

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
An Internal Audit of the Tenant Selections and Affirmative Marketing Plans
Audit Report # 21-001

Executive Summary

The Office of Internal Audit (OIA) reviewed the Tenant Selection Criteria, also known as Written Policy and procedure (WPP), and Affirmative Fair Housing Marketing plans (AFHMP) at TDHCA, its internal controls, and policies and procedures that are currently in place. Based on our reviews and testing, the OIA concludes Fair Housing division conducts reviews of the WPP and AFHMP in compliance with applicable rules. The OIA has identified the following improvement areas to enhance consistency, efficiency, record keeping.

Observations and Recommendations

- OIA recommends that FHDMMR division establish regularly scheduled and routine trainings related to WPP and AFHMP that would be published on TDHCA website.
- OIA recommends that FHDMMR division add the voluntary review requests that are submitted by property owners to the existing database as soon as they're received to ensure timely response, and to avoid any requests from being missed or overlooked.
- OIA recommends that FHDMMR division finalizes the revision of the new MOU as early as possible that would align with the current role of the FHDMMR division in the process.
- OIA recommends that FHDMMR division start implementing its priority model and selecting properties for review.
- OIA recommends that FHDMMR division establish written SOPs specific to WPP and AFHMP, signed and dated by management, for consistency and efficiency of the operation.

Management Response

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

Objective, Scope and Methodology

Our audit scope included a review of the Fair Housing Act, and Texas Fair Housing Act (as applicable), Texas Administrative Code (TAC) Chapter 10, Subchapter F and G, and other applicable rules and regulations. We also evaluated the division's internal policies and procedures, as well as the its process of providing training and technical assistance.

Mark Scott

5/27/2021

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Date Signed



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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

RE: Internal Audit of the Tenant Selection and Affirmative Marketing Plans

Dear Board Members:

This report presents the results of the Office of Internal Audit ("OIA") review of the Tenant Selection and Affirmative Marketing Plans at TDHCA. This audit was included in the Fiscal Year 2021 Annual Audit Plan and was conducted in accordance with applicable audit standards. The Tenant Selection and Affirmative Marketing plans rated high on the annual risk assessment due to changes in management, as well as lack of any recent audits. These plans serve a critical aspect of the Fair Housing Act to ensure development and property owners' compliance with applicable rules and regulations.

For this audit we reviewed, as applicable, the Fair Housing Act, Texas Fair Housing Act, Texas Administrative Codes (TAC) Chapter 10, Subchapter F and G, and other applicable rules and regulations. We also evaluated the Department's internal policies and procedures related to reviewing and monitoring of Tenant Selection criteria and Affirmative Marketing plans, as well as the division's process of providing training and technical assistance to property owners.

Background

Fair Housing Act, also known as Title VIII of the Civil Rights Act of 1968, is a federal law enacted in 1968 that prohibits discrimination in the purchase, sale, rental, or financing of housing, private or public, based on race, skin color, sex, nationality, or religion. The Civil Right Act of 1964 paved the way for this legislation. The Civil Right Act was passed by Congress in direct response to the movement to end racial segregation and injustice in the 1950s and 1960s. The statute has been amended several times since then, including in 1988 to add disability and family status to the Act. The Act is enforced at the federal level by the Department of Housing and Urban Development (HUD).

24 CFR (Code of Federal Regulation) § 100.5 (a);

- *It is the policy of the United States to provide, within constitutional limitations, for fair housing through the United States. No person shall be subjected to discrimination because of their race, color, religion, sex, handicap (disability), familial status, or national origin in the sale, rental, or advertising of dwellings, in the provision of brokerage services or in the availability of real estate-related transactions.*

In the HUD's **Final Rule** dated July 2015¹, HUD states that the approach to affirmatively furthering fair housing carried out by HUD program participants prior to this rule has not been as effective as originally envisioned. This rule refines the prior approach by replacing the analysis of impediments with a fair housing assessment that should better inform program participants' planning processes with a view toward better aiding HUD program participants to fulfill this statutory obligation. Through this final rule, HUD provides HUD program participants with an approach to more effectively and efficiently incorporate into their planning processes the duty to affirmatively further the purposes and policies of the Fair Housing Act.

Each state law can enhance the protections under the Fair Housing Act, but cannot reduce them. In addition, cities, counties, and other municipalities may have additional housing discrimination laws to protect additional groups. In Texas, the Texas Property Code 301, also known as Texas Fair Housing Act, delegates the powers and duties to the Texas Workforce Commission. The Texas Fair Housing Act mirrors the text of the Federal Fair Housing Act, and was passed by Texas Legislature on May 25, 1989.

Property code Title 15, Fair Housing Practices, Chapter 301, SubChapter A:

- **Sec.301.0015;** *Texas Workforce Commission. The powers and duties exercised by the Commission on Human Rights under this chapter are transferred to the Texas Workforce Commission.*
- **Sec.301.021(a);** *A person may not refuse to sell or rent, after the making of a bona fide offer, refuse to negotiate for the sale or rental of, or in any other manner make unavailable or deny a dwelling to another because of race, color, religion, sex, familial status, or national origin.*

¹ Federal Register/ Vol. 80, No 136/Thursday, July 16, 2015 / Rules and Regulations

Furthermore, the *Executive Order* dated January 17, 1994 ² provided guidance relating to the administration of the Federal programs and activities relating to Housing and Urban Development in order to affirmatively further fair housing throughout the United States.

- **Sec 2-202;** *The head of each executive agency is responsible for ensuring that its program and activities relating to housing and urban development are administering in a manner affirmatively to further the goal of fair housing as required by section 808 of the Act .*
- **Sec 2-203;** *In carrying out the responsibilities in this order, the head of each executive agency shall take appropriate steps to require that all persons or other entities who are applicants for, or participants in, or who are supervised or regulated under, agency programs and activities relating to housing and urban development shall comply with this order.*

As a recipient of HUD funding, the Texas Department of Housing and Community Affairs follows HUD guidelines.

Processes and Procedures

In May 2020, the oversight of the Multifamily requirements for Tenant Selection Criteria, which is also known as Written Policy and Procedures (WPP), and Affirmative Fair Housing Marketing plan (AFHMP) were transferred from the TDHCA Compliance Monitoring division to its Fair Housing Data Management and Reporting (FHDMMR) division. Effective May 17, 2020, the TAC rule elements for these two functions were repealed from 10 TAC Chapter 10 Subchapter F Compliance Monitoring division, and replaced with the new 10 TAC Chapter 10 Subchapter G. This latter rule is under the purview of FHDMMR division.

Prior to May 2020, the Compliance Monitoring division was tasked with reviewing and monitoring of the WPPs and AFHMPs for the properties that were under the Department’s jurisdictions. These reviews were conducted along with other federally required monitoring that is performed every three to five years, depending on the funding source. The properties that did not meet the requirements of WPP and AFHMP were given the opportunity to submit their corrective action plans, and to provide proof of compliance within 90 days. Properties that failed to correct and revise their policies and procedures were referred to the Enforcement Committee at TDHCA for further action. The Enforcement Committee then worked with the property owners and representatives to correct instances of non-compliance before any disciplinary actions were taken. The disciplinary action available to Enforcement Committee include debarment and fines.

We have noted that historically the Enforcement Committee has exhausted all of the available options by providing guidance and assistance to property owners and their representatives in clearing any findings prior to considering any disciplinary actions.

² Executive Order 11063

Since May 2020, and transfer of these functions to FHDMMR division, the staff have taken the similar approach in assisting properties in meeting the requirements of Fair Housing Act. This approach included, but not limited to, providing comprehensive and robust training and guidance to property owners. Immediately following TAC rule updates in May 2020, FHDMMR staff and Compliance staff delivered a joint webinar, hosted by the Texas Apartment Association, to review all updates made to the existing TAC rules at 10 TAC Subchapter F and the new rules at Subchapter G.

FHDMMR staff have also provided two trainings related to WPP and AFHMP in Feb 2021, with several more scheduled for the month of April as Fair Housing Month. In Feb more than 200 individuals attended the trainings provided by FHDMMR staff. According to the management “in celebration of Fair Housing Month, FHDMMR staff presented a series of six webinars, reaching over 1,400 participants. This is the largest training initiative undertaken by FHDMMR staff to date”. These trainings are advertised through different methods such as TDHCA website, TDHCA opt-in email distribution lists, TDHCA’s social media platforms, as well as through distribution lists of other state agency partners such as the Texas Workforce Commission Civil Rights Division and the Governors Committee on People with disabilities.

Observation Item Number	Status Pertaining to the Recommendations and Action to be Taken	Target Completion Date	Responsible Party
21-001.01	OIA recommends that FHDMMR division establish regularly scheduled and routine trainings related to WPP and AFHMP that would be published on TDHCA website	Completed	FHDMMR

Management response

Management appreciates the opportunity to provide responses to the observations made in this report. Regarding the Process and Procedures summary immediately above, Management offers comments on OIA’s assessment training efforts. All training webinars are recorded and posted on TDHCA’s website and YouTube Channel. It has always been standard practice for FHDMMR to publish these training materials on the website following a training event. The training materials include videos, presentation slides, transcripts, and relevant handouts for each webinar and are available at <https://www.tdhca.state.tx.us/fair-housing/presentations.htm>. Trainings will continue to be provided regularly each April during Fair Housing month and after each rulemaking action. The target completion date has been marked as completed because regular trainings already occur and all materials already appear on the website.

The next approach taken by the FHDMMR since May 2020 was to offer voluntary review of the WPPs and AFHMPs to property owners. Per §10.803(i), the property owners have the ability to request a voluntary review of WPP. In the initial ramp-up of the AFHMP and WPP review process under FHDMMR’s purview, FHDMMR staff allowed an influx of review requests for both AFHMP and WPP to test the review sheets and gain a better understanding of the technical assistance that would be required. Several submissions

have been received by the staff, and the division’s record shows that a total of 50 reviews have been conducted by the staff. However, internal audit was unable to determine the number of submissions that have been received so far, nor could we determine the average review and response time, due to the fact that the FHMDR division does not have a tracking list for the reviews that are being submitted. According to the staff, the submissions are kept in the FH email inbox folder until they’re reviewed. The email inbox folder also contains other correspondences between staff and property owners related to WPP and AFHMP. Once the submitted plans are reviewed they’re added to the tracking spreadsheet.

To assist this process further, the FHDNR division initiated the “Affirmative Marketing and Tenant Selection Criteria Review Handbook,” that outlines the review process for staff and outlines the rules and regulations related to these functions. This document was created and has been effective since January 2021.

Observation Item Number	Status Pertaining to the Recommendations and Action to be Taken	Target Completion Date	Responsible Party
21-001.02	OIA recommends that FHDNR division add the voluntary review requests that are submitted by property owners to the existing database as soon as they’re received to ensure timely response, and to avoid any requests from being missed or overlooked.	Completed	FHDNR

Management response

Management agrees with this recommendation and has created an Access database that captures all reviews by request type: Voluntary, TDHCA Initiated, or Other. With this database, FHDNR staff is able to more accurately track review times, manage workload, and consider any outstanding reviews as FHDNR reaches the one-year mark of having oversight of these reviews. Regarding the provision for review requests in §10.803(i), now that the ramp-up phase of the review oversight is completed, FHDNR is more strictly limiting review requests to WPP for portfolios of developments.

Pursuant to the Texas Government Code Chapter 2306, and Texas Property Code Chapter 301, TDHCA has entered into an agreement with the Texas Workforce Commission (TWC) to facilitate interagency cooperation between the two agencies regarding issues and complaints related to housing. The Memorandum of Understanding (MOU), outlines the responsibilities and obligations of each party in reporting, investigating, and conducting periodic reviews related to the requirements of the Fair Housing Act of 1968 as well as the Texas Fair Housing Act.

The duration of the current MOU is listed as Sep 2016 through Aug 2021, and it refers to the obligations of the Compliance Monitoring staff in reviewing, monitoring, and reporting on any instances of noncompliance. According to the staff, a revised version of the MOU is in the works, which will include

the recent changes to WPP and AFHMP since their transfer from Compliance Monitoring division to FHDMMR division.

Observation Item Number	Status Pertaining to the Recommendations and Action to be Taken	Target Completion Date	Responsible Party
21-001.03	OIA recommends that FHDMMR division finalizes the revision of the new MOU as early as possible that would align with the current role of the FHDMMR division in the process.	September 1, 2021 (estimated effective date of new MOU)	FHDMMR

Management response

The current MOU is effective through August 31, 2021. A new MOU has been drafted well in advance of the current August 31, 2021, expiration date and is currently with TWC for review.

According to the *Affirmative Marketing and Tenant Selection Criteria Review* handbook, and per Rule §10.802, the WPPs will be reviewed periodically by the FHDMMR division, or as a result of complaints received by the division. The majority of these complaints are typically received through the TDHCA complaint system and Texas workforce Commission Civil Rights Division (TWC-CRD).

The Housing Resource Center (HRC) division at TDHCA is tasked with reviewing complaints that are submitted through the TDHCA complaint system, and forwarding each complaint to the appropriate program and division based on the content of the complaint. Each division, or program, is responsible for reviewing the complaints and providing status updates to HRC division until the complaint is closed.

As of the end of our review and fieldwork, the FHDMMR division has received 11 complaints from HRC, of which ten were related to reasonable accommodation under the Fair Housing Act. The complaints were submitted to TDHA as well as to TWC by the Fair Housing Council of Greater San Antonio, a private nonprofit corporation that is funded by HUD, in Feb 2021. It appears that in 2019, the council performed testing at several TDHCA properties in the area. Their complaint claims that ten properties did not meet the Fair Housing Act requirements in providing reasonable accommodation for person with disability when asked for by the tester. According to the management, TWC has indicated that two of the complaints were closed with no cause determination, and the remaining complaints are still open. FHDMMR has determined that none of the properties in the complaints were noncompliant under §1.204. However, per §10.802(i), the division is performing review of all WPPs and providing technical assistance as needed. Internal Audit plans to review and evaluate the final results of these complaints during the follow up audit process in FY 2022.

It appears that FHDMR division was also involved, and consulted, in 30 other complaints with fair housing related issues along with Compliance division, with a majority of them already resolved and closed. Four of the complaints were referred to TWC for suspected FHA violations.

As of the start of this audit the reviews performed by FHDMR division of WPPs and AFHMPs have been limited to voluntary submissions and complaints received by TDHCA. The division has not implemented its priority model that is referenced in their handbook to periodically select and review properties for their compliance with Fair Housing Act requirements related to WPPs and AFHMs. Therefore, we were unable to perform any testing and evaluation of this process. Internal Audit plans to perform testing and analysis of the process during the follow up audit process in 2022.

Observation Item Number	Status Pertaining to the Recommendations and Action to be Taken	Target Completion Date	Responsible Party
21-001.04	OIA recommends that FHDMR division start implementing its priority model and selecting properties for review	Completed	FHDMR

Management Response

Management agrees with the importance of ensuring compliance with the Fair Housing Act and has already identified and initiated priority reviews for properties that have AFHMP and/or WPP are coming up on their federally required review time.

Standard Operating Procedures (SOP)

A SOP is a procedure specific to the operation of a division that describes the activities necessary to complete tasks in accordance with applicable rules and regulations. It defines expected practices in a process where quality standards exist. SOPs play an important role in any organization and division. They are policies, procedures and standards needed to operate in a successful way. They can create efficiencies, consistency and reliability, fewer errors, and add value to the Division. As of the end of our fieldwork phase, the division did not have SOPs related to WPPs and AFHMPs.

Observation Item Number	Status Pertaining to the Recommendations and Action to be Taken	Target Completion Date	Responsible Party
21-001.05	OIA recommends that FHDMR division establish written SOPs specific to WPP and AFHMP, signed and dated by management, for consistency and efficiency of the operation.	July 1, 2021 or at next revision of the Handbook,	FHDMR

		whichever occurs first	
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Management response

The AFHMP and WPP Handbook serves as the SOP and has been in effect since January 15, 2021. To address the observation provided, a signature line will be added to the next revision of the handbook.

Testing

As of the fieldwork phase of this audit, the tracking spreadsheet that is maintained by the FH division indicated that the division has received and reviewed a total of 50 Voluntary Submissions from property owners for WPPs and AFHMPs combined. We randomly selected ten submissions to review for accuracy, consistency, and completion. We also reviewed some of the requests for technical assistance that were received through emails. We found that the technical assistance provided by the division was clear and effective. However, we noted that the number of days from when the submissions are received until they are reviewed by the staff varies greatly, anywhere between 8 days, and in one case as high as 190 days. We also noticed that not of all the submissions that are received are entered into the tracking spreadsheet after they are reviewed. Some submissions remain in the FH email “Inbox”.

Although the Rules do not specify a deadline for the review of the plans once they are received by the division, and do not specify timeline for response back to the property owners, internal audit recommends that the division establish a procedure that would ensure consistency in the division’s review process. The procedure should also enhance the accuracy and completion of the documentation process, and also avoid the possibility of oversight by staff.

Observation Item Number	Status Pertaining to the Recommendations and Action to be Taken	Target Completion Date	Responsible Party
21-001.05	OIA recommends that FHDMMR division establish a more precise procedure for review, response, and documentation of the WPPs and AFHMPs.	Completed	FHDMMR

Management Response

As noted earlier in the Management Responses, an Access database has been created to track all request. This database also contains the review checklists for both AFHMP and WPP and links the initial review request with all subsequent review actions. Regarding the number of days noted for responses, FHDMMR recognizes that some responses are simple and some may require additional research or legal guidance. In the case of the 190-day response, this particular property management company had been in communications with FHDMMR staff on other matters and had received verbal communications

while FHDMR staff was awaiting legal guidance to provide formal responses in writing. FHDMR's approach to AFHMP and WPP reviews focuses on assisting housing providers with training and technical assistance to gain a better understanding of the Fair Housing Act while developing and updating compliant AFHMP and WPP documents. As FHDMR passes the one-year mark of oversight of AFHMP and WPP, staff seeks to continually improve response times and continue to provide high quality trainings and technical assistance.

OIA extends our appreciation to management and staff of the Fair Housing division, as well as Compliance division, for their time and cooperation during the course of this audit.

Sincerely,

Mark Scott

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

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