TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

RULES COMMITTEE MEETING

William B. Travis Building
Room 1-111
1701 Congress Avenue
Austin, Texas

October 9, 2019
6:30 p.m.

MEMBERS:

LEO VASQUEZ III, Chair
LESLIE BINGHAM ESCAREÑO, Member
PAUL A. BRADEN, Member
# Index

<table>
<thead>
<tr>
<th>Agenda Item</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Call to Order, Roll Call</strong></td>
<td>3</td>
</tr>
<tr>
<td><strong>Certification of Quorum</strong></td>
<td>3</td>
</tr>
<tr>
<td><strong>Action Items:</strong></td>
<td></td>
</tr>
<tr>
<td><strong>ITEM 1:</strong> Presentation, discussion, and possible action to make recommendations to the Governing Board on the Migrant Labor Housing Facilities rule, entailing the proposed repeal, and proposed new, 10 TAC Chapter 90.</td>
<td>4</td>
</tr>
<tr>
<td><strong>ITEM 2:</strong> Presentation, discussion and possible action to make recommendations to the Governing Board on the Post Award and Asset Management Requirements rule, entailing the proposed repeal, and proposed new, 10 TAC Chapter 10 Subchapter E</td>
<td>38</td>
</tr>
<tr>
<td><strong>ITEM 3:</strong> Presentation, discussion and possible action to make recommendations to the Governing Board on the Multifamily Direct Loan Rule, entailing the proposed repeal, and proposed new, 10 TAC Chapter 13</td>
<td>73</td>
</tr>
<tr>
<td><strong>Public Comment on Matters Other Than Items For Which There Were Posted Agenda Items</strong></td>
<td>none</td>
</tr>
<tr>
<td><strong>Executive Session</strong></td>
<td>none</td>
</tr>
<tr>
<td><strong>Open Session</strong></td>
<td>--</td>
</tr>
<tr>
<td><strong>Adjourn</strong></td>
<td>87</td>
</tr>
</tbody>
</table>

*ON THE RECORD REPORTING*

*(512) 450-0342*
PROCEEDINGS

MR. VASQUEZ: All right. Let's get started.

Call to order the meeting of the Texas Department of Housing and Community Affairs Rules Committee. It is 6:32, according to my clock.

All members of the Committee are present, so we have a quorum and will continue the meeting.

Today at this meeting, we're going to take stakeholder input and discuss three rules on the Agenda today and we'll take input and suggestions on potential changes -- proposed changes to the proposed rules and we'll present that. So there will be no action taken today.

We'll present the rules as potentially amended to the full Board tomorrow, and then those rules, as proposed, will then be published in the Texas Register for further comment. So lots of time to get input here.

Staff, I'm sure, will take close notes as to any changes or suggested recommendations that we put.

We'll have staff present and pause for breaks kind of like we did on the last Rules Committee meeting, and so we will ask you if you want to comment on that section as we go along.

So first item is Presentation, Discussion, and Possible Action to Make Recommendations to the Governing
Board on the Migrant Labor Housing Facilities Rule, Entailing the Proposed Repeal, and Proposed Repeal, and Proposed New 10 TAC Chapter 90, and Tom is going to be our first presenter.

MR. GOURIS: Excellent. Good afternoon, Board Members. My name is Tom Gouris. I'm the Director of Special Initiatives, and for the past year and a half or so, I've been implementing and overseeing Department's efforts on licensing migrant farmworker housing or migrant labor housing.

Let me start by giving you a little background on this activity.

MR. VASQUEZ: Can everyone hear Tom?

MR. GOURIS: I'll try to speak a little louder, too. Subchapter LL of the Texas Government Code is the governing statute for this activity, and it requires that this Board adapt rules to lay out the details for the fees and standards in which migrant labor housing gets licensed and inspected in the state of Texas.

The statute prescribes that only housing facilities providing housing for three or more temporary, seasonal, or migrant workers for three or more days must adhere to the Department's rules and be licensed. The Department has been responsible for this activity since 2005 after the passage of the Texas Migrant Labor Housing

At that time, there were approximately 20 licensed facilities. That number has grown over the years to total about 48 as the middle of last year. The rules for this activity were originally adopted by this Board in 2006, and last reviewed and modestly amended in 2014.

Over a year ago we began a robust review of these rules and looked over in particular for ways that we could make the process more efficient for everyone involved. We became aware that the federal immigration program for agricultural workers, known as the H2A visa program, requires that employers sponsoring workers for visas provide their workers with housing.

We also became aware that most, but not all, of the H2A facilities had a separate inspection process based on the federal ETA or OSHA standards and that the Texas Workforce Commission, TWC, was the state agency responsible for most of those inspections.

So we reached out to TWC to work with them and work out a process to get copies of those inspections and determined that their inspections and requirements were very similar to ours.

Also about a year ago we began an outreach campaign to contact employers who use the H2A visa program, because we became aware that another feature
requirement of the H2A program is that employers post their job opportunities to American workers.

One of the places they do this is a public website called iCERT, which is hosted by the U.S. Department of Labor. So we reached out to employers that posted jobs for three or more employees on this website and sent them a letter with information about the licensing requirement.

We've sent out letters covering about 380 properties so far, and about half of them have responded back to us. We've also tried to raise awareness of this not-very-well-known licensing requirement by creating a branding campaign, participating in conferences and workshops, and meeting with the people in the agricultural industry.

As a result, we have today -- over the last 12 months, that is, -- I had 240 applications for license. So we've increased the numbers of licensees considerably.

We believe that we have about half of the current H2A employers in Texas who hire three or more workers in our pool of licensees. That's hard to know for sure, but that's where we think we are.

The rule changes proposed would make it easier for an H2A employer to get licensed, in that it would eliminate the redundant inspection and reduce the fee in such cases where we can rely on a TWC inspection and
reduce that fee from $250 a year to $75.

At the same time, we want to make sure that the Texas quality standards that have been in place for over ten years would remain so.

So we identified the 11 standards that are in the existing Texas rule, but were not in both the ETA and OSHA rule, and spelled those out in the proposed rule. So you see a lot of redlining of the proposed rule.

We maintained 11 standards. The other standards are either in the OSHA or ETA requirements I should say in both of them -- or they were deemed to be too vague to enforce, so we thought they would be better to not add as an extra step.

Under the new rule, in order to use the TWC inspection to garner a license, a provider would have to certify that they're meeting those 11 standards, and we'd have to get a copy of their ETA or OSHA-based inspection.

We've heard from many and may hear today from some additional workers and worker advocates who appreciate the need for and protections provided by this statute in these rules. But we've also heard from many employers who are justifiably frustrated with the existing obvious redundancy and imperfections in our current rules.

In other words, they're frustrated with the double inspections and the fees from the two separate
state agencies, which we are attempting to remedy, to the extent that we can, with the proposed rules.

If I might, I'd like to read a letter for you that I received. It's a handwritten letter received earlier this year from a Texas beekeeper in response to our letter informing him of licensing requirements. I keep this letter on my board over my desk, alongside with a photo of one of the facilities that provided less-than-acceptable accommodations.

And side by side, they sort of encapsulate for me some of the difficulties in regulating this activity and keep me mindful of that. So if I can, the letter reads as follows.

"Dear Sirs. The following is not directed at any one individual. To obtain visas for migrant workers, I am required to provide housing that meets all federal, state, and local codes and provide for an inspection that meets the U.S. Department of Labor regulations 30 days prior to workers' arrival. I'm enclosing a copy of this inspection. The license that you are requiring is for three or more workers.

If you are really trying to help the worker, what about number one and number two? I feel like a victim of extortion, since I or my workers actually receive no additional protection or benefit except from
the threat of civil injunction and fines. However, if you feel that the $250 license fee is justified, I've enclosed a check.

Also, if you feel that a state inspection is needed as well as the current U.S. Department of Labor inspection, please set it up and let me know when.

Thanks."

Then he signed it, and he gave me his phone number, and we talked, and we ultimately did do the inspection and did license his property.

Earlier this week, we sent out another notice of the proposed rule changes to over 400 advocates, employers, and interested parties, and received several more emails from employers, and they reiterate the general concern not to overburden agricultural producers if we must regulate the housing at all, which we do, because it's a state statute.

The Department uses the fees for this licensing and regulatory enforcement activity. The use of it has been capped at historically $10,500 for the last biennium, and was raised to an estimated $35,000 for the current biennium.

These fees are used for licensing processing, which includes the inspections, and to support our marketing and outreach efforts that we're now doing, which
includes a dedicated hotline number and informational posters, calling cards, and other materials that are being distributed throughout the state.

These tools have been created so that employers, workers, public officials, and advocates can know how to reach us and let us know about concerns with licensed and unlicensed facilities. I have copies of those if you want to see them.

Finally, in addition to the reduction or elimination of duplication of inspections, clarifying the Texas inspection standards, and the reduction of a fee for facilities inspected by TWC, a couple of other substantial changes include providing clarification for who is responsible for getting a license by creating a definition of what we're calling a provider of migrant housing; allowing a prospective licensee to provide evidence of a corrective action in lieu of having another inspection, or they can accept the finding of noncompliance as a denial of the application for license. That wasn't a provision originally in the rule.

And then aligning the rule with a statute in regards to civil penalty of up to $200 per day for each day a violation occurs.

So that kind of wraps up my remarks and presentation on this, but I'm glad to answer any
questions, or listen to any of the comments that we get and respond to those.

MR. VASQUEZ: Okay. Well, there are people wanting to make comments.

MR. MAUCH: I think there are possibly two.

MR. VASQUEZ: Okay. Yeah. Let's --

MR. GOURIS: Okay.

MR. VASQUEZ: -- to the comments first, and then we can work them all back in. Is there a sign-in sheet here, or not?

MR. MAUCH: I've got written comments as well with my contact information.

MR. VASQUEZ: Okay. Great.

MR. MAUCH: Good evening, everybody. My name is Dave Mauch. I'm an attorney with Texas Rio Grande Legal Aid. We're a nonprofit that provides free legal services to migrant farmworkers in Texas and six other states.

I want to start out with a little bit of background on where we're at with the state of play in farmworker housing in Texas. I started about three and a half years ago working on this project to increase enforcement of the Migrant Labor Housing Facilities code.

There was a report in the Austin American
Statesman called, "Unlivable: How Texas Fails Farmworkers" that found that at that time, in 2015, TDHCA was spending $2500, not 25,000, per biennium on enforcement, and that upwards of 90 percent of farmworkers were living in housing that was unlicensed.

In the past three and a half years, I commend Tom and Homero, and other folks at TDHCA who have done a lot to bring more people into the system, but we're still at a state of play where farmworker housing in Texas is often very severely inadequate.

We have workers who complain about pest infestations. We have workers who are living in hotels, and forced to share beds. We have workers who are living in abandoned housing. I have one case I just filed -- we filed a couple big bedbug cases recently. So there's a lot more to be done in terms of enforcement.

The general thrust of these proposed regulations, as we discussed last year in September at the Rules Committee meeting, is asking for a reduction in funding for this program and a reduction in inspections that would be delivered, and both of those would lead to negative outcomes for farmworker housing in the state of Texas.

I want to start out talking about 90.5, which is the licensing section, because this is the section that
the Rules Committee had the most objection to last September when we discussed the last round of proposed revisions to these regulations.

TDHCA, the last round, proposed exactly what they’re proposing this time, which is, instead of inspecting folks who have not had an inspection under state standards, they will accept an inspection from the Texas Workforce Commission to the federal standards and then ask the employer for an attestation that they meet the additional 11 standards that are now in 90.4.

As we pointed out last time, there are a lot of problems with this. The biggest problem is that attestations don't work, and that's been proven in the H2A system already. At three and a half years ago, perhaps more recently than that, not a single one of the upwards of 350 H2A employers in the state of Texas had a state license, yet every single one of those employers, under penalty of perjury, on their H2A application to the federal government certified that they were complying with all state, local, and federal regulations.

In other words, every single one of the almost 400 H2A employers in Texas were committing perjury. The reason is there was no enforcement. They know that there's no enforcement and they can get away with it. So attestations are not useful, and we found that
attestations don't drive compliance.

The second issue with 90.5, the licensing section, is that it provides a reduced fee for folks who are already in the H2A program of $250 down to about $75. These fees are -- even though they're not swept back into TDHCA -- the amount of fees gathered the past two legislative sessions has been used to appropriate funds specifically for this enforcement program.

And so by creating a lower application fee, TDHCA is going to limit the amount of funds that it has to enforce this program going forward. Based on the current number of licensees, you'd be looking at a decrease in about $30,000 in funds for a year, which is obviously very, very substantial, given that right now they're working on about 35,000 for the biennium.

I want to skip back to 90.3, which is the applicability section Tom mentioned where they're defining this term "provider."

MR. VASQUEZ: Hang on.

MR. MAUCH: Yeah.

MR. VASQUEZ: Let's try to address some of these before we --

MR. MAUCH: Okay.

MR. VASQUEZ: -- get buried through a bunch of other.
MR. MAUCH: Sure.

MR. VASQUEZ: Okay. So on, I guess, 90.5 you're concerned about attestation without enforcement.

MR. MAUCH: Right.

MR. VASQUEZ: Which has been the situation in the past.

MR. MAUCH: Uh-huh.

MR. VASQUEZ: But I think the point of this whole thing is that we are starting to have actual enforcement, and if we hear about -- or if we, TWC, and OSHA and all of these start hearing about violators, that's what we're here for. Then they're going to start realizing there is enforcement and be encouraged to change their ways.

MR. MAUCH: Yeah. And I absolutely understand that.

MR. VASQUEZ: I think three years ago, I give your comment 100-percent credence. Now going forward I think there's confidence that it's going to be different. I think even staff is going to agree with that assessment that it's a different world going forward.

MR. MAUCH: Oh, and I agree as well.

MR. VASQUEZ: Do we have a -- I guess this is a question to staff.

Do we have a mechanism for when employers are
reported for still having substandard, even though they claimed that they've met all the regulations? I mean, how -- and I know you just talked about all those public outreach and --

MR. GOURIS: Right. So we have a tool in place to get that information. We have the hotline, and we have information out there. We're putting more information out there so folks can be aware to contact us. Then when we do get contacted, we have a process that we follow to try to first get the employer or provider to comply with the law.

The difficult thing for us in that instance is that unless it's a requirement that they have from somewhere else to provide the housing, they have the capacity to say, well, we just won't provide housing anymore. Worker, go find housing someplace else.

Now if it's an H2A employer, they have to provide housing, so they're going to comply, and we've had real good success at getting them to comply. But others have that choice, and so some have been willing to change their ways or whatever and make the housing compliant.

But those that aren't H2A will still be charged a $250 fee, and historically that has been a fairly small number of facilities, because it's so hard to get them -- it's so hard to find them. So the resources to find folks
are increasing because we have these tools now, but
they're not increasing like -- we don't have a law
enforcement arm to go out and round folks up or anything
like that.

We still are dependent on people coming in to
us and saying, hey, we have housing, we want to be
licensed. So we've taken an approach that would send it
in a more positive way, hopefully, with the branding and
otherwise. But where necessary, where we get informed
about a violation or of someone, we've gone out and talked
to them, tried to get them to comply, and in most cases,
we've gotten it to happen.

MR. VASQUEZ: And do we coordinate with other
agencies?

MR. GOURIS: Well, thus far, our coordination
with TWC has been in getting their inspections, and we're
getting them --

MR. VASQUEZ: When we receive reports of
violations?

MR. GOURIS: On enforcements, we haven't had
any coordinated efforts on that with other agencies yet.
We've handled that ourselves. We've had three, that I can
recall, instances. Two of them complied; the third one
was determined that they weren't required to comply
because they didn't meet the requirements.
But they were made aware of the requirements. Most folks want to try to comply if they are really trying to provide housing for their workers and need to provide housing for their workers.

MR. VASQUEZ: Okay. I see Homero has questions.

MR. CABELLO: Just a couple of comments. The other thing I wanted to point out was that Internal Audit went out and audited this program, the processes for licensing. They went out to several employers to check on the standards, and they all passed the internal audit inspection.

But then at your request, Mr. Vasquez, they went back out again. I think after the last Board meeting or the one before, they went back and checked some other employers, and they met the standards.

I just wanted to emphasize what Tom said. The housing is voluntary, you know?

MR. VASQUEZ: For non-H2A.

MR. CABELLO: For non-H2A. And we're pushing compliance, we're trying to get the word out on the licensing requirements, but if we push too hard and start fining these employers, they're going to say, Workers, go find your own housing and come back in the morning. So we're trying to find that balance between compliance and
enforcement.

MR. VASQUEZ: Right. And again, we are set up better now --

MR. CABELLO: Yes.

MR. GOURIS: Yeah.

MR. VASQUEZ: I mean, compared to how it was.

MR. CABELLO: The hotline comes in to Tom, and if Tom's not available, it rolls to my line. So we're the ones that handle the hotline.

MR. VASQUEZ: Okay. Are there comments on attestation?

MR. GOURIS: Let me also add that the penalties are a little bit more clear now, and consistent with the rule -- with the statute in that we can charge now a daily fine, not just a one-time fine. So we've cleared that up, so will give us a little bit more teeth to pursue folks.

MR. VASQUEZ: Yes. Okay, then on the fee sweeps and fee levels, it's my understanding that due to the limited appropriation made, we can only legally spend a certain amount of money. So even if we collected fees above that, that all just goes back into the state coffers?

MR. GOURIS: That's correct.

MR. CABELLO: That's correct.

MR. VASQUEZ: Is there anything related -- I
think --

MR. GOURIS: It would --

MR. VASQUEZ: -- Dave mentioned that if we over
collect, then next time, I guess, we'll get a higher
allocation?

MR. GOURIS: I think what we're still
struggling to do is find out how many employers -- how
many providers of housing there are out there. And I
think our goal ought to be to try to get everyone
licensed. Because once we know what the licensing
population really is -- because that's been a really hard
thing for us to nail down --

MR. VASQUEZ: Then we can set up the budget
more.

MR. GOURIS: Then we can figure out
budgetarily where we need to be and what we need to do.
Right now I think the incentives are geared toward getting
people licensed so that we know where they are and not be
overburdensome in doing so by not charging an extra
inspection trip. TWC already does an inspection. It's
relatively the same thing that we do.

The attestation is a concern, but again, when
we send out the license, we send out informational
material so that a worker has the ability to anonymously
call us and tell us, hey, they're not following this, or
this housing is of poor quality.

In fact, we had a call last month on that very subject and have worked with that employer to get their facility back up to standards. So it's working from that perspective. That's what it's supposed to be doing.

That's the intent.

MR. VASQUEZ: Yes.

And, Mr. Mauch, I can assure you that both the Board and Mr. Wilkinson are very aware of unfunded mandates from the legislature, so we're going to be trying to up that budget as well.

MR. CABELLO: And the reduction of the fee to $75, we still anticipate meeting our cap of $35,000 as well.

MR. VASQUEZ: Okay. You said 90.3 is next?

MR. MAUCH: Oh. Yes. And if I -- just two quick words on enforcement, actually, to the extent that we are in a different place than we were three years ago. I mean, I think, number one, there just hasn't been any enforcement. Tom mentioned they sent out letters to H2A employers across the state a year ago, and I did the math on this two weeks ago. It's 38 percent of H2A employers are in compliance. I'm not sure what's -- if anything's been done with the other 62 percent. We certainly haven't seen anything -- and I think right now

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we do have a system that is voluntary, basically.

In terms of 90.3, I think this is probably the next biggest issue on these regulations. So one of the biggest things that the state law does that's more protective for workers than the federal law is it doesn't have this exemption that federal law has for what are called public accommodations, which are hotels, motels, apartment complexes, mobile home parks, things like that, that provide housing to migrant farmworkers on the same terms and conditions as they do to the general public.

Those, under federal law, even if they're H2A, they don't have to get an inspection prior to occupancy, and they don't have to meet federal housing standards. The DOL actually just recently promulgated a new set of proposed regulations on the H2A program that increased the housing standards for public accommodations, because they noted in the preamble to these regulations -- and this is a very anti-regulation administration -- that they were finding the most violations in public accommodation housing because there were not inspections, and that's been our experience in Texas, as well.

So what these regulations do is they add this definition of provider. I think the definition of provider is useful because it sort of gives you a shorthand to kind of figure out all the different ways
that migrant farmworkers do get housing, whether it's provided directly by the employer, whether the employer or the farm labor contractor contracts with a hotel, a motel, a mobile home complex, or whether the workers find housing on their own, typically at places that market to and target specifically migrant farmworkers.

It's that last category, the people who are providing public accommodations but that aren't contracting directly with employers or labor contractors that would not be subject to the rule after these changes in the regulations, and I think that is problematic for a couple of reasons.

First, as I mentioned, there are a number of places where there are mobile home parks, hotels, things like that, that run seasonally. They market exclusively to farmworkers. They house pretty much exclusively farmworkers.

And because they do that and because they know they're dealing with a vulnerable and desperate population that's just there for a job, they're only going to be there for a little bit of time, they know that they can get away with substandard housing. And we've found that to be the case when we do outreach.

The second issue with 90.3 is that it does -- it also would give employers an end run around enforcement.
of the actual rules because again, if the employer isn't contracting directly with the housing provider or the owner of the housing, then there is no requirement that the housing be licensed.

Let me give you an example. Let's say right now an employer brings workers up from the Valley up to north Texas and houses them in a hotel that's seasonal and operates basically to provide housing to farmworkers. Now, let's say right now this employer is booking the hotels directly for the farmworkers just on a block rate because it's simpler that way.

If the employer wanted to avoid compliance, all they would have to do would be to give the labor contractor extra money, say, Give this to the workers to pay for housing, and then require, as a condition of their employment, that the workers stay at that particular housing.

You have exact same situation where the workers are staying at that same housing in the same poor conditions, but the difference is that legally, they're not required to follow the law. So I'm worried this loophole might swallow up the entire public accommodations exemption.

Ultimately, I think TDHCA obviously, by the language of the regulations, has the ability to exercise
discretion in terms of enforcement. And so if they find
that there's a situation where there's a hotel operator
who really just has no idea that there are migrant
farmworkers staying, and really is not doing anything
that's meant to screw people over or to provide poor
conditions for farmworkers, they can say, Hey, you know
what? I totally understand. No harm, no foul. Let's not
assess a fine.

I just worry that by creating this loophole in
the regulations itself, they would shoot themselves in the
foot in terms of future enforcement opportunities.

And then I've got stuff on 90.4 --

MR. VASQUEZ: Okay.

MR. MAUCH: -- but I expect you want to hear
from --

MR. GOURIS: So we included the definition of
provider on purpose and I wish General Counsel were here,
because it was a collaborative effort to try to define and
refine who is -- because the way the statute is written,
it is possible to conceive of any homeowner or motel owner
or hotel operator or campground operator who just happens
to have three or more residents who are migrant workers or
seasonal workers or temporary workers be required to be
licensed and be fined if they're not licensed, not even
knowing that they are agricultural workers.
So what we were trying to do is trying to connect the intent of the legislation into the rule by creating this definition of provider, which could be a hotel operator if they market to migrant workers and say, hey, we are providing migrant housing.

MR. VASQUEZ: Is there a distinction between whether they're just a group of workers that are staying there versus -- without any direct payment from the employer to the hotel/motel?

MR. GOURIS: The regulation doesn't talk about that. I mean, I can read you the definition of provider. It's pretty simple and quick, and you can hear from it what it requires, if you'd like, and that might clear it up.

We don't go into a lot of that who gives money to who or what have you. We say who's providing the housing, and if it's someone that's providing the housing, that might be someone who markets the housing as a migrant farmworker housing. If they go and advertise to it, they'd be providing migrant farmworker housing. I think we'd pursue that.

If they're just a hotel operator that happens to have some folks, they may be providing it to them as they're providing to everyone else.

MR. VASQUEZ: Or if I own a mobile home park,
and I do a three-month lease to these four people who I know that they're migrant farmworkers -- I know they're working at the farm. And then all of a sudden, I'm going to be responsible, in essence?

MR. GOURIS: Well, that's what we're -- we're trying to avoid the casual or not -- someone who didn't know what they were doing kind of situation. We're trying to address the situation where a mobile home provider was actively targeting and marketing to employees of any particular agricultural company.

So if the situation occurred that Dave was talking about, the employer who's providing the funds for that might be the one that needs to be licensed. But it's more likely that the actual person receiving those funds, knowing that they're for migrant workers, would be the provider.

That would be something that our attorneys would have to ferret out, but I think that we could get there. I don't think this -- the way the regulations are written would prevent this from ensuring that one or the other or both got licensed.

MR. CABELLO: I think the intent -- and it's at the beginning of 90.3 -- it's if it's owned or contracted by the employer to provide the housing. So if they're going to one of those places -- if the migrant farmworker
goes and gets their own hotel, and there's ten of them, the hotel operator is not required to be licensed, unless the employer pays for it and provides the housing. Then it has to be licensed. But if its employer paid or owned, they have to be.

MS. BINGHAM ESCAREÑO: Sure. Is there any -- I know we're pending counsel, but so, owned or contracted? And when I heard the scenario that Mr. Mauch kind of gave us and I heard him say that about discretion -- but I would have loosely defined that in some way as contracted, contract with --

MR. CABELLO: Right.

MS. BINGHAM ESCAREÑO: -- like a contractual. But even if it was secured, instead of owned or contracted. Is secured a word that would kind of --

MR. CABELLO: Procured?

MS. BINGHAM ESCAREÑO: Procured, maybe?

MR. CABELLO: Well, maybe.

MR. GOURIS: Maybe reading the definition will kind of alleviate some of the issues. Okay?

MS. BINGHAM ESCAREÑO: I read everything, but yeah.

MR. GOURIS: Any person who provides for the use of a migrant labor housing facility by migrant agricultural workers, both defined terms, whether the
facility is owned by the provider or is contractually obtained for or otherwise arranged by the provider.

So if -- in Mr. Mauch's example, if the employer says, Here's a couple hundred dollars, go and find your own housing at this place. And they've talked to at this place to say, they're coming your way, they've arranged the housing. So I think they would be the provider. I think we would have pretty clear guidance from the rule to say that they're the provider and we need to have them licensed.

MR. MAUCH: I agree. If I can, just one brief response.

MR. VASQUEZ: I'm also wondering if there's any way to tighten up the language --

MR. GOURIS: Sure.

MR. VASQUEZ: -- a little bit more.

MR. MAUCH: Yeah. I think the definition of provider in 90.2 is great. That actually -- I think, seems like it was modeled on some proposed legislation from the last session, which tried to put this definition of provider in there because it, I think, sort of recognizes who should be responsible.

But I think the way 90.3 is written now, it says, migrant labor housing facilities in the state, which may include hotels and other public accommodations if
owned by or contracted for by employers. So that's the limitation: It has to be owned or contracted. Let's go back to my hypothetical.

MR. VASQUEZ: Just give me cash and say --

MR. MAUCH: Yeah. That's not -- I mean, a first-year law student in a contracts class will tell you that's not a contract between the owner and the hotel, because there's no meeting of the minds between the employer and the hotel owner.

So that, I think, is not the intent, obviously, of the regulations. Just a point where I think it could use a little bit of tightening up.

90.4, then? I can proceed to that? The issue on 90.4 -- so, as Tom mentioned, 90.4 is sort of the new -- I think it was 90.2 in the way the regs currently are, which is the state-level standards.

90.4, as Tom mentioned, basically keeps most of 90.2 intact, depending on which federal standards apply. There are two things, though, that are missing that Tom pointed out.

The first one is requirement for four-burner stoves in housing. Without that requirement, you fall back on the requirement in federal law, which is two-burner hot plates. And I know it kind of sounds like a weird and esoteric and minor issue, but hot plates are
actually a large issue for workers who live in hotels, particularly during the season.

   Not only are they a huge fire hazard, but they're staying in hotels. Hotels don't have windows that open. Hot plates tend to smoke up rooms. And so we have clients literally who have respiratory issues because they're using hot plates instead of an actual cooking facility with an actual stove.

   The other part that didn't make it into 90.4 is a vector-control plan for pest infestation, which I suspect the Department's opinion is probably too vague to enforce. I'll just say pest infestation is big issue in a lot of our cases.

   I had one case which, you know, my client collected a jar of scorpions that he picked up from his housing. I've had other clients that have had literally shown me pictures of bowls full of tarantulas they've gathered. I've had clients who taped themselves inside their sleeping bags because they didn't want bugs crawling in.

   As I've mentioned, we filed a few bedbug cases recently; one out in Monahans in West Texas, and a couple in other parts of the country. Bedbugs are an issue in farmworker housing right now.

   So I think requiring the employer at least to
have a plan to address pest infestation, that way if something goes wrong, the employer can go, Well, I followed the plan. Or the workers can say, No, you had a plan, and you didn't follow it.

It lets you have a situation where you're able to determine whether or not the employer was acting reasonably in letting the pest infestation happen, because again, it is a big health risk.

MR. VASQUEZ: There's nothing in the federal regulations that addresses --

MR. GOURIS: Yes. There is, actually. Yeah. Let me speak to that, if I can.

MR. VASQUEZ: And we'll get back to --

MR. GOURIS: So that particular one is both a little vague -- it's additionally vague, I guess is what it would be. So in ETA standard, there is -- under 654.415(a) the question is asked, are housing and facilities free of insects, rodents, and other vermin? So it doesn't require a plan, but does require that it's free of that problem.

So in fact, we got a call, like I said, a little over a month ago about a particular property that had bedbugs. The vector control plan wouldn't have stopped the bedbugs, but the fact that they had bedbugs gave us the opportunity to contact them and say, hey, this
is what's happening. Can you help us understand what's going on?

The facility owner said, yeah, it's a problem. We're going to take care of it. They've replaced the beds. They've been re-inspected, and they, you know, now are back on board.

It's also listed in the OSHA standard under 1910.142(j), Effective measures shall be taken prevent infestation by and harborage of animal or insect vectors or pests.

So it's covered in both, not with the specificity we had in the old rule, but the specificity in the old rule wasn't all that great.

MR. VASQUEZ: This sounds like an enforcement issue more than --

MR. GOURIS: That's right.

MR. VASQUEZ: The language is in there.

MR. GOURIS: How we go about getting it done. Right. Again, getting the word out about, you know, you're living in an unsafe place, or unhealthy place, or a place that's -- call us; we'll help you work it out. That is the message that we're trying produce here.

MR. MAUCH: There was another issue.

MR. VASQUEZ: Okay. I think that's -- we've got to make sure that's included high on the enforcement
list.

MR. GOURIS: Right.

MR. VASQUEZ: Stoves versus hot plates?

MR. GOURIS: That's a tough one. I believe it's in one of the two federal standards, but not in the other, and I didn't find that. But a four-burner stove is going to eliminate most of the hotel —

MR. VASQUEZ: Mm-hm.

MR. GOURIS: -- accommodations that could be available, because they're not going to have four-burner stoves. And they may be perfectly adequate or even nicer than some of the things that they could alternatively live in that would have a four-burner stove.

So the way that the federal regulation gets out of that is a hotel doesn't have to be inspected, and so they can stay there without having to have a four-burner stove.

For us, we want to make sure we inspect every facility, because that's what we think the statute requires us to do, or have it inspected.

So if an H2A employer is going to use a hotel and they wouldn't get inspected because they get that exception, we will go out and inspect the hotel. We want to make sure that standard doesn't eliminate their ability to use a hotel that may be perfectly fine in every other
way but not have a four-burner stove. That's the reason
we didn't include it.

MR. VASQUEZ: I don't know if I should ask
this.

MR. GOURIS: Go for it.

MR. VASQUEZ: Is there anything in the
provisions for microwave ovens? I mean, just as an
alternative to either of those, being that we're trying to
upgrade -- update.

MR. GOURIS: I think there are catchalls in
providing for accommodations for cooking and eating, and
those provisions are going to be implied. That might be a
microwave or it might be burners or, you know, it might be
a stove.

It's just you're providing for the ability for
a worker to be able to make their own meal or make sure
that they have provisions for a meal being provided for
them. Those are kind of important features for us to, you
know -- those are things that we would go back and say,
hey, you're not providing this. This is something you
need to be doing.

MR. VASQUEZ: Okay.

MR. MAUCH: So two very quick -- I wanted to
end on a positive note.

I just wanted to point out a couple of good
things in these regulations. 90.6, the records section, requires a posting at the housing site with a poster that, you know, is in Spanish and gives the worker the hotline number. That's a great thing. That's required under federal law as well, and that's something that does lead to enforcement. So we commend the Department on that.

And 90.8, the administrative penalty as Tom mentioned just clarifies that the penalty can be assessed on per-violation per-day basis. Again, $200 on its own is nothing, but giving the Department the ability to scale the fine is, I think, meaningful.

And so both of those are good, you know, helpful in terms of enforcement. So that's all I have. Thank you.

MR. VASQUEZ: Thank you.

MR. GOURIS: Just so you know, this is the poster we devised, and like I said, calling cards that we can pass out or have available for folks that give them the information that they need to be able to contact us if they have something that's not safe.

MR. VASQUEZ: Did we have anyone else on migrant labor?

(No response.)

MR. VASQUEZ: Okay. All right. Well, I think we've -- and again, obviously this was not the only
discussion leading up to putting together these proposed rules.

And again, we're going to make a recommendation to the full Board tomorrow to publish those rules for further comment, so there's still going to be some tweaking, although I think once when it gets published in the Texas Register, it can only be relatively minor adjustments; it can't be wholesale big changes.

So great. Let's move on to the second item on the agenda: more rules. Presentation, Discussion, and Possible Action on an Order Proposing the Repeal of 10 TAC, Chapter 10 -- it says 10 TAC, Chapter 10, Subchapter E, Post Award and Asset Management Requirements and New Order Proposing New 10 TAC Chapter 10 Subchapter E Post Award and Asset Management Requirements, and directing their publication for public comment in the Texas Register.

MR. BANUELOS: That is correct.

MS. BAST: Thank you.

MR. VASQUEZ: Is that right, Rosalio?

MR. BANUELOS: Good evening. Rosalio Banuelos, Director of Multifamily Asset Management, and I'm here for Item 2, regarding the Post Award and Asset Management requirements.

So several changes that have been proposed by
staff are corrections and/or are clarifying in nature, but
the following are the more significant recommendations
made by staff.

Under Section 10.402(e) and (g), regarding post
bond closing requirements and 10-percent test requirements
respectively, staff has proposed clarification of
requirements for fair housing trainings at the request of
staff and the Fair Housing division.

The clarifications include a statement that
attendees must pass such trainings for the certificate to
be considered valid, and that duplicate certificates for
the same training course taken on separate dates cannot be
submitted to meet the required number of minimum training
hours.

Under Section 10.402(g) regarding 10-percent
test, staff also proposes the removal of the requirement
for 9-percent awardees to submit a development owner's
preliminary construction schedule, as this information is
gathered from other documentation submitted and also
tracked through the quarterly construction status reports.

In the section for cost certification, Section
10.402(j), the following changes are proposed. Staff has
proposed revised language to reflect changes made to the
owner certification exhibit in the cost certification
package, as recommended by the Department's internal
auditor during the review of the cost certification process.

The recommendation is to obtain verification from the development owner that the certified public accountant hired for the independent auditor's report required under the Internal Revenue Code and by the Department is licensed to practice public accountancy, is in good standing, and has satisfied any restrictions that may have been placed upon the CPAs firm practice by any licensing board.

Staff also proposes removal of the requirement for a financing narrative, which previously accompanied the Summary of Sources and Uses exhibit. Most of the information supplied in this exhibit is gathered through other submission items within the costs certification package, and it usually didn't provide much more value to the packet.

Staff also proposes an additional requirement for housing tax credit deals layered with National Housing Trust Fund, in accordance with federal requirements under the NHTF program, which requires an additional cost certification be completed by an independent licensed certified public accountant to certify all development costs subject to the conditions and limitations under the program's current federal requirements.
Little guidance has been released under the
NHTF interim rule regarding the requirements of the cost
certification, but in order to meet the federal rule,
staff is planning to issue a form that a CPA can use to
certify development costs.

Staff also proposes removal of the requirement
for a completion certificate for TDHCA bond developments.
The completion certificate is currently received
separately, and therefore collecting it at cost
certification is not necessary.

The last change proposed in the cost
certification section is to remove the language that
allows 8609 issuance to be delayed before a compliance
monitoring report is available to the owner and before the
owner has the ability to correct any events of
noncompliance.

This section still keeps the requirement for
owners to correct any noncompliance within or outside of
the corrective action period prior to the issuance of
8609s but will allow timely issuance of the 8609s when a
monitoring or report has not yet been issued to the owner.

Moving on to section 10.403, regarding the
review of annual HOME, NSP, and National Housing Trust
Fund grants, while staff had not previously included the
non-federal resource TCAP RF program in this requirement
for annual rent reviews.

The section states that the Department is also required to approve rents where multifamily direct loan funds are used as HOME match.

After discussion with the legal and multifamily direct loan staff, it has become apparent that nearly all TCAP RF loans are used as HOME match. So in order to avoid noncompliance with the federal requirements and to remove the complication for external stakeholders of having to determine whether loan funds were used internally as HOME match, staff proposes the updating of the section to include TCAP RF as one of the programs for which annual rent reviews will be required.

Under section 10.404, regarding reserve accounts, staff has proposed the removal of the requirement for review and approval of the special reserve account -- special reserve plan.

This section requires that a Department-approved plan be established at the time a special reserve account is created and that disbursements from the fund will only be approved by the Department if they are in accordance with the current approved plan.

However, since staff reviews all of the disbursement requirements, an additional review and approval of the special reserve plan is unnecessary.
Staff has also proposed a removal of the requirement that the special reserve account agreement be executed by the finance institution representative. As the signature was mainly for acknowledgment purposes and has created challenges for owners, which delayed the full execution of these agreements.

MR. VASQUEZ: Let me reiterate, if anyone has any comments on any of these sections, please -- that we've already done? I'm glad I brought that up.

Let's take a moment for Ms. Bast.

MS. BAST: Thank you. Cynthia Bast of Locke Lord, here not representing any particular client today. And I would like to talk to you a little bit about special reserve accounts. Special reserve accounts are used most significantly in the context of the exchange program, which was of course developed in the recovery act and turned TDHCA into a syndicator overnight.

And what your rule says about these special reserve accounts is that the funds will come in either at closing, or they can also come in as a portion of net cash flow each year.

And then the account is supposed to be used, according to the rule, for the purpose of assisting residents at the development with expenses associated with their tenancy.
So I have two comments. One is that one of the things that we're finding with some of our owner clients is that these accounts are really just sort of sitting there, and they're not being utilized very fully, they're not getting a lot of requests for assistance from the tenants for, you know, emergency utilities or even emergency rent in the event that there's been like a medical hardship or something like that.

So the first question is what can we do about that to make these funds more useful? And one thing could potentially procedural. For instance, we could allow an owner -- and it may already be allowed. An owner could say, you know what? Anybody on this property that's a veteran, we're going to subsidize their utilities, just because they're a veteran; not because they need it, just because we want to.

Maybe, though, you could go beyond and do something like providing a scholarship fund for resident children, or even resident adults who want to go back to school or something like that, which I'm not sure that that fits within the rule of assisting residents with expenses associated with their tenancy.

So I just wanted to bring this question up and have it open to thinking about what can we do to make sure that these funds are being best utilized for the tenants'
needs.

I don't know if you want to do any response to that, and then I'll take -- I have one more question.

MR. BANUELOS: Right. So as it relates to providing assistance to veterans, I think that the rule can be -- doesn't need to be modified to serve that purpose. If they're providing assistance with utilities, it would be considered an expense associated with their tenancy.

Providing a scholarship fund I think would be most appropriately served by revising the rule, since it doesn't fall within that category.

We haven't had any owner approach us about doing that type of assistance; generally it has been for medical needs, rent payments, something to the effect of helping pay for rent.

So it hadn't been considered or proposed previously, so if there's any language that we could add --

MR. VASQUEZ: Do we have any statistics as to what average dollar amounts are usually in these?

MR. BANUELOS: It ranges significantly, and part of the problem with these accounts, it seems to be -- based on what I have seen -- I don't know how much marketing is being offered as it relates to the reserve
accounts being there.

So I don't know if all the tenants know about it. In some cases a property will have probably upwards of $100,000 worth in this account. Some other properties may have a lower amount.

And very few properties seem to actively be using the account. Some owners come in and do events for their residents, like Halloween parties or whatever, just use it for that purpose.

But the large majority of the developments don't reach out to us with proposed uses for that account, so it's just adding up every year, but, yeah, it's probably in the hundreds of thousands, at the most, and then on lower developments it would be a few thousand dollars.

Once the -- it varies by -- now the special reserve account option is available to tax-credit developments as well. It started with the exchange program, but now it's available for the tax-credit developments.

For the exchange deals, the requirement is throughout the LURA, I believe, so it stays there for at least 30 years. For the other developments it's throughout the term of the compliance period, which would be for 15 years.
Once -- unless the rules change, once that period is over, the funds are going back to the developer. So I think that part of that is the incentive as to not use it as much, because it's not going back to the tenants at the end of the day; it's available to the property.

MR. VASQUEZ: Thank you. I'm just talking out loud here. Would it be possible to have something sort of -- like private foundations have a rule you have to spend 5 percent of your principal at least every year.

Could something like that be a rule that goes in to say you got to give everyone at least 5 percent of that value as a rent credit or something?

MR. BANUELOS: I think it could, if that's something that the committee would like to see in the rule.

MR. VASQUEZ: I mean, just -- it's surprising to me to hear that there's a pile of money there.

MR. BANUELOS: Right. So, yeah, I don't know that that's something that we want to add for this rulemaking cycle or if it's something that we should propose before a subsequent one, given the implications that it would have.

MR. VASQUEZ: Were there any other comments on this subject? I think I have one more behind you.

MS. LONEY: My name's Lauren Loney. I am an
attorney with Texas Housers and a relatively new addition to the team. I started a week ago.

I wasn't actually planning on commenting on this, but I would be interested to see how much tenants are notified of this opportunity. We're obviously talking about Texas' most vulnerable renters here. They're dealing with a lot of job insecurity, not a lot of disposable income to deal with emergencies that come up.

So I just simply can't imagine that this money couldn't be used to support tenant services if tenants are actually being, you know, regularly made aware of this as an option.

Thank you.

MR. VASQUEZ: So I'm looking at staff, just wondering -- putting in like that 5 percent rule. Is that too much of a change to squeeze in right now, or --

MR. BANUELOS: I think that if we want to propose it now, we would come up with proposed language -- we would have to come up with proposed language and present it tomorrow for consideration and then allow for public comment after that. So it can be done, I believe.

MR. VASQUEZ: I'm seeing lots of nodding. And, again, I'm just using it as foundation --

MS. BOSTON: Channeling Mr. Eccles, he would say that now is the time for you to make any changes you
want, because it hasn't even gone out for comment, so this is the meeting and the time -- well, tomorrow, but through what you're discussing now -- to get in a change, and then that way if people don't like it, they can ask for it to come back out.

It would be harder for you to do something kind of big and different like this once it's out for comment.

MR. VASQUEZ: Definitely.

MS. BOSTON: Yeah.

MS. BAST: I just had another thought. At least as it relates to the exchange deals, all of those properties have special reserve contracts with TDHCA, so there's already a contract that says what we're going to do.

So I do think we need to think about, for instance, if the 5-percent recommendation -- it that's problematic, given that you have a contract with one and if that would be inconsistent with the contract.

So just pointing that out, but I'm not Mr. Eccles.

MALE VOICE: I don't think those contracts have that 5 percent.

MR. VASQUEZ: No, I'm sure it doesn't, but it doesn't preclude it.

MS. BAST: Right. That's my question.
MR. BRADEN: You'd have to read the contract to see what it says. I don't know if we could make a regulation that would affect our contract.

MR. BANUELOS: Yeah, and I can tell you that the agreement says that -- well, there's the subordinate agreement which calls for this special reserve account, and it simply says that it's going to be intended to assist with the expenses associated with their tenancy.

The special reserve account agreement, which is what we sign with the owner once the account was created -- and I will say there are some developments out there that still don't have a contract per se in the form of that agreement.

But the agreement elaborates a little bit more as to the uses that were preapproved, based on the plan that they submitted.

I think it would still be serving that purpose, and it would be an extension of using those funds for the intended purpose but at an expenditure level. I don't know from a legal perspective if that would create a problem, but it's just an extension of what we have now.

MR. VASQUEZ: Let's let another attorney come up here.

MS. SYLVESTER: Well, I'm not Mr. Eccles, either.
(General laughter.)

MS. SYLVESTER: I think we could probably write something in the rule that says, "absent a contractual memorialization to the contrary," and then put the 5-percent language in, if that's something you wanted to do.

MR. BRADEN: That's helpful, but if you have the contract prohibit it --

MS. SYLVESTER: I came to the Department right after this exchange program, so I don't have a lot of experience with it, but I have reviewed a couple of them, and they're pretty vague, generally.

MR. BRADEN: And do they have to be amended by both parties to the agreement?

MS. SYLVESTER: I think I would have to look. It's probably been -- Jeff, do you remember the last time we got asked to look at one of these?

MALE VOICE: 2009?

MS. SYLVESTER: Yeah. I came to the Department in 2010, so, yeah, I mean, I think I dealt with a couple right at the beginning.

But we'd have to kind of look and see.

MR. BRADEN: What about an affirmative obligation to make the tenants aware of this?

MS. BAST: Yeah. That might be --
MR. BRADEN: Can we require that the contract -- that the agreement that they sign with the tenants has some kind of big, bold, layman's, this is here and --

MS. BAST: I think notification is reasonable, and that's why I was also suggesting sort of potentially broadening the uses, because if the uses aren't there for just tenancy expenses, then there may be way to improve the lives of the residents in other ways.

And that, I think, is not necessarily as risky in terms of being inconsistent with a contract, because if you give the owner, you know, a bigger opportunity to utilize the funds, it's different than restricting it and say, You have to use this much every year.

MR. BRADEN: I actually like the 5 percent. I think that's a good idea. It forces sort of a paydown and use, but I'm not sure we could do it at this point.

MR. CABELLO: And putting my compliance hat on, we also -- how are we going to enforce this? Are we going to get them out of compliance and -- I mean, there's a whole bunch of issues that come on that side, on the enforcement of this piece.

MR. BRADEN: It's a new concept to introduce an appropriate place, but it would be nice if we were to go through with the preliminary rule and --
MS. BINGHAM ESCAREÑO: We could work on it with a roundtable and do it next time around.

MR. BRADEN: And what about -- I mean, right now could we put something in that says it's an affirmative to tell residents about this? That's novel but common sense.

MR. VASQUEZ: But it gets the ball rolling.

MS. BINGHAM ESCAREÑO: It doesn't really have teeth, but it would -- my concern would be on the 5 percent, if there -- if some of the pools are fairly large but some of the pools are fairly small -- and being in healthcare, you can wipe out your -- if you spend down 5 percent -- I mean, if it's interest bearing and it's --

MR. VASQUEZ: But I'm also saying if -- towards the future --

MS. BINGHAM ESCAREÑO: Yes.

MR. VASQUEZ: -- if you have not spent 5 percent --

MS. BINGHAM ESCAREÑO: Yes.

MR. VASQUEZ: I mean, you know, if you've spent 3 percent, then you have 2 more percent that goes -- you give a rent credit.

MR. BRADEN: Maybe over a certain amount it's capped. I mean, if they've got $10,000, maybe you don't do that.
MR. VASQUEZ: I think this will be great for staff to work on in the next round. It's a great idea. I mean, this is sitting out there, and it's for the tenants. Let's use it.

MS. BAST: One more thing. This is easier I think. Sorry.

MR. VASQUEZ: No, that was good.

MS. BAST: Okay. One more thing. So because many of these are, for instance, exchange fund deals circa 2010 or so, natural course of real estate cycle, they're getting to a point where they may want to refinance, because interest rates are lower, they may need renovations, they may have been struggling all along. You don't know what could be any particular scenario.

There's a statement in here that says, Proceeds from any refinancing or other fund raising from the development will be considered net cash flow for purposes of funding the special reserve account.

So if I'm an owner and I have an obligation to put 20 percent of my net cash flow in the special reserve account every year, and if I go refinance my property and I have proceeds from that refinance, then this requires me to put 20 percent of those proceeds in the special reserve.

What I would like to propose is that we change
that word "will" to the word "may," so that the Department can accommodate situations like if the refinance if intended -- the proceeds are intended to renovate the property or if the proceeds are intended to address something else that is a legitimate need, then the Department could allow that to be used so that it -- the requisite percentage would not need to go into the special reserve account.

So that's my specific request there.

MR. VASQUEZ: So with Department approval --

MS. BAST: Yes. So --

MR. VASQUEZ: -- it could be less than 20 percent.

MS. BAST: Yes. So proceeds from any refinancing or other fund raising from the development may -- you could say, at the Department's discretion -- be considered net cash flow for purposes of funding special reserve account.

MR. BRADEN: I think that would be up to the Department to verify that.

MR. VASQUEZ: Right. And just that we approved that -- it's being documented, showing that it's going to be used for reroofing the whole place or whatever it is, and there's not going to be 20 percent left over. Can we do that?
MS. SYLVESTER: Yes, but. I think from a compliance standpoint, it would be easier to phrase it the other way: Unless otherwise approved by the Department, this will contain -- that way somebody has to come to the Department to say, I don't want to have to do this, and here's why.

MR. BRADEN: That works.

MR. VASQUEZ: Got that, Brooke?

MS. BOSTON: Yes.

MS. BAST: Thank you.

MR. VASQUEZ: Very good. Thank you.

MR. BANUELOS: All right. So --

MR. VASQUEZ: 10.405.

MR. BANUELOS: 10.405. Yes.

Under section 10.405, regarding amendments and extensions, staff has proposed the removal of notifications and nonmaterial amendments for general contractors or guarantors providing guarantees only during the construction period.

The removal of this requirement should result in fewer notifications and nonmaterial amendments being submitted for external stakeholders and staff, and occasionally we find out about these guarantors after the construction is completed, so we don't know about them in a timely manner.
Also in this section, a rule applicable only to exchange developments was moved from subchapter F, but this is not a new requirement; it's just changing from subchapter F to subchapter E.

In the section for amendments, staff also proposed the removal from the section relating to material LURA amendments of the reference to request to implement a revised selection under Section 42(g) of the Internal Revenue Code.

This mainly relates to changes into the average income set-aside. This type of material LURA amendment is really considered under two other sections within that section of the rules, so we just didn't want to be misleading and having it in one area only.

Under Section 10.406 relating to ownership transfers, staff has proposed the additional clarifying language for transferees who have been certified as CHDO by TDHCA prior to 2016, or have not yet been certified as a CHDO for purposes of assisting transferees wishing to qualify for CHDO status or satisfying the right-of-first-refusal requirements under a seller's LURA.

While a self-certification form declaring that the CHDO still meets the requirements under the HOME final rule can be accepted for entities that were certified after 2016, provided that federal guidance and rules have
not changed at the time that the certification is reviewed, the CHDO package prior to 2016 did not include all of the items required to determine CHDO status under the revised HOME final rule and therefore cannot be accepted for recertification or current certification processes.

Under Section 10.407, relating to right of first refusal, or ROFR, based on public comment received during an Asset Management and Qualified Allocation Plan roundtable on May 22, 2019, and additional input received by the Department in July, staff has proposed substantial changes to the required documentation to be submitted to the Department as part of the notice of intent.

Previously, only tenants and potential buyers on a Department listserv were notified of the development's notice of intent to sell through the ROFR process.

But based on stakeholder comment, staff has proposed expanding the list of parties to be notified to include tenant organizations, mayors or governing bodies of the municipality in which the development is located -- whichever is applicable -- presiding officers of the governing body of the county in which the development is located, and the local housing authority.

While not on the proposed draft, staff also
proposes to add a statement in the rules that the
development or owner has provided such notifications to
the best of their knowledge and ability. We also propose
to remove the requirement for evidence of submission or
receipt, so we're just looking for a copy of the notices.

In addition, staff has proposed adding --

MR. VASQUEZ: Wait.

MR. BANUELOS: Sorry.

MR. VASQUEZ: Okay. I'm sorry. Let's go ahead

and finish this section, or his -- continue, please.

MR. BANUELOS: So in that same section, staff

also proposed adding minimum requirements to the notice

letters, to include the development's name, address, city,

and county, the development owner's name, address,

individual contact name, phone number, email address,

information about the tenant's rights to purchase the

development through ROFR, the date that the ROFR notice

period expires, the ROFR offer price, a description of the
development that includes total number of units and low-

income units and contact information for the Department

staff overseeing the development's ROFR application.

MR. VASQUEZ: Ms. Loney -- Lauren?

MS. LONEY: This will be very quick, because I

have only very positive things to say. So just a little

bit of background.
While I am new at Texas Housers, I was a legal fellow at University of Texas for the two years prior to that, and a large portion of my work there was on long-term affordability in the LIHTC program.

So the right of first refusal is a really big component of protecting properties when a development owner wants to sell the property or request a qualified contract, for example.

So these types of notices provisions that have been included in this draft have been really critical to other state and local preservation efforts from across the country.

I've seen right-of-first-refusal notices to tenants under the current rules that don't mention the consequences of a right of first refusal, which is that the owner could then request a qualified contract to exit the program.

They don't notify tenants at all -- in the cases I've seen -- of their rights to organize -- tenant organization and purchase the property themselves. They really don't give any information except for, we satisfied this right of first refusal; here's the new person to send your check to.

To us at Housers, that's not really giving people enough information to know what's happening in
their homes. Then also, in high-opportunity areas and
gentrifying neighborhoods, we've seen right-of-first-
refusal properties listed for sale upwards of $32 million.

And local nonprofits and housing authority
often don't have the capacity to act independently to
purchase that property if they decide that's one they want
to preserve. So this notice that lets every interested
party know about this opportunity really gives every those
interested the chance to have the time to put together
financing, to work together to form partnerships if
needed, et cetera.

It essentially just gives the best possible
chance for a mission-driven entity to take on that
property so that it stays in the LIHTC program and
affordable. Thanks.

MR. VASQUEZ:  Great.

MS. BINGHAM ESCAREÑO:  Bring it home.

MR. BANUELOS:  Under Section 10.408, relating
to qualified contract request, staff proposed that the
copy of the Physical Needs Assessment submitted with the
preliminary qualified contract request be no more than 12
months older than the date of the request.

This change is proposed as the result of having
received qualified contract requests providing old PNAs
that have not given an accurate picture of the critical
repairs needed.

And because critical repairs or replacements must be resolved to the satisfaction of the Department before the development will be considered eligible to submit a qualified contract request by rule, staff must have current, accurate information regarding the repairs and replacements to make such a determination.

Finally, staff has proposed in the qualified contracts section the elimination of the requirement that the Department approve of any broker that will market and sell the property under qualified contract, and the elimination of the limit on the fee paid to the broker by the seller, which is currently limited to less than 6 percent of the qualified contract price.

These changes are due to the fact that the Department does not currently approve or maintain a selected list of brokers, and there is not a clear state or federal provision that authorizes the Department to restrict brokerage fee between a seller and a broker hired to market and sell a property.

At this time, I am available to provide further details or answer any questions.

MR. VASQUEZ: One more comment.

MS. LONEY: Sorry to be person keeping everyone here.
We really oppose the change to take away TDHCA's ability to disapprove of a broker that is chosen to market qualified-contract properties.

The reason why we oppose this and why actually we would like to see this approval process be taken a step further to mandate TDHCA's approval of a broker is because across the country, the qualified contract is widely known as the largest threat to long-term affordability in the LIHTC program.

In Texas, we've lost 5,000 units due to qualified-contract process, and other states across the country are experiencing very similar problems. The only state that is successfully finding preservation buyers during the qualified contract process, they cite one simple policy change to their success, and that is that they require developers to use a broker that has experience with successfully marketing and selling LIHTC properties.

Even if there's not a list of brokers that's readily available, it should be quite easy to see whether or not a broker has successfully sold a LIHTC property.

So this is a really important provision that could have a really large impact on our zero-percent success rate for successfully selling properties that are up for sale through the qualified-contract program.
So I just strongly urge TDHCA and the Board to reconsider taking away any oversight by TDHCA to monitor the brokers that are being used for these really, really complicated and important sales.

MR. BRADEN: What's the one state?

MS. LONEY: It's Oregon. And they don't have a list that you have to choose from. They don't do anything except confirm that that broker has experience, because they recognize that marketing and selling LIHTC property through the qualified-contract process in particular is not like real estate marketing in many other respects.

And so once the state agency in Oregon has approved that broker, there's no additional requirements there. And they cite that as the number-one reason why they're seeing successful sales.

MR. VASQUEZ: However, did you say we have zero percent successful sales?

MS. LONEY: Texas?

MR. VASQUEZ: Uh-huh.

MS. LONEY: There have been several opportunities -- there have been several presentations of qualified contracts that owners have turned down. And I think in the Dallas area, just this past year, prior to that, no property that has requested a qualified contract has ended up with a preservation buyer.
MR. VASQUEZ: But then you're saying that we should have only brokers that have experience marketing these --

FEMALE VOICE: But there aren't any.

MR. VASQUEZ: But then --

FEMALE VOICE: There's no --

MR. VASQUEZ: -- they haven't had any success, so shouldn't we want new brokers anyway?

MS. LONEY: New -- I don't know what you mean by new.

MS. BINGHAM ESCAREÑO: What would be our pool of qualified brokers?

MS. LONEY: That's a good question. I've never looked through the pool of qualified LIHTC brokers, but I know that there are brokers that are national actors that I'm sure would be interested.

I just went to a conference in Rhode Island specifically about LIHTC preservation, and there were brokers there that are national actors. But there are definitely others in the room, like Cynthia, who probably have a lot more knowledge on the actual implementation end of this.

MR. CABELLO: I just have --

MS. LONEY: Yeah.

MR. CABELLO: -- a couple of comments. You see

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the prices set by the IRS regulations. The broker is acting on behalf of the seller, and the broker is -- the percentage is negotiated by them, too. I'm not quite sure what we're trying to accomplish here when the broker is marketing the property for sale and the QC price is already set by the IRS regs.

So I don't -- I'm trying to understand what the benefit will be with the broker.

MS. LONEY: Yeah. And I can definitely reiterate what Oregon staff had told me, which is that there's only certain buyers who are really interested in and have the resources to pay for a property at that qualified-contract price, because it usually results in properties listing for sale well above fair market value.

So the idea is having a broker that's knowledgeable in precisely who they need to be marketing to, not just relying on a general, perhaps, real estate marketing strategy, or even multifamily real estate strategy -- LIHTC is just a different ballgame, and I think that having brokers that understand that apparently can go a really long way.

MR. VASQUEZ: Well, again, we appreciate the comment. It will be interesting to see how Oregon continues and to see if something like that can be applied
to the scale of Texas compared to Oregon. I think this is something that we can look at how it continues working out.

If there's statistics that show that even with this change that limits our sales or -- I just don't see how there's going to be a whole lot of -- or how we would start crafting this to say who is eligible and who is not. It starts becoming difficult.

This sounds to me like another one of those that, as you continue joining with all the rules, making committees that we have going forward, this could go into the next one, if you can get more people on board.

MS. LONEY: Just one final comment, then, is that I would say at the very least, don't strike TDHCA's capacity to have oversight that's already in the rules. At least keep it in the wheelhouse, and not just say we're going to totally lack -- not have any oversight over this because right now we don't have a list of approved brokers.

So I think that there's still opportunity, as the rules are currently written, and not the proposed rule, to have some involvement in helping to locate a good broker.

MR. BANUELOS: So a couple of comments on that. So I think that the concern with having it in the rules
right now is that there's no criteria as to approving or
disapproving.

So it's there, but there's no guidance as far
as who would be acceptable as a broker, so I understand
that it would give us the ability to say no, but the
question is, under what circumstances?

MR. VASQUEZ: Have we ever disapproved a
broker?

MR. BANUELOS: We have not. No. And then as
far as the qualified contract process goes, having the
property listed by a broker is the first step. They
contact us as at TDHCA and then we post it on our website.
We send out a notification of the property being out
there for sale. So we're trying to find a buyer as well.

And I'll tell you recently we've had a couple
of properties where there was interest to purchase, but
the owner decided not to sell after all. So I don't know
if that's necessarily a function of the broker or more of
the attributes of the property price and all that. And
ultimately it's up to the seller to decide to move forward
or not.

MR. VASQUEZ: Is --

MR. CABELLO: I think the rule only caps the
amount that the broker can charge, which is 6 percent.

MR. VASQUEZ: Well, it's both. We're striking,
"The Department may, at its sole discretion, notify the owner that the selected broker is not approved by the Department." And then the fees paid by the seller not to exceed 6 percent of the QC price.

MR. CABELLO: Lauren mentioned something that's also important to re-emphasize. The QC price is above the fair market value, so the groups that are looking for these properties know to look on our website, because that where we -- we also put it there to try to market the property.

MS. BINGHAM ESCAREÑO: I have a question. Since it says "may," do we have to strike it?

MR. VASQUEZ: That's the question. Does it matter?

MS. BINGHAM ESCAREÑO: If it says "may," is Lauren suggesting, you know, maybe we leave it in there and then figure out if we need to apply it or how to apply it or something, versus -- because I definitely hear what you're saying about we don't have any guidelines around it. But if it says "may" --

MR. VASQUEZ: It's at our discretion

MR. BRADEN: Has there ever been a problem?

MR. BANUELOS: No, there has not been a problem.

MR. BRADEN: Leave it alone then.
MR. VASQUEZ: So we leave it as is? Don't strike it?

MS. BINGHAM ESCAREÑO: Okay.

MR. VASQUEZ: What about the not to exceed 6 percent of the QC price? That's kind of standard anyway, isn't it?

MR. CABELLO: That's a negotiable percentage between the seller and broker.

MS. BINGHAM ESCAREÑO: Just not to exceed.

MR. VASQUEZ: But is there any harm in --

MR. CABELLO: No.

MR. VASQUEZ: -- leaving in the not to exceed?

MR. BRADEN: Again, we haven't had any negative --

MR. BANUELOS: No. We have not had any negative experience. We just didn't want to be in the middle --

MS. BINGHAM ESCAREÑO: Yeah.

MR. BANUELOS: -- of the transaction. We just said, Okay, that's between the two of you.

MR. BRADEN: I mean, I assume we'd only strike it if there was some real reason --

MR. BANUELOS: There hasn't been any.

MR. BRADEN: -- fraud or criminal --

MR. VASQUEZ: So it sounds like the consensus
is let's just leave it in there?

MS. BINGHAM ESCAREÑO: Unstrike it. Yeah.

MR. BANUELOS: Okay.

MR. VASQUEZ: Lauren gets one?


MS. LONEY: Let me call my boss.

MR. VASQUEZ: Okay. Mr. Banuelos, is there anything else on this section?

MR. BANUELOS: That is all under the Post Award and Asset Management Rules.

MR. VASQUEZ: Very good.

MS. BINGHAM ESCAREÑO: Thank you. Thank you, guys.

MR. VASQUEZ: Thank you for your effort. And going on to the last section, which I promise is shorter than the others --

MS. BINGHAM ESCAREÑO: All right.

MR. WILKINSON: Mr. Vasquez, I just to make sure that we know the exact changes that you want on the Asset --

MR. VASQUEZ: No changes. On that second -- on that last --

MR. WILKINSON: Okay. That's back to reserve accounts, it's just that the tenants must be notified.
We're not doing the 5 percent of --

MR. VASQUEZ: I'm sorry. Okay. I'm talking about the other one.

MR. WILKINSON: I didn't -- so 10.404, the reserve accounts -- are we putting in that all the tenants must be notified of the existence of the account for tomorrow?

MR. VASQUEZ: Yes. I thought we were adding more --

MR. BANUELOS: Yes. Stepping up 5 percent.

MR. WILKINSON: Five percent?

MR. VASQUEZ: Not the --

MR. WILKINSON: Five percent we'll look at next year, but we're adding that they must help, and that the 20 percent of like a refi or other cash flow --

FEMALE VOICE: Right. From a "will" to a "may."

MS. BINGHAM ESCAREÑO: Yeah.

MR. WILKINSON: Will, unless otherwise approved by the Department, I think you said.

MS. BOSTON: Yes.

MR. WILKINSON: Those are the two --

MR. VASQUEZ: Correct. Yes.

MR. WILKINSON: And then the third change --

Bobby Wilkinson, Executive Director. Then the third change is just keep the broker requirement.
MALE VOICE: No. Let's go back to the first one. I don't think we're changing the "shall" to a "will." We're leaving it "shall," but unless otherwise agreed to by the Department.

MR. WILKINSON: Correct. I have it that way.

Okay. Just making sure.

MR. VASQUEZ: Thanks for doing the summary now instead of at the end.

Okay. Again, the final item on the agenda, Presentation, Discussion, and Possible Action to Make Recommendation to the Governing Board on the Multifamily Direct Loan Rule Entailing the Proposed Repeal and Proposed New 10 TAC Chapter 13.

Andrew Sinnott.

MR. SINNOTT: Good evening. Andrew Sinnott, Multifamily Loan Program Administrator. Like you just said, Mr. Vasquez, this is the Proposed New 10 TAC Chapter 13, Multifamily Direct Loan Rule for 2020.

First, organizationally, our policy research specialist, Alena Morgan, did a fantastic job of organizing the rule within each section. So we still have sections 13.1 through 13.13 as we did in 2019, but I think the way the concepts are organized within each section are a lot cleaner and more intuitive this year. So I just wanted to acknowledge her contributions.
So I'll go ahead and get started, and feel free to stop me or interrupt me as I'm going through each section.

So under 13.1(c), we added a lot more granularity with respect to waivers, describing the waiver process for direct loan applications layered with housing tax credits, applications seeking direct loan funds as the only source of Department funding, and applications regardless of whether or not they're layered with tax credits, where the NOFA they applied under has been closed.

Under 13.2 definitions, we deleted annual income, as that as discussed in the Compliance Monitoring Rules in 10 TAC 10.611, and Choice Limiting Activity, since we referenced the 24 CFR Part 58 Definition in 13.11(b)(2).

Meanwhile, we added definitions for application acceptance dates, deobligated funds, housing contract system, and site and neighborhood standards, since we discussed these things in various parts of the rule.

In the Rule, NOFA and application felt they needed to be defined. We also clarified the surplus cash definition to allow for the HUD definition of surplus cash to govern when there's a HUD-insured first-lien loan. When there's not a HUD-insured first-lien loan and if

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TDHCA's loan is structured as a surplus cash flow loan, the definition in 13.2 will govern.

Under 13.3, General Loan Requirements, we added adaptive reuse developments and developments that have elected income averaging with more than 15 percent of the units designated market-rate units as ineligible activities.

With regard to the adaptive reuse developments, those developments that are financed by TDHCA typically utilize both the housing tax credits and historic tax credits, and the complex ownership structures that are necessary to take advantage of both the historic and the housing tax credits are often inconsistent with federal HOME and NHTF rules that govern our direct loan funds.

With regard to applications electing income averaging with 15 percent or more of the units designated market rate units, staff is concerned that a big gap between the income underwritten at application assuming the layering of direct loan units on the tax-credit units with the market-rate units able to command higher rents and the income ultimately generated once the property is leased when direct loan households potentially have to occupy market-rate units in order to maintain income averaging, thereby significantly decreasing the income of the property, that a big gap could appear with respect to
that, so that's why we made income averaging developments that have more than 15-percent market rate units ineligible.

That's actually the result of 11.302(d)(1)(A), the underwriting restrictions there, that limit the rents on market-rate units to lesser of market rent or gross program rent at 80-percent AMI when there's less than 15-percent market rate unit.

I apologize if it's getting a little too in the weeds, but basically when we have a deal that has 14.9-percent market-rate units, those rents will be underwritten at the 80-percent rent limit. When it's 15.1-percent, they're going to be able to say, oh, well, we think we can get $200 over the 80-percent rent limit.

So by limiting the difference in the market-rate units and what we're underwriting the market-rate units at, it's thereby limiting the potential spread between what a market-rate unit could get if it's got to have a HOME restriction on it and when a market-rate unit doesn't have a HOME restriction on it.

MR. VASQUEZ: You're going to have a spreadsheet on this. Right?

MR. SINNOTT: Megan helped.

MS. SYLVESTER: If you have questions, I can pop up there.
MR. SINNOTT: It will basically -- I think it will ensure long-term feasibility or make sure that --

MR. VASQUEZ: The developers will understand this by being able to plug their numbers into the spreadsheet and --

MR. SINNOTT: Yes.

MR. VASQUEZ: It'll be green or red? Right?

MS. SYLVESTER: No, no.

MR. SINNOTT: Yeah. It's kind of a challenging concept, but you just --

MR. VASQUEZ: But we'll make sure we don't have other --

MR. SINNOTT: Sure.

MR. VASQUEZ: -- developers sitting here trying to say, we can't understand this.

MR. SINNOTT: Yeah. I mean, it's basically a prohibition on developments that have greater-than-15-percent market-rate units. If they're also electing income averaging, they can't apply for direct loan funds. That's the bottom line.

MR. VASQUEZ: Very good.

MR. SINNOTT: We also added to the list of ineligible costs as we had some costs submitted for reimbursement with direct loan funds lately that need to be included on this list.
Under 13.4, Set-Asides, Regional Allocation, and Priorities, we made the following changes to set-asides. We renamed the Supportive Housing/Soft Repayment Set-Aside to just the Soft Repayment Set-Aside in an attempt to avoid confusion, since developments serving general or elderly populations can also qualify under this set-aside.

We also added a prohibition on developments also receiving any project-based subsidy from having the project-based subsidy be used on the direct loan units.

We made some clarifications to the CHDO in general set-asides as well.

We changed the title of Regional Allocation to Regional Allocation and Collapse, as both concepts are discussed in the section. Some other minor clarifying changes in this section as well.

In the Priorities section, (c) and (d) of 13.4, we made some minor clarifying changes and further describe Priority 3 applications, specifically applications layered with 9-percent tax credits that are on the wait list after the July Board meeting.

Under 13.5, Award Process, we made lots of minor clarifying changes throughout. Substantial changes include in (f), we further clarified the changes that may be made to 9-percent layered applications when direct loan
funds are oversubscribed in the set-aside, or for a fund source that has geographic limitations in a set-aside, like HOME; and discussed how direct loan funds that become available between the time a 9-percent layered application is submitted and the late July Board meeting will not be reserved for 9-percent layered applications, unless specifically described in the NOFA.

In (g), we further clarified how the Department will determine the direct loan fund source for an application recommended for a direct loan award.

Under (h), the finding of eligibility, similar to the findings of eligibility in the proposed 2020 version of Chapter 11, for applications that have received an award of funds from the Department within the past 15 years and/or have started or completed construction will now come from -- the funding eligibility will now come from the Executive Director or authorized designee, rather than the Board.

We have also proposed excluding weather events not classified as force majeure as a reason why such applications could be found eligible.

Under 13.6, Scoring Criteria, we deleted the scoring criteria regarding tenant populations with special housing needs, scoring for participating in the Department's Section 811 PRA program, as that scoring
Under 13.7, the Max Funding Request and Minimum Number of Direct Loan Units, lots of minor clarifying changes, with the only substantive change being in (c), in which we added maximum rehabilitation per unit subsidy limits in response to Board direction for staff to get a better handle on per-unit rehab costs.

Right now, the base amount per unit to determine substantial rehab for FHA-insured loan programs is $15,933, but then you apply the 243-percent high-cost adjustment that TDHCA-funded developments are subject to, since we're in the Fort Worth region -- that whole region gets that 243-percent high-cost adjustment -- or grantees in that Fort Worth region get a 243-percent high-cost adjustment, that brings the cap to 38,717.

So we've got a minimum of 25- to 30,000 depending on the circumstances, and then a max of 38,000. But that's only on the direct loan eligible costs, which typically make up approximately 90 percent of total housing development costs.

So there are more -- you know, in a $10 million deal, $1 million will be direct loan ineligible costs, typically --

MR. VASQUEZ: And we're basing this off the HUD federal limit?
MR. SINNOTT: Right. So the actual maximum
rehab per unit subsidy limit, like I said, assuming that
kind of 90 percent of total housing development costs are
direct loan eligible costs, the actual total housing
development costs or per-unit costs would be $43,000 when
you account for those direct loan ineligible costs.

But we're open to any committee suggestions
regarding this, as well as any items today.

Under 13.8 -- do you have any recommendations?

MR. VASQUEZ: I recommend you continue.

MR. SINNOTT: Okay. Under 13.8, Loan Structure
and Underwriting Requirements, we more clearly describe
the closing memo to the underwriting report process that
all direct loans are subject to and establish the
threshold to the decrease and the DCR between the time of
the initial underwriting report and closing memo to the
underwriting report that can be approved without Board
approval.

So it's now .05, so DCR can drop from a 125 to
a 120 and we can approve that administratively.

Anything -- you know, if it goes from 125 to a 115,
that'll come to you all. So decreases greater than .05 as
a result of the principal amount or scheduled payment
amounts on that superior lien increase will come to the
Board.
Currently, 13.8 does not have a threshold, and requires all increases in the principal or payment amount of any superior loans after the initial underwriting report to be approved by the Board.

Under (c), we more clearly describe the criteria for construction of perm loans, which has been the standard structure for direct loans establishing the construction term as being coterminous with any superior construction loan as long as it's not created in 36 months, clarifying that no interest accrues during the construction period, allowing the Department to require payment from other sources when repayment on our loan is limited by HUD's definition of surplus cash flow, clarifying that priority lien position on the Department's loan will only be considered with the USDA loan, reducing the owner equity requirement for direct-loan-only deals to 10 percent of total development cost, and deleting the requirement that direct-loan-only applicants provide appraisal reflecting a maximum 80-percent loan-to-value, instead relying on the direct loan to not be more than 80 percent of total housing development costs, since the cost of obtaining an appraisal can be prohibitive for smaller developers and because at least for new construction, an as-completed appraisal is speculative, and given that the development would not be complete until two to three years
after the appraisal is published.

Minor clarifications in (d) and (e). (f): We added criteria for when a direct loan will be used to refinance existing debt. (g): We clarified that the direct loan funds may not be used as passthrough financing, which is popular with partnerships that have nonprofits as the general partner. Most federal HOME and NHTF requirements are inconsistent with the passthrough financing structure.

Under 13.9, we updated construction standards from 2012 to 2015. IEBC or IBC is applicable. We added a statement in (e) regarding the possibility that rehab developments funded with federal sources may be required to meet minimum rehab standards as required by HUD, as we are looking into the possibility of allowing rehabilitation to be an eligible activity within HTF.

Under 13.10, we -- under (c), we expounded on the HOME-match eligible unit concept from the definition section 13.2, explaining how these types of units can exist both within and/or in addition to the direct loan restricted units, depending on the fund source.

In (e), we further developed the concept of all units being income-and rent-restricted, when housing tax credit equity and direct loan funds are the only sources of permanent financing.
Under 13.11, in (b), we changed some of the time lines for when certain benchmarks must be met post award, including corresponding changes to the construction completion deadlines, since we allowed longer construction periods, or the possibility of longer construction periods in 13.8(c).

In (b)(11)(D)(ii), we added specific documentation that REA needs in order to produce the closing memo to the underwriting report.

In 12(a), we deleted the personal guarantee requirement, as the Department's LURA, which is recorded and runs with the property, accomplishes similar goals and because the personal guarantee adds to the administrative burden of the loan closing process.

In 14, as Rosalio alluded to in his presentation of the Asset Management Rule earlier, we noticed a unique aspect of the federal NHTF rule, 24 CFR 93.406, that required a cost certification upon construction completion and annual audits throughout the 30-year federal affordability period that we felt was worth incorporating into Chapter 13 as a result of its uniqueness.

So 13.11(b)(14) only applies to developments funded with NHTF. Under 13.12, the changes were mostly minor clarifying changes, though we did indicate in (a)(5)
that decreases in the direct loan amount prior to closing 
may be administratively approved, but may be subject to 
penalties in 13.11.

And under 13.13, we carried through the 
threshold .05 to the decrease in the DCR that can be 
approved without Board approval as it relates to increase 
superior debt post closing, and in (d), we further 
developed requirements regarding the assignment and 
assumption of direct loans following the approval of the 
ownership transfer.

With that, that concludes my presentation. Do 
you have any questions or comments?

MR. VASQUEZ: Okay. Anyone in the audience 
have any comments? Thoughts?

(No response.)

MR. SINNOTT: I put everyone to sleep?

MS. BINGHAM ESCAREÑO: No.

MR. VASQUEZ: Obviously there was lots of input 
from the development community during this process.

MR. SINNOTT: For sure. Yeah. Throughout 
the --

MR. VASQUEZ: Throughout this --

MR. SINNOTT: -- roundtables and emails. Yeah.

MR. VASQUEZ: Okay. Well, it looks like you're 
off the hook.
MR. SINNOTT: All right. Thank you.

MS. BINGHAM ESCAREÑO: Good job, Andrew.

MR. VASQUEZ: Okay. All the agenda items have been addressed.

Is there any public comment on items not on the agenda that anyone needs to address?

(No response.)

MR. VASQUEZ: Okay. Do we have a -- are you confident that you have the summary, Brooke, of the edits that we are suggesting to be made?

MS. BOSTON: Yes.

MR. VASQUEZ: Okay. So at tomorrow's Board meeting we'll have a similar, although much abbreviated, presentation and make recommendations to the Board given the edits that we've put together.

Mr. Wilkinson?

MR. WILKINSON: Bobby Wilkinson, Executive Director.

Mr. Vasquez, I think the way we'd planned to organize it next time after talking to Beau was when this particular rule comes up during staff presentations, they'll discuss the changes that you all suggested, and the chairman will probably move it to you to make a motion on your changes being accepted by the rest of the Board along with the proposed rule.
MR. VASQUEZ: Correct. Great.

Other comments?

(No response.)

MR. VASQUEZ: Okay. Well, seeing that we've completed the agenda, this concludes the meeting of the Rules Committee of the Governing Board of the Texas Department of Housing and Community Affairs.

It is now 8:21, and we stand adjourned. Thank you.

(Whereupon, at 8:21 p.m., the meeting was adjourned.)
CERTIFICATE

MEETING OF: Rules Committee of TDHCA Board

LOCATION: Austin, Texas

DATE: October 9, 2019

I do hereby certify that the foregoing pages, numbers 1 through 8687, 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, 2019

(Transcriber)

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