that that number may move a little one direction or the other, but what we're doing right now is making a determination of the appropriate amount of credits that they would be legally entitled to based on their bond structure.

MR. GOODWIN: Does that answer your question?
MR. VASQUEZ: The first part. So other than the segment of the community that doesn't want this, dare I say, in their backyards, there's no other impeding legal. Again, the i's are dotted and the t's are crossed as far as the Department is concerned.

MS. HOLLOWAY: Correct.

MR. IRVINE: Our governing statute has in it a requirement that you cannot move forward with a bond application that will be augmented with 4 percent credits unless you've received a resolution of no objection from your local government, and they have that resolution.

MR. VASQUEZ: Okay. So even if some of us don't want it or don't like it, it's --

MR. IRVINE: It's a local decision.

MR. VASQUEZ: -- the i's are dotted and the t's are crossed. Okay. That's what I need to know.

Thanks.

MS. HOLLOWAY: Thank you.

MR. IRVINE: And I would also say that we, I think, take a lot of pride in the fact that our program encourages developments like this and all of the others to do things that address the situations of the people who live there and really help the residents have access to good amenities and to be successful. So whether you would question and come to a different conclusion on the zoning
process or not, I think that this ideally, by meeting the requirements of our rules, will be a good project for the people that live there.

MR. GOODWIN: Do I hear a motion?

MR. BRADEN: I'll make a motion to accept staff's recommendation to find the site eligible and approve the issue of the determination notice for the 4 percent housing tax credits.

MR. GOODWIN: Second?

MR. VASQUEZ: Second.

MR. GOODWIN: Any further discussion?

(No response.)

MR. GOODWIN: All in favor say aye.

(Ayes: Members Bingham, Braden, Reséndiz, Thomas, and Vasquez.)

MR. GOODWIN: Opposed? Me.

(Nay: Chairman Goodwin.)

MR. GOODWIN: Okay. Moving on, the next thing we have on our action item is a report on the recent voucher application activity.

Brooke. Good morning.

MS. BOSTON: Good morning, Chairman Goodwin, Board members. My name is Brooke Boston. We put this item on the agenda so we could brief you on two items that you had authorized previously relating to housing
vouchers.

In May of this year you approved staff to submit an application in response to a notice of funding availability from HUD for something called Mainstream Housing Vouchers -- we call them MVP -- which were specifically for use only by non-elderly disabled persons.

As you have heard from staff in the past, the program also operates a program called Project Access which provides vouchers for people with disabilities existing institutions. We operate Project Access through our Housing Choice Voucher Program and collaborate with an existing partnership with Texas Health and Human Services.

Because the Department's Project Access Program had a waiting list exceeding 200 individuals, the Department pursued the NOFA for MVP vouchers specifically to allow us to issue the MVP vouchers to waiting list clients on the Project Access waiting list. I'm happy to let you know that on September 5 the Department was notified by HUD that we would be receiving roughly $396,000 to fund 50 of the MVP vouchers. We were thrilled and have actually already reached out to 50 clients on the Project Access waiting list and let them know that they can begin looking for a unit.

The other item I wanted to brief you on relates to vouchers. In June of this year you granted authority
for staff to follow up with a HUD notice that had announced availability of HUD VASH vouchers. VASH vouchers are solely eligible for veterans experiencing homelessness who are being provided case management and clinical services by a local Veterans Assistance Medical Center, VAMC.

The Department’s Housing Choice Voucher Program has a 34-county jurisdiction, and we have reached out to all of the VAMCs in that area to see if any of them wanted to partner with us to pursue the VASH vouchers. There was such interest for Fort Bend and Galveston counties, and in response to that you had allowed us to register our interest with HUD. HUD and the VA then work together and look at all the submissions and decide who they want to offer vouchers to. We were again very happy to hear in September that we would be awarded $124,533 to provide approximately 20 VASH vouchers for Fort Bend and Galveston counties.

So I want to thank the Board for having granted us the authority to go after that. I want to thank Andre Adams who is our Section 8 manager. He is very excited and committed to doing all of this. And also to our Housing Resource Center who put together the MVP application on our behalf.

Thank you.
MR. GOODWIN: Great job, Brooke.

Any questions for Brooke?

(No response.)

MR. GOODWIN: Do I hear a motion to accept Brooke's report?

MS. THOMASON: So moved.

MR. GOODWIN: Moved. Second?

MR. VASQUEZ: Second.

MR. GOODWIN: Moved and seconded. Any further discussion?

(No response.)

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Okay. Next we have the quarterly report on Texas Homeownership Division activity.

MS. GUTIERREZ: You see my anxiousness to get up here and report to you.

MR. GOODWIN: I saw you.

MS. GUTIERREZ: Good morning, Chairman Goodwin, Board members. I'm Cathy Gutierrez, the director of the Texas Homeownership Division, presenting to you on item 3(b), Quarterly report on Texas Homeownership Division activity.
I'll start off by saying it's a really exciting time for Texas homeownership, and I'd like to take the opportunity to summarize the last three years' performance. When the quarterly reports were first introduced to you in 2016, the homeownership programs were doing well and keeping a pretty steady amount of volume on an annual basis, serving on average 747 households per quarter, ending fiscal year 2016 with a total of 2,988 Texas households served and $454 million in single family mortgage loan activity.

The homeownership programs went through some significant structural changes in early fiscal year 2017. These changes provided long-term cost savings in the Department which were passed along to the borrower through lower interest rates and fees. Shortly after implementation of the changes, the programs began to see an increase in activity, closing out the fiscal year with 5,870 Texas households served and $958 million in related mortgage loans, pretty much doubling the activity for the previous year.

Fast forward one year to fiscal year 2018. Illustrated on page 2 of the Board item, the fiscal year began with a much higher amount of volume in comparison to the start of fiscal year 2017. A typical seasonal decline in volume occurred during the fall-winter months but
quickly rebounded in the spring and summer. By fiscal year-end the TDHCA homeownership programs had reached a record volume, assisting 8,018 Texas households with a benefit of a low rate first mortgage loan, down payment and closing cost assistance, and/or a mortgage credit certificate. The mortgage loan activity totaled $1.3 billion, an increase of 32 percent from last year's record activity of $958 million.

Additionally, something really important to note, although the programs allow for household incomes up to 115 percent of the area median family income, year after year the majority of funds continue to assist households that fall into the 80 percent or below income range. On average 67 percent of those served are low income first-time homebuyers.

8,018 Texas households served. I say that over and over because it's remarkable. $1.3 billion in mortgage loan activity. As I said, the growth is remarkable and we have no intention of slowing down.

Not included in today's report is the activity generated through the 2018 Series A bond transaction. Item 2(b) provided in your board book by the Bond Finance Division gives a detailed summary on the structure and pricing of the bond transaction. The 2018 Series A bond issue totaled approximately $143 million in bond proceeds.
and was split into two options: 80 percent of the funds provided four points of down payment and closing costs assistance to the borrower and offered a mortgage rate of 5.43 percent; the remaining 20 percent of the funds provided an extremely attractive below market interest rate of 3.75 percent, but offered no assistance for down payment and closing costs.

The no assistance option was one that had not been offered by the Department in almost ten years due to a combination of unfavorable market conditions and the increasing demand for funds that would assist borrowers with the down payment requirements of a mortgage loan. To gauge interest and demand, staff surveyed participating lenders on the option of a below market rate with no assistance. Based on their interest, approximately $27 million in unassisted funds was released on August 3.

There was somewhat of a learning curve for those loan originators who had not been in the business ten-plus years ago when tax exempt mortgage revenue bonds were the primary funding source for the housing finance agency programs. The concept of a below market interest rate without significant added cost to the borrower was initially somewhat difficult for some lenders to grasp, however, it didn't take long for lenders to recognize the benefit in terms of affordability that a 3.75 percent
interest rate in today's market could provide to a homebuyer, specifically a low to moderate income first-time homebuyer.

The unassisted allocation was fully committed within 18 business days. The re-introduction of this type of structure has been very well received by the lending community, with requests and interest coming in daily for additional funds using the same structure. The entire 2018 Series A bond issue was fully originated within two weeks from bond closing. Loans originated under the bond issue will be included in the next quarterly report.

And in closing, I want to take the opportunity to give a shout out to some of the key players in the recent success of our programs: our network of participating lenders and Realtor partners for their continued commitment, support and appreciation of the programs offered by TDHCA, our TDHCA DPPA staff who assists with our ongoing efforts in generating awareness and effectively marketing the programs, and the biggest thanks to our Homeownership and Bond Finance teams who have felt and dealt with the growing pains of the increased volume and who continue every single day to give all that they have and making TDHCA programs the very best and most affordable options for Texas homebuyers. $1.3 billion in volume assisting 8,000-plus Texas homebuyers
could not have been achieved and managed without the passion, commitment and all around team effort by all of those mentioned.

We will be making modifications to the format of the quarterly reports. If there's anything that you would like to see or added to the reports, please let me know. And with that, I'll take any questions.

MR. GOODWIN: Well, first of all, I want to congratulate you. I have not been around many programs where you've seen in a two-year period a 400 percent increase in the number of people served and an almost 300 percent increase in the dollar volume. So you and your staff, and Monica -- where is Monica, I know she's here -- stand up, and all the staff that's had a hand in this if you would stand up, let us show you our appreciation.

(Applause.)

MS. GUTIERREZ: Thank you.

MR. GOODWIN: Those numbers are astounding.

MS. GUTIERREZ: They are astounding. We have a great team, and we appreciate the support from the Board and executive team as well.

MR. GOODWIN: Any questions from any Board members?

(No response.)

MR. GOODWIN: Thank you, Cathy.
MS. GUTIERREZ: Thank you.

MR. GOODWIN: So do I hear a motion to accept this magnificent report?

MS. BINGHAM ESCAREÑO: So moved.

MR. GOODWIN: So moved. A second?

MS. THOMASON: Second.

MR. GOODWIN: A second for a magnificent report. And all those in favor of accepting this magnificent report please say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed? Not even me.

(No response.)

MR. GOODWIN: Next we move to item 3(c) which we're going to move to the end of the agenda, so we're going to move on to item 4(a).

Teresa.

MS. MORALES: Good morning, Mr. Chairman and members of the Board.

MR. GOODWIN: Good morning.

MS. MORALES: Teresa Morales, manager of Multifamily Bonds.

As it relates to item 4(a), staff, if it pleases the Board, would like to request that this item be moved to the end of the agenda, as we work through some last-minute issues to try to get those resolved.
MR. GOODWIN: Okay.

MS. MORALES: And instead we'd like to move on to item 4(b).

MR. GOODWIN: 4(b).

MS. MORALES: Okay. Chairman Goodwin and members of the Board.

Item 4(b) involves the issuance of multifamily housing revenue bonds, Series 2018A and taxable multifamily housing revenue bonds Series 2018B for Forestwood Apartments, Resolution No. 19-008, and a determination notice of housing tax credits. Forestwood Apartments involves the new construction of 220 units in Balch Springs and all of the units will be rent and income restricted at 60 percent of the area median income.

Under the proposed financing structure the Department will issue unrated tax exempt bonds in the amount of $20 million and taxable bonds in the amount of $3 million. The bonds will bear interest at a variable rate for the first 30 months, and there will be a forward starting swap in place at closing that will commence once the property has reached stabilization. The borrower will pay a fixed interest rate to the swap counterparty, and the counterparty will pay a variable rate in return. It's important to note that the Department is not a party to the swap agreement.
The interest rate on the bonds is as reflected in the bond resolution, along with the specific terms and the maturity relative to both the tax exempt and the taxable pieces.

Staff recommends the bond issuance and adoption of Resolution 19-008, as presented in your materials for Forestwood Apartments, and the issuance of a determination notice of $1,422,455 in 4 percent housing tax credits.

MR. GOODWIN: Okay. Do I hear a motion to accept staff's recommendation?

MR. BRADEN: I'll make a motion to accept staff's recommendation.

MR. GOODWIN: Okay. A second?

MR. VASQUEZ: Second.

MR. GOODWIN: Okay. Now any discussion, any questions?

(No response.)

MR. GOODWIN: If not, all those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: That's passed.

MS. MORALES: Thank you.

MR. GOODWIN: We're going to Item 5 that has
been pulled on Multifamily Finance, so we're going to move
to item 6, Rules.

MS. BOSTON: Chairman Goodwin, Board members,
I'm presenting on item 6 relating to the Community Affairs
rules. Brooke Boston, for the record.

MR. ECCLES: Brooke, if I could bust in. I
know that there was another rule that was on the consent
agenda that was item 1(r) that the Board passed, but there
were revisions that were proposed and a handout was placed
in the back of the room. I just wanted to be clear to the
Board if they had any questions, since it's already been
passed, if they wanted to go back and have any discussion
on item 1(r) since there were changes that were put into
that proposed rule that are not reflected in the board
book but are reflected on this handout.

MR. GOODWIN: Any questions any Board member
have about that?

(No response.)

MR. GOODWIN: Hearing none, we will move on.
Thank you.

MS. BOSTON: Good. I didn't bring those notes
up here.

At the Board meeting of May 24, 2018, the Board
approved proposed revisions to our administrative code at
Chapters 2 and 6 relating to our Community Affairs
programs to improve clarity, to remedy discrepancies between rules, to correct identified areas of concern, and to provide changes needed to address findings and concerns identified by one of the Department's federal oversight entities, the U.S. Department of Health and Human Services, during a monitoring visit.

The rules were then released for public comment. Comments were received from seven organizations and reasoned responses have been provided to those comments. While quite a few subjects were covered in the rule that was proposed, the majority of comments were focused on one issue that I'd like to expand on a bit for you.

Within the LIHEAP Program -- which is the Low Income Home Energy Assistance Program; that program funds utility assistance and weatherization -- within that program an issue exists that's been a challenge for the Department and our subrecipients. This issue at the macro level comes about because of several different federal regulations.

So there's a federal LIHEAP regulation that has a preference that LIHEAP funds be assigned to CSBG providers. CSBG federally has a preference for nonprofits. Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which we call
PRWORA, nonprofits cannot be required to verify lawful status of persons assisted. But -- and here's the challenge -- U.S. Health and Human Services has determined that the legal status of any member of a household must be determined and assistance adjusted accordingly in the LIHEAP program to ensure that benefits are not provided to non-qualified aliens.

So the result of this interplay of federal regulations is that more than 70 percent of the current LIHEAP providers are nonprofits and cannot be required to determine lawful status but are running the Department's largest grant program which requires that the Department ensure if lawful status has been confirmed. In a state such as Texas in which LIHEAP program data is kept at the local level and not centralized at the state, and based on the volume of people that we serve, this has really put the Department in a tough spot, as well as the subrecipients.

So HHS clearly expects the Department to assure compliance with this requirement, so after looking at all of our options, our initial conclusion was that we felt like we had two choices: to have the Department provide the verification directly or through a third party provider, which could only occur if we actually received the client information from the nonprofit subrecipients,
so therefore, they would need to gather and still transmit that to us or a third party contractor; or the other alternative would be rebidding the portions of the network that are unable to perform the verifications to ensure that we're working with subrecipients who can perform the verifications for us.

Both of those are really big major decisions, so to be sure we were thinking all of this through carefully and correctly, we worked with HHS on this. Additionally, staff met with key members of the Texas Association of Community Action Agencies that came into Austin and met with us -- most of them are back there -- to try and find a solution to this issue.

One option suggested by TACAA was that households self-certify their legal status which would negate the need for any documentation to be gathered, transmitted or verified. TDHCA, on TACAA's behalf, did request this specifically of HHS, however, they indicated that doing such self-certifications, TDHCA and the subrecipient would still both be fully accountable for any disallowed costs for an ineligible household. That's clearly not a position we are comfortable putting the state in, we don't have the resources to do that, so that financial risk mad this an infeasible option.

I'd also like to mention several other kind of
considerations going on with this whole thing. First, having the state permanently handle the verifications in the long term is a pretty inefficient approach. Not only would it slow down the approval process for clients, because a current subrecipient who is doing these verifications in-house it could take an extra 15 to 20 minutes, to outsource and do it with TDHCA or someone else, it could take as long as a week, so we don't want to see that delay on behalf of the clients. It would also require the state to hire FTEs. It would also direct funding that would have been channeled part way through the year to program expenditures so that we could help more people, it would basically drive back to administrative expenses.

Second, I had noted an option about the idea of the nonprofits gathering and transmitting information, and HHS had originally proposed that to us as an acceptable strategy, and we thought that sounded great as one option potentially, or at least a good middle ground. But we have asked HHS to confirm that to have private nonprofits gather that information and transmit it is in fact consistent with interim guidance that's been issued by the Department of Justice on this issue. Our reading seems to be a little bit in conflict so we were concerned that that was not permissible, so we have not heard back from HHS on
So because this issue is still under discussion with HHS, the rules being proposed for adoption reflect several changes to address this issue, and keep in mind that the bulk of all these changes you're approving have nothing to do with this. You know, if you skim through the rule, a lot of these were kind of benign changes that we just needed fixes for and the network was supportive of.

So references in the rule requiring that private nonprofit subrecipients verify status have all been removed, and while initially contemplated, no language is being added that would require the subrecipients to gather and transmit any documentation needed for the state or a contractor. At this time the Community Affairs rule is silent on the issue of how verification will be performed by the private nonprofits.

This issue of how to handle verification for programs that are required to secure the verification but for which local nonprofits may be subrecipients is not limited to only LIHEAP, this is a situation that can occur in other programs as well. Therefore, the Department expects to bring a draft rule to the Board, hopefully in November, that will address how we're going to handle this issue for any of our programs in which the PRWORA
requirements are in place that a federal agency has said that those requirements are applicable and we have private nonprofit providers. So we'll be bringing something back that kind of is more in one of our overarching chapters to address that.

Another issue which we received a lot of comment on, and people may get up and speak with you about, was received associated with how legal status relates to determining household income, benefits and vulnerable population status. A clear set of guidelines is needed in this regard so that all mixed status households are treated equitably. We want to be sure that in a household of five and two of which are non-qualified aliens that that's handled the same in one part of the state as in another, both for benefit determination and income and whether that household is considered vulnerable.

So whether current subrecipients will have verified the household members themselves because they are public organizations, or they're private nonprofits and they'll follow whatever process comes in our next ensuing rule, it's important that this rule continues to have clear guidelines about this issue. Therefore, the rule continues to have provisions in it that relate to how we're going to determine a household member's income,
vulnerable status and eligibility.

One last thing, in this regard the commenters have asked that the income of the non-qualified alien household members be excluded from the household income, however, if a non-qualified alien lives within a house and earns income, the income earned by that alien is in fact being used by the household and can cause a household to have over the qualified income, so if the income is not considered, you would actually potentially be serving a household who is over income.

An information memorandum from Health and Human Services, dated December 12 of 2014, on this issue specifically indicates that there is no authority to exclude income relating to this issue, so while we understand where the subrecipients are coming from, that's not something we have the authority to grant based on the HHS IM.

I think that lays out all the meaty issues for you. In a nutshell, the rule presented for adoption today specifies no requirement for the nonprofit subrecipients as it relates to the verification process, it keeps in language relating to how a household's benefits and income need to be determined, and we plan on bring in you another rule in about a month.

MR. GOODWIN: Okay. Any questions for Brooke?
MR. GOODWIN: It appears we have people that want to speak to the issue, so before we do that we will get a motion to accept Brooke's report.

MS. THOMASON: So moved.

MR. GOODWIN: Moved. A second?

MR. BRADEN: Second.

MR. GOODWIN: Okay. So it's been moved and seconded. We have speakers that would like to speak to this issue. Please, if you would, state your name and sign in. Thank you.

MR. POWELL: Good morning, Mr. Chair, members of the Board, Mr. Irvine. We appreciate the opportunity to come and speak with you. My name is Bill Powell. I am the executive director for South Plains Community Action Association in Levelland, and I've served in that capacity for nearly 30 years. Some of you may not have seen me in the past but I've been here on occasion several times. I'm also serving as the president of the Texas Association of Community Action Agencies and I've managed to avoid that for a number of years but I finally got caught on that one too, so I am representing TACAA this morning.

Several proposed rules were triggered as a result of a compliance review by the U.S. Department of Health and Human Services, or HHS, however, we understand
HHS has not officially replied in writing to the Department's response to the review. Overall, we're okay with the rules proposed for adoption. Some of them will be a little difficult for us to move forward with but I think we can move out with them.

We agree with the Department staff in holding off the adoption of one rule and we suggest another rule also be tabled until further written guidance is received from the federal office of HHS. First of all, the verification of non-qualified aliens for the purpose of LIHEAP benefits, we appreciate the staff's recommendation to not take action today on rules requiring nonprofit organizations to determine lawful status as it awaits guidance from HHS.

As you may know, under the federal law the Personal Responsibility and Work Opportunity Act, as mentioned earlier, and the Department of Justice's interim guidance specifically state that "Nonprofit providers of LIHEAP benefits are not required to determine, verify or otherwise require proof of immigrant's eligibility of any applicant for benefits." An HHS memo dated December 12 of 2014 also states the same language and is referenced in federal law. We recognize the Department must ensure non-qualified aliens do not receive LIHEAP benefits and we want to continue a joint dialogue to find solutions and
explore what other states might do to address this issue.

Two options suggested by the Department staff are limiting, which are number one, provide verification via a third party, and number two, to rebid the network of LIHEAP providers. We suggest we continue the dialogue between the Department staff and HHS, and probably we would like to be included as a small group of providers to ensure that all qualified applicants receive the LIHEAP benefits. We all need some clarity and clarification from HHS on this, and I know we are as anxious to find out what HHS says about this as TDHCA.

We appreciate the opportunity Mr. Irvine has afforded us in meeting with him a couple of weeks ago on this issue. We hope to work in harmony with TDHCA staff in trying to resolve these issues.

Ladies and gentlemen, that's all I have to say. I do have two colleagues here, one colleague from El Paso who would like to address certain portions of what we're talking about this morning. We have two other people here as resources so if you have specific technical questions, we'll all be glad to respond to that. Do you have any questions for me?

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: You mentioned tabling another.
Was it something that Brooke had proposed? I wasn't quite clear on what you were talking about when you said, And I suggest you table another.

MR. POWELL: Yes, sir. There is one portion that, as I understand it, there's no opinion yet rendered from HHS, and we'd like to see HHS render that opinion and then that would give us a basis -- at least it would give TDHCA a basis to begin formulating a --

MR. GOODWIN: Possibly I'm the only one that's confused then, but that happens frequently, but in your recommendation are we in conformity?

MS. BOSTON: Just to clarify, because we took the information out of the rule, we don't need to table anything today. You can act on the rule and the issues that we're still waiting on for feedback will be in a subsequent rule. So in effect, it is tabled, you're not acting on it today, but it's not an official table.

MR. IRVINE: But I do believe the clarity is quite valuable, and I think we have some clarity from HHS on two points. One is that in the LIHEAP program there is a requirement that the entire income of the household be taken into consideration for eligibility purposes, accompanied by a requirement that benefits be adjusted if one or more members of that household do not meet either citizenship or qualified alien status. They've been
pretty unambiguous on those requirements.

That has a financial impact. This is our largest grant program. This is what, about $150 million a year? If it should happen that in subsequent monitorings it is determined at any level that those requirements were not met, the U.S. Department of Health and Human Services will look to us on behalf of the State of Texas to repay them. We do not have appropriated funds to repay them, we would certainly look to the subrecipient for financial indemnification or repayment, but there is a financial risk here and HHS has been pretty unambiguous in identifying both its programmatic requirements and the potential for financial risk.

They have yet to be really specific on granular issues about, you know, the ability to require, either through rule or agreement, that nonprofits gather certain information and transmit them which would facilitate our determinations on these matters. There are technical issues that they are working through, and it's very hard to reconcile the language of PRWORA, the requirements of the LIHEAP program and the Department of Justice guidance. This is not a model of statutory or regulatory clarity.

We are in direct communication both with TACAA and with HHS to get to the bottom of that and figure out the most accommodating possible way to move forward, but
we as the staff are resolute, we cannot back off on the requirement that we need to protect the state against financial liability.

MR. GOODWIN: In light of all those comments, do the other people still want to testify at this stage?

MR. POWELL: Yes, sir, I'm sure they probably do.

MR. GOODWIN: Okay. Any other questions?

(No response.)

MR. POWELL: Thank you very much for your time.

MS. PONCE: Good morning, Mr. Chairman, members of the Board, Mr. Irvine. My name is Laura Ponce, and I'm the executive director of the El Paso Community Action Program Project Bravo. I also serve on the executive committee of the Texas Association of Community Action Agencies.

I too wish to thank Mr. Irvine and his staff for meeting with us a couple of weeks ago regarding this agenda item. And as to your question you had for Mr. Powell, I have a clarification for that which I'll talk about at the end.

MR. GOODWIN: Okay.

MS. PONCE: If you please refer to Chapter 6, Subchapter C, CEAP 6.307(f), page 46 and 55 of your agenda item, and Subchapter D, WAP 6.406, page 53 of the 55-page
agenda item. These are changes requiring public entities to verify immigration status of all household members. Currently only the applicant is subject to the verification process. We believe the requirement is premature and we should wait for written guidance from HHS. This is the requirement for the governmental entities that are doing that, not the nonprofits.

And we think that that's going to have an impact, you know, for all people in Texas, and it's not really something that's just going to impact people who are non-qualified aliens but people who are citizens who cannot provide the verification documents to prove that they are citizens.

As previously mentioned, PRWORA, the Personal Responsibility and Work Opportunity Reconciliation Act and the Department of Justice interim guidance reference the applicant in the statements. "Nonprofit providers of LIHEAP benefits are not required to determine, verify or otherwise require proof of immigrant eligibility of any applicant for benefits." So this is the language that's coming from these entities, and it's not requiring it for all household members. This is the change that they're requiring, that instead of just verifying the applicant, they want us to verify the citizenship status or alien status of every person in the household.
A requirement of validating citizenship or immigration status is not 100 percent achievable. So for example, we have families with vulnerable household members, so for example, if a family takes on foster children, they do not have any legal right to get these documents, even though these children are U.S. citizens, as the foster parents. Grandparents taking care of grandchildren, they also don't have a legal right to request these documents to verify that those children are U.S. citizens.

People that are recently homeless and they've lost or had their documents stolen, we see this a lot with homeless veterans that we're putting into rapid rehousing. They're coming in and they don't have any documents to verify that they're U.S. citizens but we know that they are because, you know, they served in the military and there is some documentation there but it's going to take months, sometimes years, to get the documents to verify that they're U.S. citizens, especially if they were born outside of the U.S. to parents that are U.S. citizens.

May I go on?

MR. GOODWIN: Yes.

MS. PONCE: And also people who are very elderly who may have difficulty trying to get those documents because they had a fire, they lost them over the
years, these people who are U.S. citizens are going to have a lot of difficulty getting those documents to prove that they are U.S. citizens to receive these benefits.

The Department encourages LIHEAP providers to expedite the processing of applications via mail, fax and online. That's something that has been a directive from Mr. Irvine and his group to have us have a more expedited process, but it's not going to be possible when they talk about the extra 15 to 20 minutes of verification. That means that we're going to have to have people come into our offices to provide these documents because it's not safe to mail copies of your birth certificate, your passport, all of these documents that are extremely sensitive, and there's a lot of risk for people stealing them and stealing your identity.

So we have provided the solution of self-certification, and so this is something where the household member certifies whether or not they are a U.S. citizen or they are an alien who's a qualified alien, and so really the verification and the onus is on that person, and if there was some type of fraud, then the onus would be on the person who has signed and said I am a U.S. citizen or I am a qualified alien. To our knowledge, there have not been any instances in Texas where Texas was penalized for serving non-qualified aliens, and these are...
rules that are almost 20 years old.

Regarding Subchapter C, CEAP 6.309, see page 47, and Subchapter D, Weatherization 6.406(e)(1), (2) and (3), pages 53 of your agenda, counting the income of the non-qualified alien and then excluding them from the count to determine the benefit levels is a concern and a penalty to the household. Implementation of this may cause disparity in the delivery of services of vulnerable populations.

We see this especially in grandparents raising grandkids who they have a pretty comfortable income coming in because they're just a couple and then they take on their grandkids, so now they have a household of three or four extra children in their household and so now they're below 150 percent of the poverty level. They don't have the documents to verify that these children are U.S. citizens, these people are not going to be able to qualify for these services even though the whole household has U.S. citizens living in the household.

An undated compliance letter from HHS states that the state ensure mixed status households are not denied LIHEAP assistance based solely on the non-qualified member of a non single person household, and the non-qualified member could be a citizen who just cannot provide their documents to verify that they're a citizen.
Counting income of the non-qualified person and excluding them in the household size will minimize the qualified member's household, and so just know that this is a practice that goes away from established practices. If you go to SNAP they don't count the income of the person who is non-qualified into the household count. Medicaid, other government programs, this is going to be different from the way that other governmental entities are counting income and counting the people or not counting them within the household.

So we believe the requirement is premature and the Department should wait for written guidance from HHS, and I know that they've tabled this motion for the nonprofit agencies, but we think that it should be tabled across the board for the other entities until we have written guidance, not verbal guidance, from HHS.

Thank you for the opportunity to provide you these comments, and if you have any questions, please let me know.

MR. GOODWIN: Any questions, Board members?

MS. RESÉNDIZ: Mr. Chairman, I have a question.

MR. GOODWIN: Okay.

MS. RESÉNDIZ: What is your relationship with the consulate?

MS. PONCE: The consulate, I think that they
have a health fair once a year and we go there to provide
information about our programs and services because we
have various programs and services available.

MS. RESÉNDIZ: Is there an opportunity for you
to obtain the documentation necessary for citizens?

MS. PONCE: It can be very complicated.

Nowadays it's very difficult to provide birth
certificates, all of these documents because you have to
provide so much verification information to prove that you
were born in the United States or to prove that you are
who you are even though you've lost all your documents.
So for example, one of my colleagues, her mother lost her
birth certificate and in the State of Texas you have to
provide copies of all of your divorce decrees to be able
to prove who you are and the woman was divorced more than
once and so they had to go to multiple courthouses to go
grab these documents because they couldn't get a copy, it
had to be an actual certified copy, among all the
different documents they had to prove that she was born in
the United States. So it's very complicated to prove who
are and get these documents back once they've been lost.

MR. ECCLES: Excuse me. Let the record reflect
that Ms. Bingham has left the dais.

MS. PONCE: Thank you.

MR. GOODWIN: Any other questions?
(No response.)

MR. GOODWIN: Tim, do you want to comment on this?

MR. IRVINE: Sure, I'll be glad to.

I believe that our proposed action on this rule is in line with clear federal guidance and direction. I believe that we have made an appropriate accommodation to pull out the treatment of nonprofits, but I think it's crystal clear what the federal expectations are on governmental entities providing these types of assistance and I wholly support moving forward on this rulemaking. I would also note that under the Administrative Procedures Act, we really need to take action or else we need to restart the entire process because this is a process that by state law cannot extend beyond six months.

MR. GOODWIN: Thank you.

Another speaker? No one else, no other discussion?

(No response.)

MR. GOODWIN: Okay. I'll entertain a motion, minus Ms. Bingham, for this area.

MR. VASQUEZ: Move to accept staff's recommendation to go forward with the rules as presented.

MR. GOODWIN: Okay. And a second?

MS. THOMASON: Second.
MR. GOODWIN: It's been moved and seconded.

Any further discussion?

(No response.)

MR. GOODWIN: All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Thank you.

Teresa, are we ready now? We are ready now so we're going to move back to item 4(a).

MS. MORALES: Teresa Morales, manager of Multifamily Bonds. Thank you for that.

Chairman Goodwin and members of the Board, item 4(a) involves the issuance of multifamily housing revenue bonds for the related RD portfolio, Series 2018, Resolution No. 19-007, and determination notices of housing tax credits. This transaction involves nine properties totaling 384 units located in various rural cities across the state that are being treated as one bond issuance. Your materials include a brief development-specific summary for each of the nine properties.

Although the 9 percent housing tax credit program has traditionally been the better avenue in financing rural transactions, to get them to work on the 4 percent side there are often several developments that get
pooled together in order to achieve economies of scale relative to issuance costs. At staff review of the individual application, it was identified that two waivers were needed. One is associated with the minimum threshold cost per unit, and another pertains to undesirable neighborhood characteristics.

One application, Bay City Village in Baytown, did not meet the minimum threshold cost per unit pursuant to the Uniform Multifamily Rules which requires rehab developments funded through USDA to spend a minimum of $25,000 per unit in building costs and site work. Bay City Village reflected approximately $20,000 per unit. There were recent repairs made to the property as a result of damage sustained by Hurricane Harvey last year. Had those repairs not been previously made, the development would have met the Department's minimum amount required under the rule. Staff recommends a waiver of this minimum threshold amount for Bay City Village pursuant to 10 TAC Section 10.207 be granted.

As it relates to the undesirable neighborhood characteristics, there is a property in Evant where the elementary school, which happens to be the only elementary school in Evant, did not achieve the Met Standard rating for the past two years. According to the rule, schools that have not achieved the Met Standard rating for two
consecutive years are required to submit a letter from a school official, and the applicant has been unable to provide such letter. As further explained in your board materials, staff is recommending a waiver of the letter requirement and further recommends that the site be considered eligible.

The financing structure for this transaction involves a USDA Section 538 loan by Lancaster Pollard. The mortgage loans will be originated by the Department and made to each borrower on the closing date and funded with bond proceeds. The proceeds will be 100 percent cash collateralized at all times. In this regard, the transaction mirrors FHA 221(d)(4) transactions previously approved by the Board but instead just uses a different funding source.

The Department will issue short term tax exempt fixed rate bonds in an amount not to exceed $20 million. With the specific amounts anticipated, there could be some slight fluctuations allocated to each property as reflected in your materials. Once the rehabilitation is complete on the properties, the proceeds from the Section 538 loan will be used to pay off the bonds. The Section 538 mortgage loan is anticipated to carry a 5.12 percent interest rate with a 40-year term and amortization.

Staff recommends the bond issuance and adoption
of Resolution No. 19-007, as presented in your materials for the Related RD Portfolio, and the issuance of nine determination notices.

Staff notes that after the board materials were posted there were some last-minute adjustments made to some of those credit amounts that were simply a staff oversight in our rush to get everything finalized. I would like to read into the record the correct tax credit amounts associated with each of those properties.

For Bastrop Oak Grove the amount is $157,787; for Bay City Village the amount is $118,454; Burke Village $102,278; Elgin Meadow Park $78,192; Evant Tom Sawyer $47,076; Hondo Brian Place $118,914; Hondo Gardens $80,082; Lampasas Gardens $99,330; and Lantana Apartments $293,791.

MR. GOODWIN: Any questions for Teresa?

(No response.)

MR. GOODWIN: It doesn't appear that there are. I'll entertain a motion to accept this recommendation from staff.

MS. THOMASON: So moved.

MR. GOODWIN: It's been moved. A second?

MR. BRADEN: Second.

MR. GOODWIN: Moved and seconded. Any further discussion?
(No response.)

MR. GOODWIN:  All those in favor say aye.

(A chorus of ayes.)

MR. GOODWIN:  Opposed?

(No response.)

MR. GOODWIN:  Okay. That is passed.

So now we come to item 3(c). The Governing Board of the Texas Department of Housing and Community Affairs will go into closed or executive session at this time. The Board may go into executive session pursuant to Texas Government Code 551.074 for the purposes of discussing personnel matters, pursuant to Texas Government Code 551.071 to seek and receive the legal advice of its attorney.

The closed session will be held within the anteroom this meeting Room E2.028 but we're going to meet in Room E2.024. This is not big enough back here. So the date is October 11, 2018, and the time is 9:20, and I would expect for us to be back -- I'm going to give an earlier time but we may be longer than this -- at 9:45. So at this point we will recess into executive session to discuss item 3(c).

(Whereupon, at 9:20 a.m., the meeting was recessed, to reconvene this same day, Thursday, October 11, 2018, following conclusion of the executive session.)
MR. GOODWIN: The Board is now reconvened in open session at 10:11 a.m. During the executive session the Board did not adopt any policy, position, resolution, rule, regulation or take any formal action or vote on any item, save and except for deliberations on personnel matters pursuant to Texas Government Code 551.074.

So our next item on the agenda, which is the last item on the agenda, the action item, is to report on the process for appointment of a new executive director and actions of the Executive Director Committee.

As you all know, Tim Irvine, our executive director, distinguished, fantastic, unbelievable executive director, will be retiring from TDHCA at the end of November. This necessitated the creation of a Board committee to begin the process of selecting a replacement executive director. Last evening the Executive Director Committee met in a public meeting. Pursuant to Texas Government Code 551.074, the committee went into closed or executive session for the purpose of deliberating matters regarding the employment of a public officer or employee.

The committee deliberated and determined that due to the time constraints of locating a suitable new permanent executive director prior to Tim Irvine's departure, the committee recommends not interviewing or recommending to the Board the hiring of a permanent
executive director at this time. The committee recommends appointing a current TDHCA employee, Mr. David Cervantes, on an acting director basis only, which in accordance with Texas Government Code 2306.038 will be done with the governor's approval. The Board action to appoint an acting director, along with the governor's consideration will be made at the next Board meeting in November.

Do I hear a motion to receive the committee's report?

MS. BINGHAM ESCAREÑO: Move to accept the report.

MR. GOODWIN: I have a motion. Do I hear a second?

MS. THOMASON: Second.

MR. GOODWIN: It has been moved and seconded.

Any discussion?

(No response.)

MR. GOODWIN: All those in favor please say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Okay. So we have come to the point in the agenda where we will listen to public comments for the sole purpose of establishing topics for
future Board consideration meeting for Board agenda items.

Is there anyone that would like to speak at this time in public comments?

(No response.)

MR. GOODWIN: If not, I would entertain a motion to adjourn.

MS. BINGHAM ESCAREÑO: So moved.

MR. GOODWIN: It's been moved. Second?

MR. BRADEN: Second.

MS. THOMASON: Second.

MR. GOODWIN: It's been moved and seconded several times. All those in favor please say aye.

(A chorus of ayes.)

MR. GOODWIN: Thank you all for coming.

(Whereupon, at 10:15 a.m., the meeting was adjourned.)
CERTIFICATE

MEETING OF: TDHCA Board
LOCATION: Austin, Texas
DATE: October 11, 2018

I do hereby certify that the foregoing pages, numbers 1 through 71, 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.

DATE: October 17, 2018

/s/ Nancy H. King
(Transcriber)

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