

BOARD BOOK OF FEBRUARY 21, 2019



J. B. Goodwin, Chair

Leslie Bingham Escareño, Vice-Chair

Paul Braden, Member

Asusena Reséndiz, Member

Sharon Thomason, Member

Leo Vasquez, III, Member

Texas Department of Housing and Community Affairs

PROGRAMMATIC IMPACT IN FISCAL YEAR 2018

The Texas Department of Housing and Community Affairs (TDHCA) is the State of Texas' lead agency responsible for affordable housing and administers a statewide array of programs to help Texans become more independent and self-sufficient. Short descriptions and key impact measures for these programs – including the total number of households/individuals that were served and total funding either administered or pledged for Fiscal Year 2018 (September 1, 2017 through August 31, 2018) – are set out below:

Multifamily New Construction & Rehabilitation:

Provides mechanisms to attract investment capital and to make available significant financing for the construction and rehabilitation of affordable rental housing through the Housing Tax Credit, Multifamily Bond, and Multifamily Direct Loan programs.

Total Households Served: 14,832
Total Funding: \$1,460,067,840

Single Family Homebuyer Assistance, New Construction, Rehabilitation, Bootstrap, and Contract for Deed:

Assists with the purchase, construction, repair, or rehabilitation of affordable single family housing by providing grants and loans through the HOME Single Family Development, HOME Homeowner Rehabilitation Assistance, HOME Homebuyer Assistance, Amy Young Barrier Removal, and Texas Bootstrap programs. Stabilizes homeownership in colonias through the HOME Contract for Deed program.

Total Households Served: 257
Total Funding: \$15,545,196

Single Family Homeownership Program:

Provides down payment and closing cost assistance, mortgage loans, and mortgage credit certificates to eligible households through the My First Texas Home and Mortgage Credit Certificates programs.

Total Households Served: 8,018
Total Funding: \$1,279,041,464

Rental Assistance:

Provides rental, security, and utility deposit assistance through HOME Tenant Based Rental Assistance, and rental assistance payments through HUD Section 8 Housing Choice Vouchers and Section 811 Project Based Rental Assistance.

Total Households Served: 1,729
Total Funding: \$10,145,027

Weatherization Assistance Program:

Provides funding to help low-income households control energy costs through the installation of energy efficient materials and through energy conservation education.

Total Households Served: 2,667
Total Funding: \$21,395,454

Homelessness:

Funds local programs and services for individuals and families at risk of homelessness or experiencing homelessness. Primary programs are the Homeless Housing and Services program and the Emergency Solutions Grants program.

Total Individuals Served: 48,886
Total Funding: \$12,811,075

Comprehensive Energy Assistance Program:

Provides energy utility bill assistance to households with an income at or below 150% federal poverty guidelines.

Total Households Served: 151,141
Total Funding: \$108,351,163

Community Services Block Grant:

Provides administrative support for essential services for low-income individuals through Community Action Agencies.

Total Individuals Served: 385,869
Total Funding: \$37,322,167

Sources: this data comes from the TDHCA 2019 State Low Income Housing Plan and Annual Report draft. Multifamily New Construction & Rehab data come from the most recent award logs from FY2018 for 4%, 9%, and Direct Loan Applications. Because Multifamily logs are updated on a monthly basis to reflect the changing status of Applications, this impact statement will also be updated on a monthly basis.

Note: Some households may be served by more than one TDHCA program.



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
GOVERNING BOARD MEETING

A G E N D A
8:00 AM
FEBRUARY 21, 2019

Dewitt C. Greer State Highway Building
Ric Williamson Hearing Room
125 E. 11th Street
Austin, Texas 78701

CALL TO ORDER

ROLL CALL

J.B. Goodwin, Chair

CERTIFICATION OF QUORUM

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

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

Resolution Recognizing February as *Black History Month*

CONSENT AGENDA

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

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

EXECUTIVE

- a) Presentation, discussion, and possible action on Board meeting minutes summary for December 6, 2018

J. Beau Eccles
General Counsel

LEGAL

- b) Presentation, discussion, and possible action regarding the adoption of a Final Order of debarment for John R. Dykema Jr. and Dykema Architects, Inc.

Jeffrey T. Pender
Deputy General Counsel

COMMUNITY AFFAIRS

- c) Presentation, discussion, and possible action on approval of the draft 2019 Department of Energy Weatherization Assistance Program state plan for public comment

Michael DeYoung
Director of
Community Affairs

BOND FINANCE

- d) Presentation, discussion, and possible action on Inducement Resolution No. 19-027, for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority for Northgate Village Apartments (#19603) in Dallas

Teresa Morales
Manager of
Multifamily Bonds

e) Presentation, discussion, and possible action on Inducement Resolution No. 19-028, for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority for Ventura at Hickory Tree (#19604) in Balch Springs

MULTIFAMILY FINANCE

f) Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits with another Issuer and an Award of Direct Loan Funds

18448 RBJ Phase I Austin
19409/18454 Grim Hotel Texarkana

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

18445 Wurzbach Manor San Antonio

h) Presentation, discussion, and possible action on the re-issuance of a Determination Notice for Housing Tax Credits with another Issuer (#18424 Flora Lofts, Dallas)

i) Presentation, discussion, and possible action regarding site eligibility under 10 TAC §11.101(a)(2) related to Undesirable Site Features

19076 Belfort Park Apartments Houston
19112 Hebbronville Seniors Apartments Hebbronville

Marni Holloway
Director of MF Finance

Marni Holloway
Director of MF Finance

HOME AND HOMELESSNESS PROGRAMS

j) Presentation, discussion, and possible action to authorize the issuance of the 2019 HOME Investment Partnerships Program Single Family Development Notice of Funding Availability and publication in the *Texas Register*

Abigail Versyp
Director of Home and Homelessness Programs

ASSET MANAGEMENT

k) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application

17204 Vista Bella Lago Vista
18015 Cambrian East Riverside Austin

l) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement

01069 Northstar Apartments Raymondville
01162 Town Park Townhomes Houston

Rosalio Banuelos
Director of Asset Management

RULES

m) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §5.801, Project Access Initiative; and an order adopting new 10 TAC §5.801, Project Access Initiative, and directing their publication for adoption in the *Texas Register*

n) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 1, Administration, Subchapter B, Accessibility and Reasonable Accommodations; and an order adopting new 10 TAC Chapter 1, Subchapter B, Accessibility and Reasonable Accommodations, and directing their publication for adoption in the *Texas Register*

o) Presentation, discussion, and possible action on an order adopting new 10 TAC §1.410, Determination of Alien Status for Program Beneficiaries, and directing publication for adoption in the *Texas Register*

p) Presentation, discussion, and possible action on an order adopting new 10 TAC §1.411, Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code, and directing publication for adoption in the *Texas Register*

Brooke Boston
Director of Programs

- q) Presentation, discussion, and possible action on an order proposing an amendment to 10 TAC §1.405, Bonding Requirements, and directing publication for public comment in the *Texas Register*
- r) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC §5.802, Local Operators for the Section 8 Housing Choice Voucher Program, and directing its publication for public comment in the *Texas Register*
- s) Presentation, discussion, and possible action on an order proposing an amendment to 10 TAC §1.15, Integrated Housing Rule, and directing publication for public comment in the *Texas Register*
- t) Presentation, discussion, and possible action on the adoption of the 2019 State of Texas Low Income Housing Plan and Annual Report, and an order adopting the repeal and new 10 TAC §1.23 concerning State of Texas Low Income Housing Plan and Annual Report, and directing their publication in the *Texas Register*
- u) Presentation, discussion, and possible action regarding adoption of amendments to 10 TAC §23.24, concerning Administrative Deficiency Process, and §23.51 concerning Contract for Deed General Requirements, and directing their publication in the *Texas Register*
- v) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 7, Subchapter C, Emergency Solutions Grants; and an order adopting new 10 TAC Chapter 7, Subchapter C, Emergency Solutions Grants, and directing publication for adoption in the *Texas Register*

Elizabeth Yevich
Director of
Housing Resource Center

Abigail Versyp
Director of Home and
Homelessness Programs

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

- a) TDHCA Outreach Activities, (January-February)
- b) Report on the 2020 QAP Plan
- c) Report on the Department's 1st Quarter Investment Report in accordance with the Public Funds Investment Act (PFIA)
- d) Report on the Department's Interim Balance Sheet/Statement of Net Position for the period ended November 30, 2018
- e) Report on the Department's 1st Quarter Investment Report relating to funds held under Bond Trust Indentures

Michael Lyttle
Director of
External Affairs

Marni Holloway
Director of
MF Finance

Ernie Palacios
Director of
Financial Administration

Monica Galuski
Chief Investment
Officer

ACTION ITEMS

ITEM 3: PROGRAM CONTROLS AND OVERSIGHT

Presentation, discussion, and possible action on the contract and sale of Alpine Retirement Community in Alpine, Texas

Tom Gouris
Director of HOME and
Homelessness &
Special Initiatives

ITEM 4: HOMEOWNERSHIP PROGRAM

Quarterly Report on Texas Homeownership Division Activity

Cathy Gutierrez
Director of
Texas Homeownership

ITEM 5: COMMUNITY AFFAIRS

Presentation, discussion, and possible action on the 2019 Low Income Home Energy Assistance Program Comprehensive Energy Assistance Program award for Galveston County Community Action Council, Inc.

Michael DeYoung
Director of
Community Affairs

ITEM 6: MULTIFAMILY FINANCE

- a) Presentation, discussion, and possible action regarding an Award of Direct Loan funds from the 2018-1 Multifamily Direct Loan Notice of Funding Availability 18503 Eastern Oaks Apartments Austin
- b) Presentation, discussion, and possible action regarding approval for publication in the *Texas Register* of the 2019-2 Multifamily Direct Loan Notice of Funding Availability: Special Purpose NOFA (Predevelopment)
- c) Presentation, discussion and possible action on staff determination regarding Application disclosure under 10 TAC §11.101(a)(2) related to Undesirable Site Features and 10 TAC §11.101(a)(3) related to Neighborhood Risk Factors for #19146 New Hope Housing Avenue J
- d) Presentation, discussion, and possible action regarding a request for waiver of rules for Residences of Long Branch, Housing Tax Credit Application #17363

Andrew Sinnott
MF Loan Programs
Administrator

Marni Holloway
Director of
MF Finance

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

EXECUTIVE SESSION

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

J.B. Goodwin
Chair

The Board may go into Executive Session Pursuant to Tex. Gov't Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee;

Pursuant to Tex. Gov't Code §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a settlement offer;

Pursuant to Tex. Gov't Code §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Tex. Gov't Code Chapter 551; including seeking legal advice in connection with a posted agenda item;

Pursuant to Tex. Gov't Code §551.072 to deliberate the possible purchase, sale, exchange, or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person; and/or

Pursuant to Tex. Gov't Code §2306.039(c) the Department's internal auditor, fraud prevention coordinator or ethics advisor may meet in an executive session of the Board to discuss issues related to fraud, waste or abuse.

OPEN SESSION

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

ADJOURN

To access this agenda and details on each agenda item in the board book, please visit our website at www.tdhca.state.tx.us or contact Michael Lyttle, 512-475-4542, TDHCA, 221 East 11th Street, Austin, Texas 78701, and request the information. If you would like to follow actions taken by the Governing Board during this meeting, please follow TDHCA account (@tdhca) on Twitter.

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Terri Roeber, ADA Responsible Employee, at 512-475-3959 or Relay Texas at 1-800-735-2989, at least five (5) days before the meeting so that appropriate arrangements can be made. Non-English speaking individuals who require interpreters for this meeting should contact Elena Peinado, 512-475-3814, at least five (5) days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado, al siguiente número 512-475-3814 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

NOTICE AS TO HANDGUN PROHIBITION DURING THE OPEN MEETING OF A GOVERNMENTAL ENTITY IN THIS ROOM ON THIS DATE:

Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun.

De acuerdo con la sección 30.06 del código penal (ingreso sin autorización de un titular de una licencia con una pistola oculta), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola oculta.

Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly.

De acuerdo con la sección 30.07 del código penal (ingreso sin autorización de un titular de una licencia con una pistola a la vista), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola a la vista.

NONE OF THESE RESTRICTIONS EXTEND BEYOND THIS ROOM ON THIS DATE AND DURING THE MEETING OF THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Texas Department of Housing and Community Affairs

WHEREAS, February 2019 is Black History Month, and has a nationally designated theme of “Black Migrations,” emphasizing the movement of people of African descent to new destinations and subsequently to new social realities, beginning in the early 20th century and continuing today in the 21st century;

WHEREAS, the Texas Department of Housing and Community Affairs (the Department) recognizes the significance of Black History Month as an important time to honor African Americans as they moved from the farm to the cities, from the South to the more industrialized Northeast, Midwest and West and from poverty to the national stage in business, politics, literature and the arts;

WHEREAS, the Department recognizes African American migration patterns and the continuous movement and relocation of these families; that such migrations have resulted in a more diverse and stratified interracial and intra-racial urban population amid a changing social climate; and that such migrations have required a greater need for affordable housing in those relocated areas; and

WHEREAS, the Department recognizes that today, black migrations are worldwide and the historic trend of migration has reversed with an increase in black populations looking for jobs and affordable housing in southern cities such as Atlanta and Houston.

NOW, THEREFORE, it is hereby

RESOLVED, that the Texas Department of Housing and Community Affairs —

- (1) recognizes the significance of Black History Month as an important time to acknowledge, better understand, and celebrate the history of African Americans, and encourages the continued celebration of this month to provide an opportunity for all peoples of the State of Texas to learn more about the migration of African Americans, its impact on African Americans in business, politics, literature and the arts and the impact affordable housing has on the success of African Americans in these areas as they relocate; and
- (2) recognizes that in the pursuit of the goal and responsibility of providing affordable housing and equal housing opportunities for all, the Governing Board of the Texas Department of Housing and Community Affairs does hereby celebrate February 2019 as Black History Month in Texas and encourages all Texas individuals and organizations, public and private, to join and work together in this observance of the impact and importance of affordable housing and equal housing opportunity to the success of all Texans .

Signed this _____ day of February 2019.



J. B. Goodwin, Chair

Leslie Bingham Escareño, Vice Chair

Leo Vasquez , Member

Paul A. Braden, Member

Asusena Reséndiz, Member

Sharon Thomason, Member

David Cervantes, Acting Director

CONSENT AGENDA

1a

BOARD ACTION REQUEST

BOARD SECRETARY

FEBRUARY 21, 2019

Presentation, discussion, and possible action on Board meeting minutes summary for December 6, 2018

RECOMMENDED ACTION

Approve the Board meeting minutes summary for December 6, 2018.

RESOLVED, that the Board meeting minutes summary for December 6, 2018, is hereby approved as presented.

Texas Department of Housing and Community Affairs Governing Board
Board Meeting Minutes Summary
December 6, 2018

On Thursday, the sixth day of December 2018, at 8:00 a.m., the regular meeting of the Governing Board (Board) of the Texas Department of Housing and Community Affairs (“TDHCA” or “the Department”) was held in Hearing Room E2.026 of the Texas Capitol Extension, 1100 Congress Avenue, Austin, Texas.

The following members, constituting a quorum, were present and voting:

- J.B. Goodwin
- Paul A. Braden
- Asusena Reséndiz
- Sharon Thomason
- Leo Vasquez

J.B. Goodwin served as Chair, and James “Beau” Eccles, TDHCA General Counsel, served as secretary.

- 1) The Board unanimously approved the Consent Agenda with a modification made to Item 2(e) – Report on the allocation of Program Year 2019 Community Services Block Grant awards.
- 2) The Board unanimously adopted a resolution recognizing December 21, 2018, as Homeless Persons Memorial Day in Texas.
- 3) Action Item 3 – Report on the meeting of the Internal Audit and Finance Committee – was presented by Sharon Thomason, Chair of the Audit and Finance Committee. The Board heard and unanimously accepted the report.
- 4) Action Item 4(a) – Presentation, discussion, and possible action on Resolution No. 19-010 authorizing the sale of mortgage-backed securities and redemption of 2009 Series A Residential Mortgage Revenue Bonds and 2009 Series B Residential Mortgage Revenue Bonds – was presented by Monica Galuski, TDHCA Director of Bond Finance. The Board unanimously approved staff recommendation on the resolution.
- 5) Action Item 4(b) – Presentation, discussion, and possible action regarding the Issuance of Multifamily Tax-Exempt Bonds (M-TEMS) (Park Yellowstone) Series 2019 and Multifamily Housing Revenue Bonds (Park Yellowstone) Series 2019 Resolution No. 19-016 and a Determination Notice of Housing Tax Credits – was presented by Teresa Morales, TDHCA Program Administrator of 4% Housing Tax Credits and Bonds. The Board unanimously approved staff recommendation to issue the bonds and credits.

6) Action Item 5 – Presentation, discussion, and possible action on an order adopting the amendments to 10 TAC Chapter 10 Subchapter E, concerning Post Award and Asset Management Requirements, and directing its publication in the Texas Register – was presented by Rosalio Banuelos, TDHCA Director of Asset Management. The Board unanimously approved staff recommendation to adopt the amendments for publication.

7) Action Item 6(a) – Presentation, discussion, and possible action on a request for the extension of the placement in service deadline under 10 TAC §11.6(5) of the 2018 Qualified Allocation Plan related to Credits Returns Resulting from Force Majeure Events for 16185 Merritt Heritage, Georgetown; and 18210 Merritt Monument, Midland – was presented by Marni Holloway, TDHCA Director of Multifamily Finance. The Board unanimously approved staff recommendation to approve the extension requests.

8) Action Item 6(b) – Presentation, discussion, and possible action on penalties for failure to meet deadlines under 10 TAC 11.9(c)(8) Readiness to Proceed for 18013 Dayton Retirement Center, Dayton; and 18243 2222 Cleburne, Houston – was presented by Ms. Holloway with additional information from Mr. Eccles. Following public comment (listed below), the Board unanimously chose to issue no penalties to 18013, and a one point penalty to the applicant and its affiliates of 18243 for the 2019 housing tax credit awards cycle.

- Tamea Dula, Coats Rose attorney representing 18013, provided information on the item
- Barry Palmer, Coats Rose attorney representing 18013, provided information on the item
- Stephan Fairfield, Covenant Community Capital and an affiliate of 18243, provided information on the item
- Jason Aldridge, National Equity Fund and purchaser of tax credits for 18243, provided information on the item
- Cynthia Bast, Locke Lord attorney representing 18243, provided information on the item

9) Action Item 6(c) – Presentation, discussion, and possible action regarding approval for publication in the Texas Register of the 2019-1 Multifamily Direct Loan Notice of Funding Availability – was presented by Andrew Sinnott, TDHCA Multifamily Loan Programs Administrator. The Board unanimously approved staff recommendation, as clarified by Mr. Sinnott, to publish the NOFA.

10) The Board did not consider Action Item 6(d) – Presentation, discussion, and possible action regarding a request for extension of deadlines for the Housing Tax Credit Application 18235 Memorial Apartments, McAllen. The item was pulled from the agenda.

11) Action Item 6(e) – Presentation, discussion and possible action regarding an Award of Direct Loan funds from the 2018-1 Multifamily Direct Loan Notice of Funding Availability for 18019 Highlander Senior Village, Bulverde – was presented by Ms. Holloway. The Board unanimously approved staff recommendation to award the funds.

12) During the Public Comment portion of the meeting, Mr. Vasquez encouraged everyone in the affordable housing industry to work with TDHCA staff at their earliest convenience if they encounter challenges or issues with their project as it relates to TDHCA. Chairman Goodwin asked TDHCA staff to stand and be recognized in appreciation for their work. The Chair also thanked fellow Board members for their commitment to the Board and agency.

Except as noted otherwise, all materials presented to and reports made to the Board were approved, adopted, and accepted. These minutes constitute a summary of actions taken. The full transcript of the meeting, reflecting who made motions, offered seconds, etc., questions and responses, and details of comments, is retained by TDHCA as an official record of the meeting.

There being no further business to come before the Board, the meeting adjourned at 9:00 a.m. The next meeting is set for Thursday, January 17, 2019.

Secretary

Approved:

Chair

1b

BOARD ACTION REQUEST

LEGAL DIVISION

FEBRUARY 21, 2019

Presentation, discussion, and possible action regarding the adoption of a Final Order of debarment for John R. Dykema Jr. and Dykema Architects, Inc.

RECOMMENDED ACTION

WHEREAS, John R. Dykema Jr and Dykema Architects, Inc. (collectively, Respondent), acted as architectural consultants for Timbers Clayton 104 Apartments, LP, owner of The Timbers Apartments (HTC 15412 / CMTS 1612) (the Property);

WHEREAS, the Property is required to comply with requirements of the Fair Housing Act and 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" Federal Register 79 FR 29671, and as otherwise modified in 10 TAC Chapter 1, Subchapter B;

WHEREAS, a final construction inspection of the Property was conducted on September 20, 2017, and multiple fair housing and mobility accessibility deficiencies were cited under the Fair Housing Act and 2010 ADA standards, respectively;

WHEREAS, TDHCA required correction of the findings in the specific units that had been inspected, and required the same corrections to be made in all other affected mobility accessible units and fair housing covered units;

WHEREAS, Respondent signed certifications representing that corrections had been made in the cited units, and in all mobility accessible units and fair housing covered units;

WHEREAS, after receiving a complaint, TDHCA conducted a second final construction inspection, revealing that corrections had not been made in all units;

WHEREAS, Respondent was referred for debarment for making negligent material misrepresentations to the Department;

WHEREAS, Tex. Gov't. Code §2306.0504(b) addresses debarment and indicates that the Department may debar a person from participation in a Department program on the basis of the person's past failure to comply with any condition imposed by the Department in the administration of its programs;

WHEREAS, 10 TAC §2.401(a)(3) also addresses debarment, and states that the Committee may debar a Consultant who provides intentional or negligent material misrepresentation or omission with regard to any documentation, certification, or other representation made to the Department;

WHEREAS, an informal conference was held with the Enforcement Committee, and a debarment term of one year has been recommended;

WHEREAS, staff has based its debarment recommendation for a term of one year on the Department's rules for debarment and an assessment of each and all of the material factors identified at 10 TAC §2.401(j) that are to be considered in determining a recommended period of debarment, applied specifically to the facts and circumstances present in this case; and

WHEREAS, Respondent has indicated that they do not intend to appeal the debarment recommendation.

NOW, therefore, it is hereby

RESOLVED, that a Final Order of Debarment for a term of one year against John R. Dykema and Dykema Architects, Inc., substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, is hereby adopted as an order of this Board.

BACKGROUND

During 2015, Timbers Clayton 104 Apartments, LP, a Texas limited partnership (Owner) was awarded an allocation of Low Income Housing Tax Credits to rehabilitate The Timbers Apartments (Property) (HTC 15412 / CMTS 1612). John R. Dykema Jr and Dykema Architects, Inc. (Respondent) provided architectural consulting services. Among other requirements, the Property is required to comply with requirements of the Fair Housing Act and 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" Federal Register 79 FR 29671, and as otherwise modified in 10 TAC Chapter 1, Subchapter B, and Respondent acknowledged those requirements before beginning its consulting services. John R. Dykema Jr, Vice President and Principal Architect of Dykema Architects, Inc., signed an Architect Certification for TDHCA on April 27, 2015, certifying, among other things, that the Property would, *"be designed and built to meet the accessibility requirements of the Federal Fair Housing Act as implemented by HUD at 24 C.F.R. Part 100 and The Fair Housing Act Design Manual, titles II and III of the Americans with Disabilities Act (42 U.S.C. Sections 12131-12189) as implemented by the Department of Justice regulations at 28 C.F.R. Parts 35 and 36, and the Department's Accessibility rules in 10 TAC Chapter 1, Subchapter B, as may be amended from time to time."*

On September 20, 2017, a final construction inspection was conducted by the Department to verify that the Property had been rehabilitated as required by applicable state and federal laws, and the TDHCA Land Use Restriction Agreement. Deficiencies were identified and corrective documentation received included certifications signed by John R. Dykema Jr. on July 30, 2018, that stated deficiencies had been corrected in the cited units, and in all fair housing covered units and/or mobility accessible units. TDHCA re-inspected the property on September 20, 2018, in order to verify correction after receiving a complaint suggesting that corrections had not been made. The re-inspection showed that the deficiencies had not been resolved in all fair housing covered units and/or mobility accessible units, with unresolved deficiencies affecting twenty-four units. Certifying that the findings were corrected was a negligent material misrepresentation. Providing a negligent material misrepresentation with regard to any documentation, certification, or other representation made to the Department is grounds for discretionary debarment in accordance with 10 TAC §2.401(a).

Pursuant to 10 Tex. Admin. Code §2.401(j), recommended periods of debarment are to be based upon material factors such as the following: repeated occurrences, seriousness of underlying issues, presence or absence of corrective action, including corrective action to install new responsible persons and ensure they are qualified and properly trained, and other material factors. A Notice of Debarment Determination was issued by the Executive Director on January 24, 2019, and included an appeal period of 20 days. Respondent has indicated that they do not intend to appeal the debarment. A debarment term of one year is appropriate under the debarment factors outlined above. Accordingly, after consideration of all appropriate factors, including those set out in TEX. GOV'T CODE §2306.0504 and 10 TEX. ADMIN. CODE §2.401, the Enforcement Committee has recommended a debarment term of one year.

Consistent with direction from the Department's Enforcement Committee, a debarment term of one year is recommended. This will be a reportable item of consideration under previous participation for any new award involving Respondent during this period of debarment.



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

To: TDHCA Governing Board
From: David Cervantes, Acting Executive Director
Date: February 21, 2019
Subject: Report to the Board

The Enforcement Committee has recommended a one year debarment term beginning February 21, 2019, against John R. Dykema Jr and Dykema Architects, Inc., architectural consultants for Timbers Clayton 104 Apartments, LP, owner of The Timbers Apartments (HTC 15412 / CMTS 1612) for providing negligent material misrepresentation or omission with regard to any documentation, certification or other representation made to the Department. The recommendation is based upon the following:

I. JURISDICTION:

1. During 2015, Timbers Clayton 104 Apartments, LP, a Texas limited partnership (Owner) was awarded an allocation of Low Income Housing Tax Credits by the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or the Department), to rehabilitate The Timbers Apartments (Property) (HTC 15412 / CMTS 1612).
2. The Property is required to comply with requirements of the Fair Housing Act and 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" Federal Register 79 FR 29671, and as otherwise modified in 10 TAC Chapter 1, Subchapter B.
3. John R. Dykema Jr, Vice President and Principal Architect of Dykema Architects, Inc., signed an Architect Certification on April 27, 2015, certifying, among other things, that the Property would, *"be designed and built to meet the accessibility requirements of the Federal Fair Housing Act as implemented by HUD at 24 C.F.R. Part 100 and The Fair Housing Act Design Manual, titles II and III of the Americans with Disabilities Act (42 U.S.C. Sections 12131-12189) as implemented by the Department of Justice regulations at 28 C.F.R. Parts 35 and 36, and the Department's Accessibility rules in 10 TAC Chapter 1, Subchapter B, as may be amended from time to time."*
4. John R. Dykema Jr and Dykema Architects, Inc., are considered a consultant for the Property, and therefore subject to the regulatory authority of TDHCA.



II. MATERIAL VIOLATIONS SUBJECT TO DEBARMENT¹:

1. On September 20, 2017, a final construction inspection was conducted to verify that the Property had been rehabilitated as required by applicable state and federal laws, and the TDHCA Land Use Restriction Agreement. Deficiencies were identified and corrective documentation received by TDHCA included certifications signed by John R. Dykema Jr on July 30, 2018, that stated deficiencies had been corrected in the cited units, and in all fair housing covered units and/or mobility accessible units. TDHCA re-inspected the property on September 20, 2018, in order to verify correction. It identified the following deficiencies, of which items b through d were part of the certifications of correction that were signed by Mr. Dykema on July 30, 2018:
 - a. Mobility accessible units 104, 203, 701 and 803: Top grab bars at the bathtub exceeded accessibility tolerances. They were located 37-38 inches above the floor and maximum allowed is 36 inches. This was a new deficiency that had not previously been identified, and is a violation of 2010 ADA standards 607.4.2;
 - b. Mobility accessible units 104, 503 and 803: Rear toilet grab bar was L-shaped and returned to the floor. This is not allowed per the access board; the grab bar must be located on a wall. This was Deficiency #27 from the original final construction inspection, and is a violation of 2010 ADA standards 604.5 and 609.8. That original inspection had identified the deficiency for mobility accessible units 104, 203, and 701. The re-inspection proved correction in mobility accessible units 203 and 701, but the deficiency was uncorrected in mobility accessible unit 104, and was newly identified in mobility accessible units 503 and 803;
 - c. Mobility accessible units 104, 503 and 803: Secondary bathroom T-turn space is not clear. There are built-in shelves within the T-turn turning space and the bathroom door needs to swing out the other way for a full T-turn clearance. This was Deficiency #16 from the original final construction inspection, and is a violation of 2010 ADA standards 304.3 and 809.2.2. That original inspection had identified the deficiency for mobility accessible unit 104. The re-inspection found that the deficiency was uncorrected in mobility accessible unit 104, and was newly identified in mobility accessible units 503 and 803; and
 - d. Fair housing covered units 204, 301, 302, 303, 304, 401, 403, 404, 501, 504, 601, 602, 603, 604, 702, 903, 904, 1001, 1002, 1003 and 1004: Did not have the required 9 inch clearance at the range for a parallel side approach, each range only had 4.5 inches on the side closest to the corner cabinet. This was Deficiency #22 from the original final construction inspection, and is a violation of the Fair Housing Act Design Manual 7.. That original inspection had identified the

¹ Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 Tex. Admin. Code, Chapters 1, 2, AND 10 refer to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

deficiency for fair housing covered units 203 and 701. The re-inspection proved correction in fair housing covered units 203 and 701, but the deficiency was newly identified in fair housing covered units 204, 301, 302, 303, 304, 401, 403, 404, 501, 504, 601, 602, 603, 604, 702, 903, 904, 1001, 1002, 1003 and 1004.

2. The architect certifications of correction signed by Mr. Dykema on July 30, 2018, had included representations that the above deficiencies had been resolved in the cited units *and* in all fair housing covered units and/or mobility accessible units. The re-inspection showed that the deficiencies had not been resolved in all fair housing covered units and/or mobility accessible units. Certifying that the findings were corrected was a negligent material misrepresentation. Providing a negligent material misrepresentation with regard to any documentation, certification, or other representation made to the Department is grounds for discretionary debarment.

III. LAW/RULE VIOLATIONS:

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §2306.0504 and 10 TAC §2.401.
2. Respondent is a "Consultant" as that term is defined in 10 TAC §2.102(1).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
4. Pursuant to TEX. GOV'T CODE Chapter 2306, Subchapter DD and TEX. GOV'T CODE §2306.185, TDHCA is authorized to make Housing Tax Credit Allocations for the State of Texas and is required to monitor to ensure compliance.
5. Pursuant to Internal Revenue Code (IRC) §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance;
6. John R. Dykema Jr and Dykema Architects, Inc. violated the Department's Accessibility rules in 10 TAC Chapter 1, Subchapter B, by failing to ensure compliance with the Fair Housing Act and the 2010 ADA standards, with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" Federal Register 79 FR 29671, and as otherwise modified in 10 TAC Chapter 1, Subchapter B, as part of the rehabilitation for The Timbers Apartments.
7. John R. Dykema Jr and Dykema Architects, Inc. violated 10 TAC §2.401(a)(3) by submitting signed certifications to TDHCA, representing that Fair Housing Act and ADA findings had been corrected for the cited units and all fair housing covered units and/or mobility accessible units, as applicable, although the corrections had not been made for all affected units.

8. Pursuant to Tex. Gov't. Code §2306.0504(c), the Department may debar a person from participation in a Department program on the basis of the person's past failure to comply with any condition imposed by the Department in the administration of its programs.
9. Pursuant to 10 TAC §2.401(a) the Department may debar a consultant or vendor for past failure to comply with any condition imposed by the Department in the administration of its programs, including but not limited to providing negligent material misrepresentation with regard to any documentation, certification, or other representation made to the Department.

IV. RECOMMENDED DEBARMENT TERM:

Pursuant to 10 Tex. Admin. Code §2.401(j), recommended periods of debarment are to be based upon material factors such as the following:

1. **Repeated occurrences:** There is no history of prior administrative penalty or debarment referrals to the Enforcement Committee (Committee), but there is a history of similar deficiencies identified at Park at Cliff Creek a year earlier. John R. Dykema Jr. and Dykema Architects acted as a consultant for that tax credit allocation also.
2. **Seriousness of underlying issues:** The misrepresentations in the corrective certifications signed by Mr. Dykema are very serious since the deficiencies were certified as corrected despite not being resolved, causing compliance problems for the owner that required immediate and costly remedies. Failure to ensure compliance with the Fair Housing and ADA standards is very serious, and a very expensive problem for an owner to fix after a rehabilitation is complete. It also causes tenant disruption in occupied units.
3. **Presence or absence of corrective action, including corrective action to install new responsible persons and ensure they are qualified and properly trained:** As of the date of the informal conference on December 18, 2018, complete corrective documentation relating to the re-inspection had not yet been received². Mr. Dykema represented that he was working closely with the owner at no cost to resolve the deficiencies, and that solutions have been identified for all deficiencies. He also indicated that Dykema Architects, Inc. has learned a lot about Fair Housing and ADA standards as a result of the TDHCA final construction inspection and enforcement process, which knowledge is now being applied to other properties.
4. **Other material factors:** Mr. Dykema's primary argument is that he did not understand that TDHCA was requiring corrections to be made to the specific units cited in the final construction inspection, as well as requiring corrections to be made in additional units that had not been inspected. It appears that TDHCA instructions may have been misread, and Committee members agreed that the instructions could have been written more clearly to indicate what "all fair housing covered units" and "all mobility accessible

² Corrective documentation has now been received, and the final construction inspection was closed by the TDHCA Compliance Division on January 7, 2019.

units” means, and that these groups of units may encompass additional units that had not been inspected or specifically listed in the inspection report. With that said, the architect did not call to ask questions, and Committee members felt that the deficiencies should not have occurred at all because the architect was responsible for ensuring compliance with all applicable state and federal regulations relating to fair housing and accessibility. Committee members found there was evidence that a negligent material representation had been made, but no evidence that it was willful. Mr. Dykema stated that he thought Dykema Architects, Inc. had complied with the TDHCA requirements. It was Mr. Dykema’s understanding that only the specifically cited units in the final construction inspection were required to be corrected, however, Committee members noted that the final construction letter from TDHCA included corrective action instructions requiring the deficiencies to be corrected in all fair housing covered units / mobility accessible units. The corrective certifications to TDHCA that Mr. Dykema wrote and signed also stated that the identified deficiencies were corrected in the cited units *and* in the fair housing covered units / mobility accessible units, as applicable. Furthermore, Mr. Dykema repeatedly stated in writing and during an informal conference that he was not fully aware of the Fair Housing Act and ADA regulations that TDHCA was enforcing, nor did he understand TDHCA’s final construction inspection process; however, the original tax credit application for The Timbers includes a certification that he signed in 2015 that the Property would comply with those regulations. Accordingly, it was Mr. Dykema’s responsibility to ensure that he knew which units were considered “fair housing covered units” and “mobility accessible units”, required to comply with Fair Housing Act and/or ADA standards. Committee members further noted that Fair Housing Act requirements would apply even if TDHCA were not involved with the Property, so not knowing TDHCA’s rules or inspection protocols is largely irrelevant. However, they also noted that Dykema Architects, Inc. has worked primarily on properties owned by Public Housing Authorities; those properties have tended to be older, and some of the same requirements do not apply as a result of their age. There does not appear to be any evidence that Dykema Architects, Inc. was intending to mislead the Department with its certifications, and Committee members did not find that Mr. Dykema had made willful misrepresentations, however, he admitted to negligence, and unintentional material misrepresentations. Dykema Architects ultimately took responsibility for the problems and continued working with the owner at no cost to ensure full corrections.

A Notice of Debarment Determination was issued by the Executive Director on January 24, 2019, and included an appeal period of 20 days. Respondent has indicated that they do not intend to appeal the debarment. A debarment term of one year is appropriate under the debarment factors outlined above. Accordingly, after consideration of all appropriate factors, including those set out in TEX. GOV’T CODE §2306.0504 and 10 TEX. ADMIN. CODE §2.401, the Enforcement Committee has recommended a debarment term of one year.

ENFORCEMENT ACTION AGAINST THE	§	BEFORE THE
JOHN R. DYKEMA JR. AND	§	TEXAS DEPARTMENT OF
DYKEMA ARCHITECTS, INC.	§	HOUSING AND COMMUNITY
	§	AFFAIRS

FINAL ORDER

General Remarks and official action taken:

On this 21st day of February, 2019, the Governing Board (“Board”) of the Texas Department of Housing and Community Affairs (“TDHCA” or “Department”) considered the matter of whether enforcement action should be taken against **JOHN R. DYKEMA, JR. AND DYKEMA ARCHITECTS, INC.** (collectively, “Respondent”), for providing negligent material misrepresentation or omission with regard to certifications and representations made to the Department on July 30, 2018.

This Final Order is executed pursuant to the authority granted in the Tex. Gov’t Code, Chapter 2306.0504, which requires the Board to adopt a policy providing for the debarment of a person from participation in Department programs because of a person’s past failure to comply with conditions imposed by the Department in the administration of its programs. The policy was adopted by the Board and is set forth in 10 TAC §2.401.

Upon recommendation of the Enforcement Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

FINDINGS OF FACT

Jurisdiction:

1. During 2015, Timbers Clayton 104 Apartments, LP, a Texas limited partnership (“Owner”) was awarded an allocation of Low Income Housing Tax Credits by the Governing Board (“Board”) of the Texas Department of Housing and Community Affairs (“TDHCA” or the “Department”), to rehabilitate The Timbers Apartments (“Property”) (HTC 15412 / CMTS 1612).
2. The Property is required to comply with requirements of the Fair Housing Act and 2010 ADA standards, with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" Federal Register 79 FR 29671, and as otherwise modified in 10 TAC Chapter 1, Subchapter B.
3. John R. Dykema Jr, Vice President and Principal Architect of Dykema Architects, Inc., signed an Architect Certification on April 27, 2015, certifying, among other things, that

the Property would, *“be designed and built to meet the accessibility requirements of the Federal Fair Housing Act as implemented by HUD at 24 C.F.R. Part 100 and The Fair Housing Act Design Manual, titles II and III of the Americans with Disabilities Act (42 U.S.C. Sections 12131-12189) as implemented by the Department of Justice regulations at 28 C.F.R. Parts 35 and 36, and the Department’s Accessibility rules in 10 TAC Chapter 1, Subchapter B, as may be amended from time to time.”*

4. John R. Dykema Jr and Dykema Architects, Inc., are considered a consultant for the Property, and therefore subject to the regulatory authority of TDHCA.

Material Violations Subject To Debarment:

1. On September 20, 2017, a final construction inspection was conducted to verify that the Property had been rehabilitated as required by applicable state and federal laws, and the TDHCA Land Use Restriction Agreement. Deficiencies were identified and corrective documentation received by TDHCA included certifications signed by John R. Dykema Jr on July 30, 2018, that stated deficiencies had been corrected in the cited units, and in all fair housing covered units and/or mobility accessible units. TDHCA re-inspected the property on September 20, 2018, in order to verify correction. It identified the following deficiencies, of which items b through d were part of the certifications of correction that were signed by Mr. Dykema on July 30, 2018:
 - a. Mobility accessible units 104, 203, 701 and 803: Top grab bars at the bathtub exceeded accessibility tolerances. They were located 37-38 inches above the floor and maximum allowed is 36 inches. This was a new deficiency that had not previously been identified, and is a violation of 2010 ADA standards 607.4.2;
 - b. Mobility accessible units 104, 503 and 803: Rear toilet grab bar was L-shaped and returned to the floor. This is not allowed per the access board; the grab bar must be located on a wall. This was Deficiency #27 from the original final construction inspection, and is a violation of 2010 ADA standards 604.5 and 609.8. That original inspection had identified the deficiency for mobility accessible units 104, 203, and 701. The re-inspection proved correction in mobility accessible units 203 and 701, but the deficiency was uncorrected in mobility accessible unit 104, and was newly identified in mobility accessible units 503 and 803;
 - c. Mobility accessible units 104, 503 and 803: Secondary bathroom T-turn space is not clear. There are built-in shelves within the T-turn turning space and the bathroom door needs to swing out the other way for a full T-turn clearance. This was Deficiency #16 from the original final construction inspection, and is a violation of 2010 ADA standards 304.3 and 809.2.2. That original inspection had identified the deficiency for mobility accessible unit 104. The re-inspection found that the deficiency was uncorrected in mobility accessible unit 104, and was newly identified in mobility accessible units 503 and 803; and

- d. Fair housing covered units 204, 301, 302, 303, 304, 401, 403, 404, 501, 504, 601, 602, 603, 604, 702, 903, 904, 1001, 1002, 1003 and 1004: Did not have the required 9 inch clearance at the range for a parallel side approach, each range only had 4.5 inches on the side closest to the corner cabinet. This was Deficiency #22 from the original final construction inspection, and is a violation of the Fair Housing Act Design Manual 7.4. That original inspection had identified the deficiency for fair housing covered units 203 and 701. The re-inspection proved correction in fair housing covered units 203 and 701, but the deficiency was newly identified in fair housing covered units 204, 301, 302, 303, 304, 401, 403, 404, 501, 504, 601, 602, 603, 604, 702, 903, 904, 1001, 1002, 1003 and 1004.
2. The architect certifications of correction signed by Mr. Dykema on July 30, 2018, had included representations that the above deficiencies had been resolved in the cited units *and* in all fair housing covered units and/or mobility accessible units. The re-inspection showed that the deficiencies had not been resolved in all fair housing covered units and/or mobility accessible units. Certifying that the findings were corrected was a negligent material misrepresentation. Providing a negligent material misrepresentation with regard to any documentation, certification, or other representation made to the Department is grounds for discretionary debarment.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §2306.0504 and 10 TAC §2.401.
2. Respondent is a "Consultant" as that term is defined in 10 TAC §2.102(1).
3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
4. Pursuant to TEX. GOV'T CODE Chapter 2306, Subchapter DD and TEX. GOV'T CODE §2306.185, TDHCA is authorized to make Housing Tax Credit Allocations for the State of Texas and is required to monitor to ensure compliance.
5. Pursuant to Internal Revenue Code (IRC) §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance;
6. John R. Dykema Jr and Dykema Architects, Inc. violated the Department's Accessibility rules in 10 TAC Chapter 1, Subchapter B, by failing to ensure compliance with the Fair Housing Act and 2010 ADA standards as part of the rehabilitation for The Timbers Apartments.
7. John R. Dykema Jr and Dykema Architects, Inc. violated 10 TAC §2.401(a)(3) by submitting signed certifications to TDHCA, representing that Fair Housing Act and 2010

ADA standards findings had been corrected for the cited units and all fair housing covered units and/or mobility accessible units, as applicable, although the corrections had not been made for all affected units.

8. Pursuant to Tex. Gov't. Code §2306.0504(c), the Department may debar a person from participation in a Department program on the basis of the person's past failure to comply with any condition imposed by the Department in the administration of its programs.
9. Pursuant to 10 TAC §2.401(a) the Department may debar a consultant or vendor for past failure to comply with any condition imposed by the Department in the administration of its programs, including but not limited to providing negligent material misrepresentation with regard to any documentation, certification, or other representation made to the Department.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of material factors including those set forth in 10 Tex. Admin. Code §2.401(j) to be considered for a recommended period of debarment, as applied specifically to the facts and circumstances present in this case, the Board of the Texas Department of Housing and Community Affairs orders the following:

IT IS HEREBY ORDERED that Respondent is barred from future participation in all programs administered by the Department for a period of **one** year, to commence upon the date this Order is approved by the Board. This debarment does not prohibit Respondent from participating in any existing engagements funded through the Department, nor affect any responsibilities or duties thereunder.

IT IS FURTHER ORDERED that the terms of this Agreed Final Order shall be published on the TDHCA website.

[Remainder of page intentionally blank]

Approved by the Governing Board of TDHCA on February 21, 2019.

By: _____
Name: J.B. Goodwin
Title: Chair of the Board of TDHCA

By: _____
Name: James "Beau" Eccles
Title: Secretary of the Board of TDHCA

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 21st day of February, 2019, personally appeared J.B. Goodwin, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Before me, the undersigned notary public, on this 21st day of February, 2019, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

Notary Public, State of Texas

1c

BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
FEBRUARY 21, 2019

Presentation, discussion, and possible action on approval of the draft 2019 Department of Energy Weatherization Assistance Program state plan for public comment

RECOMMENDED ACTION

WHEREAS, the Energy Conservation in Existing Buildings Act of 1976 (42 USC §6851), as amended in Title II, Part 2 of the National Energy Conservation Policy Act allows Department of Energy (DOE) Weatherization Assistance Program (WAP) funds to be utilized to carry out a program of weatherization assistance for low-income persons, as well as 10% for planning and administration;

WHEREAS, the Department develops and submits a State Plan to the DOE each year to administer the WAP;

WHEREAS, the Department anticipates receiving notice of Program Year (PY) 2019 DOE WAP funds in the estimated amount of \$6,811,752;

WHEREAS, the State Plan also includes estimated carryover funding from PY 2018 for a total State Plan amount of \$7,561,752;

WHEREAS, the DOE WAP funds are allocated based on the formula detailed in 10 TAC §6.404, Distribution of WAP Funds; and

WHEREAS, the attached draft 2019 DOE WAP State Plan is proposed for public comment;

NOW, therefore, it is hereby

RESOLVED, that the draft 2019 DOE WAP State Plan, in the form presented to this meeting, is hereby approved for public comment and public hearing; and

FURTHER RESOLVED, that the final plan with consideration for public comment and technical corrections made by staff, along with award recommendations for Subgrantees as indicated in Section IV.1 of the State Plan will be presented to the Board no later than the meeting of April 25, 2019, and will serve as a public hearing as required by 10 CFR 440.12(a).

BACKGROUND

The Department anticipates receiving notice of an estimated award of \$6,811,752 for the 2019 DOE WAP. The DOE WAP funding provides for the installation of weatherization measures to increase energy efficiency of a home including caulking; weather-stripping; adding ceiling, wall, and floor insulation; patching holes in the building envelope; duct work; and repair or replacement of energy inefficient heating and cooling systems. Additionally, the funds allow Subgrantees to complete financial audits, household energy audits, outreach and engagement activities, and program administration. Also, the funding provides for state administration and state training and technical assistance activities. The list of Subgrantees and the proposed award amounts are included in the State Plan in section IV.1, Subgrantees. This list of Subgrantees has not been through the Department's Previous Participation Review and the Board is not approving a list of awardees at this time. To the extent that the 2019 funds are greater or less than the amount in the draft Plan, the proposed activities and Subgrantee awards will be proportionally adjusted by service area.

The draft Plan and details regarding a public hearing for the plan will be posted on the Community Affairs Division's website no later than February 22, 2019. An announcement of the availability of the draft Plan and details regarding a public hearing for the Plan will be published in the *Texas Register* on March 8, 2019. The Department will conduct a public hearing for the draft Plan at 2 p.m. Austin local time on March 20, 2019, in Room 320 at the Thomas Jefferson Rusk Building on 208 East 10th Street, Austin, Texas 78701.

DOE regulations require a Weatherization Policy Advisory Council be designated in the Plan in order to provide guidance and comment on the Plan. The Policy Advisory Council is composed of three individuals appointed by the Department. The Policy Advisory Council meeting is scheduled to occur on March 29, 2019, after the public hearing, and after general public comment has been received.

The full text of the draft 2019 DOE WAP State Plan may be viewed at the Department's website: <http://www.tdhca.state.tx.us/board/meetings.htm>. The public may also receive a copy of the draft 2019 DOE WAP State Plan by contacting Gavin Reid at gavin.reid@tdhca.state.tx.us or by phone at (512) 936-7828.

APPLICATION FOR FEDERAL ASSISTANCE SF-424

Version 02

1. Type of Submission: <input type="checkbox"/> Preapplication <input checked="" type="checkbox"/> Application <input type="checkbox"/> Changed/Corrected Application	2. Type of Application: If Revision, select appropriate letter(s) <input type="checkbox"/> New <input checked="" type="checkbox"/> Continuation Other (specify): <input type="checkbox"/> Revision
3. Date Received:	4. Applicant Identifier:
5a. Fed Entity Identifier:	5b. Federal Award Identifier: DE-EE0007952
State Use Only:	
6. Date Received by State: 07/01/2019	7. State Application Identifier: TX-W-200
8. APPLICANT INFORMATION:	
a. Legal Name: State of Texas	
b. Employer/Taxpayer Identification Number (EIN/TIN): 742610542	c. Organizational DUNS: 806781902
d. Address:	
Street 1: P.O. BOX 13941	
Street 2:	
City: Austin	
County:	
State: TX	
Province:	
Country: U.S.A.	
Zip / Postal Code: 787113941	
e. Organizational Unit:	
Department Name: Texas Department of Housing and Community Affairs	Division Name: Community Affairs Division
f. Name and contact information of person to be contacted on matters involving this application:	
Prefix: Mr First Name: Michael	
Middle Name:	
Last Name: DeYoung	
Suffix:	
Title: Community Affairs Division Director	
Organizational Affiliation: Texas Dept. of Housing and Community Affairs	
Telephone Number: 5124752125	Fax Number: 5124753935
Email: michael.deyoung@tdhca.state.tx.us	

APPLICATION FOR FEDERAL ASSISTANCE SF-424

Version 02

9. Type of Applicant:

A State Government

10. Name of Federal Agency:

U. S. Department of Energy

11. Catalog of Federal Domestic Assistance Number:

81.042

CFDA Title:

Weatherization Assistance Program

12. Funding Opportunity Number:

DE-WAP-0002019

Title:

2019 Weatherization Assistance Program

13. Competition Identification Number:

Title:

14. Areas Affected by Project (Cities, Counties, States, etc.):

Statewide

15. Descriptive Title of Applicant's Project:

Provide Statewide Weatherization Assistance

APPLICATION FOR FEDERAL ASSISTANCE SF-424

Version 02

16. Congressional District Of:

a. Applicant: Texas Congressional District 01

b. Program/Project: TX-Statewide

Attach an additional list of Program/Project Congressional Districts if needed:

17. Proposed Project:

a. Start Date: 07/01/2018

b. End Date: 06/30/2020

18. Estimated Funding (\$):

a. Federal	6,811,752.00
b. Applicant	0.00
c. State	0.00
d. Local	0.00
e. Other	0.00
f. Program Income	0.00
g. TOTAL	6,811,752.00

19. Is Application subject to Review By State Under Executive Order 12372 Process?:

- a. This application was made available to the State under the Executive Order 12372 Process for review
- b. Program is subject to E.O. 12372 but has not been selected by the State for review.
- c. Program is not covered by E.O. 12372

20. Is the applicant Delinquent On Any Federal Debt? (If "Yes", provide explanation)

No

21. By signing this application, I certify (1) to the statements contained in the list of certifications and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to**

I AGREE

** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency

Authorized Representative:

Prefix: Mr First Name: David

Middle Name:

Last Name: Cervantes

Suffix:

Title: Acting Director

Telephone Number: 512475

Fax Number: 5124753858

Email: david.cervantes@tdhca.state.tx.us

Signature of Authorized Representative:

Date Signed:

BUDGET INFORMATION - Non-Construction Programs

1. Program/Project Identification No. EE0007952		2. Program/Project Title Weatherization Assistance Program	
3. Name and Address State of Texas P.O. BOX 13941 Austin, TX 787113941	4. Program/Project Start Date 07/01/2018		
	5. Completion Date 06/30/2020		

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Federal Catalog No. (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1. 2019 WAP Formula Funds	81.042	\$ 750,000.00		\$ 6,811,752.00		\$ 7,561,752.00
2. STATE			\$ 0.00		\$ 0.00	\$ 0.00
3.						
4.						
5. TOTAL		\$ 750,000.00	\$ 0.00	\$ 6,811,752.00	\$ 0.00	\$ 7,561,752.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	Grant Program, Function or Activity				Total (5)
	(1) GRANTEE ADMINISTR ATION	(2) SUBGRANTE E ADMINISTRA	(3) GRANTEE T&TA	(4) SUBGRANTE E T&TA	
a. Personnel	\$ 180,430.00	\$ 0.00	\$ 167,938.00	\$ 0.00	\$ 348,368.00
b. Fringe Benefits	\$ 62,790.00	\$ 0.00	\$ 58,442.00	\$ 0.00	\$ 121,232.00
c. Travel	\$ 0.00	\$ 0.00	\$ 27,720.00	\$ 0.00	\$ 27,720.00
d. Equipment	\$ 0.00	\$ 0.00	\$ 4,000.00	\$ 0.00	\$ 4,000.00
e. Supplies	\$ 3,000.00	\$ 0.00	\$ 1,875.00	\$ 0.00	\$ 4,875.00
f. Contract	\$ 0.00	\$ 503,918.00	\$ 30,000.00	\$ 550,000.00	\$ 6,882,527.00
g. Construction	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
h. Other Direct Costs	\$ 12,272.00	\$ 0.00	\$ 2,250.00	\$ 0.00	\$ 14,522.00
i. Total Direct Charges	\$ 258,492.00	\$ 503,918.00	\$ 292,225.00	\$ 550,000.00	\$ 7,403,244.00
j. Indirect Costs	\$ 82,096.00	\$ 0.00	\$ 76,412.00	\$ 0.00	\$ 158,508.00
k. Totals	\$ 340,588.00	\$ 503,918.00	\$ 368,637.00	\$ 550,000.00	\$ 7,561,752.00
7. Program Income	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00

BUDGET INFORMATION - Non-Construction Programs

1. Program/Project Identification No. EE0007952		2. Program/Project Title Weatherization Assistance Program	
3. Name and Address State of Texas P.O. BOX 13941 Austin, TX 787113941	4. Program/Project Start Date 07/01/2018		
	5. Completion Date 06/30/2020		

SECTION A - BUDGET SUMMARY						
Grant Program Function or Activity (a)	Federal Catalog No. (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.						
2.						
3.						
4.						
5. TOTAL		\$ 750,000.00	\$ 0.00	\$ 6,811,752.00	\$ 0.00	\$ 7,561,752.00

SECTION B - BUDGET CATEGORIES					
6. Object Class Categories	Grant Program, Function or Activity				Total (5)
	(1) PROGRAM OPERATIONS	(2) HEALTH AND SAFETY	(3) LIABILITY INSURANCE	(4) FINANCIAL AUDITS	
a. Personnel	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 348,368.00
b. Fringe Benefits	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 121,232.00
c. Travel	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 27,720.00
d. Equipment	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 4,000.00
e. Supplies	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 4,875.00
f. Contract	\$ 4,771,271.00	\$ 841,988.00	\$ 163,350.00	\$ 22,000.00	\$ 6,882,527.00
g. Construction	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
h. Other Direct Costs	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 14,522.00
i. Total Direct Charges	\$ 4,771,271.00	\$ 841,988.00	\$ 163,350.00	\$ 22,000.00	\$ 7,403,244.00
j. Indirect Costs	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 158,508.00
k. Totals	\$ 4,771,271.00	\$ 841,988.00	\$ 163,350.00	\$ 22,000.00	\$ 7,561,752.00
7. Program Income	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00

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IV.1 Subgrantees

Subgrantee (City)	Planned Funds/Units
Alamo Area Council of Governments (San Antonio)	\$550,329.00 75
BakerRipley (Houston)	\$829,971.00 116
Big Bend Community Action Committee (Marfa)	\$109,607.00 11
Brazos Valley Community Action Program (College Station)	\$231,859.00 28
Combined Community Action, Inc. (Giddings)	\$158,633.00 18
Community Action Committee of Victoria Texas (Victoria)	\$211,577.00 25
Community Action Corporation of South Texas (Alice)	\$742,391.00 103
Community Council of South Central Texas, Inc (Seguin)	\$146,901.00 16
Concho Valley Community Action Agency (San Angelo)	\$135,376.00 15
Dallas County Health & Human Services (Dallas)	\$530,939.00 73
Economic Opportunities Advancement Corporation (Waco)	\$200,449.00 23
El Paso Community Action Program, Project Bravo (El Paso)	\$310,844.00 38
Fort Worth, City of (Fort Worth)	\$332,690.00 41
Greater East Texas Community Action Program (Nacogdoches)	\$614,625.00 85
Hill Country Community Action Association, Inc. (San Saba)	\$191,757.00 22
Nueces County Community Action Agency (Corpus Christi)	\$123,422.00 13
Panhandle Community Services (Amarillo)	\$194,966.00 23
Rolling Plains Management Corporation (Crowell)	\$293,195.00 36
South Plains Community Action Association, Inc. (Levelland)	\$178,585.00 20
Texoma Council of Governments (Sherman)	\$358,440.00 48
Travis County Health and Human Services and Veterans Services (Austin)	\$212,875.00 25
West Texas Opportunities (Lamesa)	\$193,096.00 23
Total:	\$6,852,527.00 877

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IV.2 WAP Production Schedule

Weatherization Plans	Units
Total Units (excluding reweatherized)	877
Reweatherized Units	0

Note: Planned units by quarter or category are no longer required, no information required for persons.

Average Unit Costs, Units subject to DOE Project Rules		
VEHICLE & EQUIPMENT AVERAGE COST PER DWELLING UNIT (DOE RULES)		
A	Total Vehicles & Equipment (\$5,000 or more) Budget	\$0.00
B	Total Units Weatherized	877
C	Total Units Reweatherized	00
D	Total Dwelling Units to be Weatherized and Reweatherized (B + C)	877
E	Average Vehicles & Equipment Acquisition Cost per Unit (A divided by D)	\$0.00
AVERAGE COST PER DWELLING UNIT (DOE RULES)		
F	Total Funds for Program Operations	\$4,771,271.00
G	Total Dwelling Units to be Weatherized and Reweatherized (from line D)	877
H	Average Program Operations Costs per Unit (F divided by G)	\$5,440.45
I	Average Vehicles & Equipment Acquisition Cost per Unit (from line E)	\$0.00
J	Total Average Cost per Dwelling (H plus I)	\$5,440.45

IV.3 Energy Savings

Method used to calculate savings: <input checked="" type="checkbox"/> WAP algorithm <input type="checkbox"/> Other (describe below)			
	Units	Savings Calculator (MBtus)	Energy Savings
This Year Estimate	877	29.3	25696
Prior Year Estimate	871	29.3	25520
Prior Year Actual	281	29.3	8233
Method used to calculate savings description:			

IV.4 DOE-Funded Leveraging Activities

N/A

IV.5 Policy Advisory Council Members

Check if an existing state council or commission serves in this category and add name below

Combined Community Action Inc.	Type of organization: Non-profit (not a financial institution) Contact Name: Kelly Franke Phone: (979)540-2985 Email: KJFranke@craction.com
Greater East Texas Community Action Program	Type of organization: Non-profit (not a financial institution) Contact Name: Karen Swenson, Executive Director Phone: (936)564-2491 Email: kswenson@sbcglobal.net
Health and Human Services Commission	Type of organization: Unit of State Government Contact Name: Toni Packard Phone: 5124384290 Email: toni.packard@hhsc.state.tx.us

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IV.6 State Plan Hearings (Note: attach notes and transcripts to the SF-424)

Date Held	Newspapers that publicized the hearings and the dates the notice ran
04/25/2019	Final DOE State Plan and list of awardees to be presented at TDHCA Board of Directors meeting for approval. The meeting will also serve as a Public Hearing.
03/20/2019	Public Hearing for the DOE State Plan begins at 2:00 pm (CST) in Room 320 at the Thomas Jefferson Rusk Building on 208 East 10th Street, Austin, Texas 78701.
02/22/2019	Draft State Plan and notice of public hearing posted on the TDHCA website; public listserv announcement sent announcing availability of draft State Plan and public hearing details.
03/29/2019	Comment period for the DOE State Plan ends at 5:00 pm (CST).
02/21/2019	TDHCA Board of Directors authorizes release of draft State Plan for public comment.
03/08/2019	Announcement of public hearing for draft State Plan published in Texas Register. Public comment period for draft State Plan begins.
03/29/2019	WAPAC meeting regarding DOE State Plan.

IV.7 Miscellaneous

Recipient Business Officer

Michael De Young
Michael.deyoung@tdhca.state.tx.us
221 East 11th Street
Austin, Texas 78701
(512) 475-2125

Recipient Principal Investigator

Gavin Reid
gavin.reid@tdhca.state.tx.us
221 East 11th Street
Austin, Texas 78701
(512) 936-7828

Policy Advisory Council

The Policy Advisory Council ("PAC") is representative of organizations and agencies and provides balance, background, and sensitivity with respect to solving the problems of low-income persons, including weatherization and energy conservation problems. Historically, the PAC has met annually at the end of the public hearing period for the DOE plan.

The low-income elderly population is represented by the PAC members from Combined Community Action and the Greater East Texas Community Action Program. The low-income persons with disabilities population is represented by the PAC member from the Health and Human Services Commission.

Liability Insurance

The liability insurance separate line item includes pollution occurrence insurance in addition to the general liability insurance. Most regular liability insurance policies do not provide coverage for potential effects of many health and safety measures, such as lead disturbances and other pollution occurrence items. The Department strongly recommends the Subgrantees require their contractors to carry pollution occurrence insurance to avoid liability for any mistakes the contractors may make. Each Subgrantee should get a legal opinion regarding the best course to take for implementing the pollution occurrence insurance coverage.

2017 ACSI Action Plan (based on 2017 Survey)

Immediately after receiving the results of the 2017 ACSI, TDHCA met with the the Texas Association of Community Action Agencies (TACAA), which represents the network of WAP agencies, to analyze and discuss the results. With TACAA's input, TDHCA worked up a plan of action to address the concerns raised in the 2017 ACSI. The plan of action includes the following:

- Hosting workgroups to discuss client eligibility, weatherization best practices, reobligation/deobligation, production and to receive input on the Health and Safety portion of the State Plan
- Working more closely with TACAA to streamline communications and announcements to the network
- Adding updated information to the TDHCA website regarding WAP best practices and information received from the federal and state levels. Each time an update occurs, TDHCA sends an email to the network notifying them of the update
- Coordinating trainings for the network such as manufactured home insulation training throughout the state, HVAC and ASHRAE 62.2 training, CAZ testing

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training, and making available a proctor for QCI testing to the network

- Offering network webinars, conference calls, training for new program managers and new Executive Directors, and individual agency trainings that are personalized to the specific needs of that agency
- Providing training and technical assistance via individual phone calls and emails
- Working more closely with the Compliance Division to develop guidance for subrecipients and to identify training needs amongst both individual agencies and the network as a whole

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This worksheet should be completed as specified in Section III of the Weatherization Assistance Program Application Package.

V.1 Eligibility

V.1.1 Approach to Determining Client Eligibility

Provide a description of the definition of income used to determine eligibility

Eligibility for program assistance is determined under the Federal Poverty Income Guidelines and calculated as described in 10 TAC §6.4.

Describe what household eligibility basis will be used in the Program

During the LIHEAP application process, households will be screened for DOE Weatherization benefits and determined eligible if their income is at or below 200% of the Federal Poverty Income Guidelines.

Describe the process for ensuring qualified aliens are eligible for weatherization benefits

The Welfare Reform Act, officially referred to as the Personal Responsibility and Work Opportunity Act of 1996, H.R. 3734, placed specific restrictions on the eligibility of aliens for "Federal means-tested public benefits" for a period of five years. As defined in a Federal Register notice dated August 26, 1997 (62 FR 45256) the Department of Health and Human Services (HHS) is interpreting "Federal means-tested public benefits" to include only those benefits provided under Federal means-tested, mandatory spending programs. HHS Information Memorandum LIHEAP-IM-25 dated August 28, 1997, states that all qualified aliens, regardless of when they entered the U.S., continue to be eligible to receive assistance and services under the Low-Income Home Energy Assistance Program (LIHEAP) if they meet other program requirements.

To ensure program continuity between LIHEAP and DOE Weatherization for all Subgrantees operating both programs, the DOE Weatherization Assistance Program will follow the interpretation as adopted by HHS. The Department has provided training and will continue to provide training to those entities who have elected to use the SAVE system.

The DOE and LIHEAP WAP are in compliance with **LIHEAP-IM-99-10, issued June 15, 1999, which states that weatherization in a multifamily building is not a covered activity for status verification.**

V.1.2 Approach to Determining Building Eligibility

Procedures to determine that units weatherized have eligibility documentation

Subgrantees maintain a client file for each unit weatherized, including documented proof that the dwelling unit is an eligible dwelling unit as defined in 10 CFR §440.22. The Department determines that weatherized units have eligibility documentation during monitoring reviews.

Describe Reweatherization compliance

Texas limits reweatherization to 5% of all units weatherized. To ensure the cap is not exceeded, Subgrantees may not reweatherize a unit without prior approval from the Department.

Reweatherization will be allowed on units that have received weatherization prior to September 30, 1994. A new energy audit must be conducted on each unit reweatherized.

Units may be eligible for reweatherization under 10 TAC §6.403(h) which specifies:

Consistent with 10 CFR §440.18(e)(2), if a Dwelling Unit has been damaged by fire, flood, or act of God and repair of the damage to Weatherization materials is not paid for by insurance; or if a Dwelling Unit was partially weatherized under a federal program during the period September 30, 1975, through September

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30, 1994, the Dwelling Unit may receive further financial assistance for Reweathering.

Describe what structures are eligible for weatherization

10 TAC §6.2 and §6.403 includes the following definitions which describe structures eligible for weatherization:

Dwelling Unit--A house, including a stationary mobile home, an apartment, a group of rooms, or a single room occupied as separate living quarters.

Multifamily Dwelling Unit--A structure containing more than one Dwelling Unit.

Rental Unit--A Dwelling Unit occupied by a person who pays rent for the use of the Dwelling Unit.

Shelter--A Dwelling Unit or Units whose principal purpose is to house on a temporary basis individuals who may or may not be related to one another and who are not living in nursing homes, prisons, or similar institutional care facilities.

Single Family Dwelling Unit--A structure containing no more than one Dwelling Unit.

Describe how Rental Units/Multifamily Buildings will be addressed

In accordance with 10 CFR §440.22(b)(3), the Department requires that Subgrantees keep on file procedures that address protection of renters' rights, to ensure:

- Written permission of the building owner or his agent before commencing work.
- Cash/in-kind contribution from building owner when feasible.
- Benefits of the services accrued primarily to the low-income tenants residing in such units.
- For a reasonable period of time after completion, the household will not be subjected to rent increases (unless those increases are demonstrably related to other matters other than the weatherization work performed).
 - There are adequate procedures whereby the Grantee can receive tenant complaints and owners can appeal, should rental increases occur.
- No undue or excessive enhancement shall occur to the value of the dwelling unit.
- To secure the federal investment and to address issues of eviction from and sale of property, per 10 CFR §440.22(c), Grantees may seek landlord agreement to placement of a lien (or other contractual restrictions) upon the property being weatherized.

The Department will abide by 10 CFR §440.22, ensuring that not less than 66% of the eligible building units (50% for duplexes and four-unit buildings, and certain eligible types of large multifamily buildings) are eligible units or will become eligible dwelling units within 180 days under a Federal, State or local government program for rehabilitating the building or making similar improvements. WPN 16-5 provides guidance on the review and verification required for Department of Housing and Urban Development (HUD), Department of Agriculture (USDA), and Low Income Housing Tax Credit (LIHTC) buildings. Assessments and client file documentation for rental units and multifamily units are also detailed in the Multifamily Weatherization Best Practice posted on the Department's website at

<http://www.tdhca.state.tx.us/community-affairs/wap/docs/WAP-BP-MFWeatherization.pdf>.

Because large multifamily buildings (buildings containing 25 or more dwelling units or those with shared central heating (i.e. boilers) and/or shared cooling plants (i.e. cooling tower that use water as the coolant) regardless of the number of dwelling units) have different audit requirements, Subgrantees must obtain prior written approval through the Department to use the 50% eligibility, and DOE must approve the proposed activity. The Department will seek DOE approval.

Subgrantees must submit to the Department a request for permission to weatherize large multifamily buildings. Request for permission must include evidence of significant energy savings. A significant energy savings is defined as having an SIR of 1.0 or greater in the energy audit.

Describe the deferral Process

A Dwelling Unit shall not be weatherized when there is a potentially harmful situation that may adversely affect the occupants or the Subgrantee's weatherization crew and staff, or when a Dwelling Unit is found to have structural concerns that render the Dwelling Unit unable to benefit from weatherization. The Subgrantee must declare their intent to defer weatherization on an eligible unit on the assessment form. The assessment form must include the client's name and address, dates of the assessment, and the date on which the client was informed of the issue in writing. The written notice to the client must include a clear description of the problem, conditions under which weatherization could continue, the responsibility of all parties involved, and any rights or options the client has. A copy of

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the notice must be given to the client, and a signed copy placed in the client application file. Only after the issue has been corrected to the satisfaction of the Subgrantee shall weatherization work begin.

If structural concerns or health and safety issues identified (which would be exacerbated by any weatherization work performed) on an individual unit cannot be abated within program rules or within the allowable WAP limits, the unit exceeds the scope of this program.

Crewmembers or contractors who work on a unit that could or should be a deferral or walk-away do so at their own risk.

V.1.3 Definition of Children

Definition of children (below age): **18**

V.1.4 Approach to Tribal Organizations

Recommend tribal organization(s) be treated as local applicant?

If YES, Recommendation. If NO, Statement that assistance to low-income tribe members and other low-income persons is equal.

The 70th Texas Legislature created the Native American Restitutionary Program (Oil Overcharge Restitutionary Act, Texas Government Code, Chapter 2305) for the purposes of providing oil overcharge restitution to Texas Native Americans. In the Texas WAP, the Native-American Indian population is treated and served in the same manner as other applicants.

V.2 Selection of Areas to Be Served

The Texas WAP is available to eligible low-income households in all 254 counties of the state. Subgrantees are held responsible for all intake, eligibility, and weatherization activities. If the Subgrantee's performance record is satisfactory according to both state and federal regulations, then the Department may offer to renew the contract if the Subgrantee so desires. The Department's award committee may decline to recommend an award or place additional conditions on an award based upon its previous participation review as outlined in 10 TAC §1.302.

New or additional DOE subgrantees for counties that become unserved by the DOE WAP will be selected according to DOE regulations found in 10 CFR §440.15 and 10 TAC §1.302. If the Department determines it is necessary to permanently reassign a service area to a new subgrantee, the subgrantee will be chosen in accordance with 10 CFR §440.15. A new or additional subgrantee is defined as a CAA or other public or nonprofit entity that is not currently operating a Department-funded Weatherization Assistance Program. All counties are served by 22 existing entities.

(The Department may deobligate all or part of the funds provided under this contract as outlined in 10 TAC §6.405. A Subgrantee's failure to expend the funds provided under this State plan in a timely manner may also result in the Subgrantee's ineligibility to receive additional funding during the program year.)

Formula Distribution

The Department updates the budget allocation proportion by county and Subgrantee based on poverty income, elderly poverty, median household income (from the 2010 U.S. Census data), and climate data (from the National Climatic Data Center, Climate Normals, 2010), as outlined in 10 TAC §6.404.

The Department allocates funds to Subgrantees by applying a formula based upon the DOE allocation for program year; or if the allocation amount is not known, based on an assumption of level funding from the previous program year. Once the allocation amount is known, the formula is re-run. The allocation formulas reflect the 2010 Census data. If any carryover funds are available, they will be distributed by allocation formula and used to increase the number of units to be weatherized. The Department will adjust guidance to reflect the adjusted average expenditure limit per unit for the program year.

The fund allocations for individual service areas are determined by a 5-factor distribution formula as outlined in 10 TAC §6.404:

- (1) Number of non-elderly poverty households per county;
- (2) Number of elderly poverty households per county;
- (3) Median income variance per county;
- (4) Inverse poverty household density ratio per county; and
- (5) County Weather Factor (Heating/Cooling Degree days per county) as a portion of State County Weather.

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V.3 Priorities for Service Delivery

The Department will ensure by contract that its Subgrantees give priority to weatherizing dwellings owned or occupied by low-income persons who are particularly vulnerable such as the Elderly, Persons with Disabilities, Families with Young Children, Households with High Energy Burden, and Households with High Energy Consumption. Applicants from these groups must be placed at the top of a Subgrantee's waiting list. The Department ensures that Subgrantees give proper attention to these requirements through monitoring/evaluation of the Subgrantee.

V.4 Climatic Conditions

The climatic conditions for the State of Texas are imbedded in the algorithms of the Weatherization Assistant (WA 8.9) energy audit software toll engineered by the Oak Ridge National Laboratory for the Department of Energy. As part of the energy audit modeling, the Department requires the Subgrantee Network to select the nearest weather station to the dwelling units. The Weather files imbedded in the WA 8.9 contains 30 year data of Heating and Cooling degree days for each weather station.

As described in the report prepared by the Pacific Northwest National Laboratory & Oak Ridge National Laboratory for the Department of Energy, the state of Texas has several IECC climate zones. http://apps1.eere.energy.gov/buildings/publications/pdfs/building_america/ba_climateguide_7_1.pdf. These climate zones are used as an aid in helping Subgrantees to identify the appropriate climate designation for the counties in which they are providing WAP services. In addition to prescribing appropriate mechanical equipment (example of climate specific measures would be evaporative cooling which may be prescribed in the Hot Dry climate of Texas and not in the Mixed Humid part of Texas) the IRC prescriptive thermal envelope of measures are different. The climate zones found in Texas are as follows:

1. Hot-Humid

A hot-humid climate is defined as a region that receives more than 20 inches (50 cm) of annual precipitation and where one or both of the following occur:

- A 67°F (19.5°C) or higher wet bulb temperature for 3,000 or more hours during the warmest six consecutive months of the year; or
- A 73°F (23°C) or higher wet bulb temperature for 1,500 or more hours during the warmest six consecutive months of the year.

IRC Prescriptive Thermal Envelope Measures:

Zone 2A and 2B	Zone 3A
Ceiling R 38	R38
Windows U 0.40	U 0.35
Walls R-13	R-13 + 5
Floors R – 13	R 19
SHGC 0.25	0.25

2. Hot-Dry

A hot-dry climate is defined as a region that receives less than 20 inches (50 cm) of annual precipitation and where the monthly average outdoor temperature remains above 45°F (7°C) throughout the year.

IRC Prescriptive Thermal Envelope Measures:

Zone 3A and 3B	
Ceiling	R38
Windows	U0.35
Walls	R13 + 5

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Floors R 19
SHGC .025

3. Mixed-Humid

A mixed-humid climate is defined as a region that receives more than 20 inches (50 cm) of annual precipitation, has approximately 5,400 heating degree days (65°F basis) or fewer, and where the average monthly outdoor temperature drops below 45°F (7°C) during the winter months.

IRC Prescriptive Thermal Envelope Measures:

Zone 3A

Ceiling R38
Windows U 0.35
Walls R13 + 5
Floors R 19
SHGC .025

4. Mixed-Dry

A mixed-dry climate is defined as a region that receives less than 20 inches (50 cm) of annual precipitation, has approximately 5,400 heating degree days (50°F basis) or less, and where the average monthly outdoor temperature drops below 45°F (7°C) during the winter months.

IRC Prescriptive Thermal Envelope Measures:

Zone 4

Ceiling R49
Windows U 0.35
Walls R13 + 5
Floors R 19

In addition to the 2015 IRC adopted by the State of Texas, several individual cities have adopted amendments to the code. The adoption and amendments to the 2015 IRC impact the WA 8.9 energy audits in that cities are required to evaluate user defined measures to meet the codes adopted by each individual City.

V.5 Type of Weatherization Work to Be Done

V.5.1 Technical Guides and Materials

Technical Guides and Materials

<http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm>

Weatherization Tools and Guides

- [WAP Production Schedule/Tool \(XLS\)](#) – Revised 12.30.16
- [Weatherization Assistance \(NEAT\) – Student Guide \(PDF\)](#) - Revised 7.1.18
- [Single-Family Homes: Standard Work Specifications Field Guide \(PDF\)](#) - Revised 7.1.18
- [Manufactured Housing: Standard Work Specifications Field Guide \(PDF\)](#) - Revised 7.1.18
- [Weatherization FAQs Answered by TDHCA \(PDF\)](#) – Revised 10.20.17
- [DOE-WAP Timeline \(PDF\)](#) Revised 10.30.15
- [LIHEAP-WAP Timeline \(PDF\)](#) Revised 10.30.15
- [Material Installation Standards Manual \(2012\) \(PDF\)](#)
- [Weatherization Field Guide \(2010\)](#)
- [Mechanical Systems Field Guide \(2010\)](#)
- [Exhaust Fan Flow Meter Quick Guide \(PDF\)](#)
- [International Energy Conservation Code \(IECC\) Requirements \(energycode.pnl.gov\)](#)

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- [Weatherization Reporting Instructions](#) - Revised 7.11.18
- [LIHEAP Performance Measures Module User Guide \(PDF\)](#)
- [Checking WAP Reports](#) - Revised 7.11.18

Program Administration Forms

- [DOE Budget Amendment Form \(XLS\)](#)
- [LIHEAP Budget Amendment Form \(XLS\)](#)
- [WAP Inventory List: Tools and Equipment \(DOC fillable\)](#)
- [Quality Control Inspection \(QCI\) Form](#)

Assessment Calculators

- [AC Replacement Calculator \(XLS\)](#)
- [Attic Ventilation Calculator \(XLS\)](#)
- [Degradation Calculator \(XLS\)](#)
- [Refrigerator Replacement Calculator \(XLS\)](#)
- [Sidewall Density Calculation Sheet \(XLS\)](#)
- [ASHRAE 62.2 Calculator](#) (www.residentialenergydynamics.com)

Client and Field Assessment Forms

- [QCI Final Inspection Certification Form \(PDF\)](#)
- [Health & Safety Client Questionnaire & Inspection Checklist \(PDF\)](#)
- [LIHEAP Priority List \(PDF\)](#) – Revised July 2017
- [Blower Door and Duct Blower Data Sheet \(XLS\)](#)
- [Unified Notification Form \(PDF\)](#) – Revised July 2011
- [Mold-Like Substance Notification and Release Form \(PDF\)](#)
- [Consumer Mold Information Sheet \(PDF\)](#)
- [Whole House Assessment Sheet \(XLSX\)](#)
- [Refrigerator Replacement Form \(DOC fillable\)](#)
- [Landlord Permission to Perform Assessment \(PDF\)](#)
- [Multi-Family Project Preparation/Completion Checklist \(PDF\)](#)
- [Wall/Attic Inspection Form \(XLS\)](#)
- [Building Weatherization Report \(BWR\) \(XLS\)](#) – Revised January 2017

Further, the Department has several Weatherization Best Practices posted at: <http://www.tdhca.state.tx.us/communityaffairs/wap/wapbestpractices.htm>.

Best Practices are developed based upon repeat questions that require more clarity than simply an FAQ. These have proved highly effective in multiple ways: increased compliance, better understanding on how to assess and proceed, increased consistency across the Network, and reduction in calls for same issues. They often have multiple references and are based upon sound building science principles.

All Subrecipient agreements and vendor contracts active in PY 2015 and beyond contain language which clearly documents the SWS specifications for work quality outlined in WPN 15-4, Section 2. A signed contract shall confirm that the organization understands and agrees to these expectations. Each contract includes a substantially equivalent clause or exhibit:

Materials and Work Standards

A. Subrecipient shall weatherize eligible dwelling units using only weatherization materials which meet or exceed the standards prescribed by DOE in Appendix A of 10 CFR Part 440 and added approved materials noted in WPN 19.4.

B. All weatherization measures installed shall meet or exceed the standards prescribed by DOE in Weatherization Program Notice (WPN) 15-4 regarding Standard Work Specifications, as detailed in the Department's Standard Work Specifications.

C. All weatherization work must be performed in accordance to the DOE approved energy audit procedures, 10 CFR Part 440 Appendix A, State of Texas adopted International Residential Code (or that of jurisdictions authorized by State law to adopt later editions).

Subgrantee will include the substance of this section in all subcontracts

Field guide types approval dates

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Single-Family: 6/15/2018
Manufactured Housing: 6/15/2018
Multi-Family:

V.5.2 Energy Audit Procedures

Audit Procedures and Dates Most Recently Approved by DOE

Audit Procedure: Single-Family
Audit Name: Other (specify)
<input type="text" value="NEAT: DOE Approved June 2, 2016"/>
Approval Date: 10/5/2016

Audit Procedure: Manufactured Housing
Audit Name: Other (specify)
<input type="text" value="MHEA: DOE Approved June 2, 2016"/>
Approval Date: 10/5/2016

Audit Procedure: Multi-Family
Audit Name: Other (specify)
<input type="text" value="NEAT: 5-24 individually heated and cooled units - DOE Approved June 2, 2016"/>
Approval Date: 10/5/2016

Comments

V.5.3 Final Inspection

<p>The Department has provided Subgrantees with sufficient T&TA funding to obtain and/or maintain required QCI and MF-QCI certifications by an IREC certified training provider. The Department tracks Subgrantee compliance with unit inspection requirements of WPN 15-4.</p> <p>The Department has five certified QCI staff, who maintain their certifications. The Department annually requires all Subgrantees to report the following for determining the number of units that the Department will inspect for compliance at each agency:</p> <ul style="list-style-type: none">• Option 1 (at minimum 5% compliance final inspection required)= With multiple QCI staff, this Subrecipient will NOT allow the QCI staff member who conducts the Final Inspection on any/every DOE-funded/reported unit to perform any other aspect(s) associated with that same unit. Example: Initial Assessment; NEAT Audit; Work Order; etc• Option 2 (10% compliance final inspection required)= With limited QCI staff, this Subgrantee will have a QCI staff member conduct the Final Inspection on any/every DOE-funded/reported unit AND will also perform other aspect(s) associated with that same unit. Example: Initial Assessment; NEAT Audit; Work Order; etc• Option 3 (5% compliance final inspection required) = This Subgrantee typically has an independent third-party QCI contractor.• NOTE: As scheduling permits, compliance will conduct 10% final inspections on completed units for Options 1 and 3, as well. <p>Ten Subgrantees have multiple QCI Staff with separation of duties, eight have limited QCI, and four are using third-party QCIs. All units are inspected by a certified QCI. In addition to final inspections, a completed QCI Final Inspection Certification Form is required. QCI Final Inspection Certification Form (PDF).</p> <p>Subgrantees are required to follow work standards as per the SWS guidelines. This requirement is within Subgrantee contracts, and the SWS guide is posted on the Department Program Guidance Webpage.</p> <p>All units must meet DOE requirements and pass a QCI inspection. Any unit that fails to be brought into compliance results in disallowed costs and a finding for the reason(s) of the disallowed cost is issued in the monitoring report. The initial T&TA response to any findings is email guidance providing resources to resolve the findings by the training team. This is then followed by individualized T&TA, or a referral to the appropriate Tier 1 training provider, as deemed</p>

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appropriate.

V.6 Weatherization Analysis of Effectiveness

Pursuant to 10 TAC, Chapter 1, Subchapter C, §1.302, a review of a Subgrantee's compliance history in Department programs must be approved by the Department's Executive Award and Review Advisory Committee (EARAC) and provided to the Department's Board of Directors in order that the Board may consider the compliance history and make and document its award decisions with full knowledge of these matters. Prior to the award of DOE funds to any Subgrantee, EARAC reviews:

1. Summary information regarding findings identified during the last three years; and
2. If the Subgrantee is subject to the requirement of an annual single audit:
 - A. A report of any required single audit or single audit certification form that is currently past due;
 - B. If such single audit has been submitted to the Federal Audit Clearinghouse; and
 - C. If the most recent single audit report contained findings.

The Subrecipient Monitoring section, within the Compliance Division, submits information regarding its monitoring activity to EARAC. If EARAC finds that a Subgrantee has outstanding monitoring issues, their WAP award may be subject to conditions intended to avoid future noncompliance, and limit disallowed costs.

Issues identified during this review point to areas in a Subgrantee that require attention, both from a monitoring standpoint and a T&TA standpoint. The reviews not only hold the Subgrantee accountable, they also give the monitoring and T&TA sections guidance in planning future activities.

T&TA staff is copied on all monitoring reports and/or a staff meeting is held for monitors to debrief T&TA staff after each visit. In those meetings, monitoring staff relay issues found related to individual Subgrantee, as well as, overall trends identified. Following the monitoring report, T&TA staff provide initial email to Subgrantee to provide resources for identified issues. T&TA staff applies debrief information when determining the needs for agency-wide specific T&TA and to plan the curriculum for regional trainings.

Further, Subgrantee performance is reviewed periodically and at the end of the program year. The Department tracks subgrantee performance over time by reviewing their monthly production and expenditure reports. Subgrantees are required to submit a Production Report on the 15th of each month. If staff determines that a benchmark is missed or a subgrantee is falling behind on expenditure and/or production, a letter is issued from the Department and the subgrantee is required to submit a written Mitigation Action Plan.

Additionally, based upon monthly submitted performance and expenditures, individualized TA is provided to ensure full expenditure and an adequate rate of production. T&TA staff analyzes the reports submitted by subgrantees and provides T&TA when necessary. Such T&TA may include: a course on production oriented management, proper reporting, procurement, and/or other relevant topics.

Analysis of reports includes the following:

- Number of homes completed;
- Number of applications pending;
- Number of homes in progress;
- Contract amount;
- Total funds expended;
- Balance of funds; and
- Special comments

The Department enforces the Deobligation/Reobligation of Awarded Funds rule as laid out in TAC §6.405. While the Department's performance review process has not achieved full expenditure of funds each Program Year (e.g., PY 2017 due to Hurricane Harvey), the Department continuously assesses its processes and researches potential modifications in order to improve. For example, the Department has a Program Specialist who is tasked with the

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responsibility of overseeing the performance and expenditure report and production schedule process and to provide technical assistance to individual subrecipients, conduct quarterly network calls for updates, and to address issues identified by Compliance.

V.7 Health and Safety

Attached to SF-424

V.8 Program Management

V.8.1 Overview and Organization

The Department is the state's lead agency responsible for affordable housing and community assistance programs. The Department annually administers funds derived from mortgage revenue bond financing and refinancing, federal grants, and federal tax credits.

In 1991, the 72nd Texas Legislature created the Department. The Department's enabling legislation combined programs from the Texas Housing Agency, the Community Development Block Grant Program from the Texas Department of Commerce, and the Texas Department of Community Affairs.

On September 1, 1992, two programs were transferred to the Department from the Texas Department of Human Services: the Low Income Home Energy Assistance Program and the Emergency Nutrition and Temporary Emergency Relief Program. Effective September 1, 1995, in accordance with House Bill 785, regulation of manufactured housing was transferred to the Department. In accordance with House Bill 7, effective September 1, 2002, the Community Development Block Grant and Local Government Services Programs were transferred to the newly created Office of Rural Community Affairs. Effective September 1, 2002, in accordance with Senate Bill 322, the Manufactured Housing Division became an independent entity administratively attached to TDHCA. As a state agency, the Department is under the authority of the Governor of the State of Texas.

The Department's services are offered through three program categories: Single Family Programs, Multifamily Finance Production, and Community Affairs, which administers the WAP.

The Department subcontracts with a network of Subgrantees that provide the WAP services. The network is comprised of community action agencies (CAAs), regional Councils of Government (COGs), and organizations in the other public or private nonprofit entity category (PPNPs). All network Subgrantees are provided a draft copy of the yearly weatherization state plan and a notice of the state public hearing. The Public and all Subgrantees are invited and encouraged to participate in the public comment process.

Historically, the regular weatherization program year ran from April through March. Starting PY 2015, the weatherization program year has run from July through June.

The Department will continue to administer the program through Subgrantees in accordance with 10 CFR §440.15 provisions and State regulations. If existing Subgrantees are successfully administering the Program, the Department will offer to renew the contract if the Subgrantee so desires and if grant funds are available. When the Department determines that an organization is not administering the program satisfactorily, it may take the following action:

- Correction of the problem(s) with training or technical assistance;
- Re-assignment of the service area (or service area portion) to another Department existing Subgrantee; or,
- Solicitation or selection of a new or additional Subgrantee in accordance with 10 CFR §440.15 provisions.

A new or additional Subgrantee is defined as a CAA or other public or nonprofit entity that is not currently operating a DOE Weatherization Assistance Program.

Consolidation/downsizing: Any downsizing will occur through normal attrition, through a Subgrantee's determination that it can no longer administer the program efficiently/effectively, or through the Department's determination that a Subgrantee can no longer administer the program efficiently/effectively.

Reassignment of service areas for just cause: In the event that a service area can no longer be served by a Subgrantee, the Department reserves the right to reassign service areas. If it appears necessary to permanently reassign the service area, a new Subgrantee may be chosen in an open, competitive solicitation process in accordance with 10 CFR §440.15, or the reassignment may become permanent.

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V.8.2 Administrative Expenditure Limits

The Department will use 5% of its grant funds for state administration. An additional 5% will be distributed for local WAP field operations under contract. Contract funds are intended for local administration, liability insurance coverage, local fiscal audit, materials, labor, program support and health and safety measures. To help ensure that Subgrantees comply with the full and proper use of all the contract funds, written definitions are to be provided to Subgrantees on budget categories as deemed necessary. The Department has elected to provide the maximum allowable funds for Subgrantee administration to Subgrantees receiving less than \$350,000, so it has not included procedures for deciding which Subgrantees will receive additional funds. This decision is based on the following factors:

- Subgrantees often have to rely on other programs for WAP outreach and other administrative support;
- Subgrantees have had to adjust budgeting to keep pace with cost-of-living increases -- staff salaries, fringe benefits, rent, postage, travel, etc.;
- The State of Texas is 877 miles from Northern to Southern tips, 834 miles from Eastern to Western tips, and is comprised of a total of 266,807 square miles. The extra geography that Subgrantees have to cover to serve all the area's clients equitably requires additional staff, staff time, postage and phone costs, and vehicle wear and maintenance. (Source of Mileage Data: Texas Department of Transportation);
- Salaries, space, utilities, telephone, and similar costs associated with program support personnel should be charged to program support; and
- The increasing cost of maintaining appropriate qualified staff is challenging.

For Subgrantees receiving over \$350,000, the administrative allowance will be 5% of each subgrant. For Subgrantees receiving less than \$350,000, the administrative allowance will be 10% of each subgrant.

V.8.3 Monitoring Activities

The Department will monitor the Weatherization Assistance Program ("WAP") with the Monitoring staff included in the budget. Subgrantee is defined as an organization with whom the Department contracts and provides WAP funds.

Names and credentials of Department staff dedicated to monitoring DOE activities follow. Monitoring staff are paid out of Grantee Administration and the Grantee T&TA (see the Budget Explanation, Personnel line item, for detailed information on the percentages allocated from each budget category.

- Robert Moore - over 8 years of weatherization experience as a Texas WAP Subgrantee, QCI certified, BPI & Lead certified, OSHA30
- Chad Turner - over 18 years of weatherization experience as a Texas WAP Subgrantee, QCI certified, BPI & Lead certified, OSHA30
- Kevin Glienke – over 8 years of weatherization monitoring experience; BPI Certified; has attended DOE sponsored conferences; QCI certified.

(All staff listed above conduct fiscal/administrative and inspection monitoring activities)

Compliance Subrecipient Monitoring is staffed with nine additional monitors not dedicated to weatherization. All of these qualified monitors may be tasked with fiscal and programmatic activities though funds provided by this State plan.

The Department will monitor each of the DOE Subgrantees during the contract period which will be July 1, 2019 through June 30, 2020. Many of the DOE Subgrantees also receive funds through the Department of Health and Human Services Community Service Block Grant and Low Income Home Energy Assistance Program. Whenever possible, all three programs will be monitored during one visit to the Subgrantee.

(See attached PY2019 Tentative Monitoring Schedule)

The Department understands DOE's expectation and will conduct at least one on-site visit annually to each Subrecipient for technical and fiscal/administrative monitoring.

Financial and Administrative monitoring will include, at minimum, a review of the Subgrantee's General Ledgers and policies and procedures (including procurement) as well as support documentation for reported expenditures. These documents will be reviewed to ensure compliance with DOE, Department and other applicable rules and regulations. The Department will monitor for eligibility through sampled client file reviews. Through sampled unit inspections, Department staff will monitor for installed measures that are allowable and meet or exceed DOE requirements. The Department will review whether charged measures were installed properly and determine compliance with health and safety procedures, client eligibility, energy audit procedures, client education

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procedures and compliance with the SWS.

The Department will inspect 5% of all completed weatherized units. In order to achieve the 5% inspection rate, and comply with the requirements of WPN 15-4, the Department is requesting that Subgrantees with a QCI on staff do not have that staff member involved with the weatherized unit prior to final inspection. The Department defines prior involvement as performing the audit, creating the work order or performing any weatherization work on the weatherized unit. The Department has created a QCI Final Inspection Form, for Subgrantees which will allow TDHCA to determine if a QCI employed by the Subgrantee had prior involvement with that unit. The Department will review each sampled QCI final inspection document to ensure compliance with the requirement to inspect 5% and will increase the required inspections if necessary.

The Department recognizes that there may be a need to perform additional unit inspections towards the end of the contract period to comply with the requirements of WPN 15-4 if there were not enough units available to sample during the full monitoring review.

(More frequent monitoring visits (Fiscal/Administrative and/or Technical) may be conducted at Subgrantees with significant identified risk)

Monitors will complete evaluation instruments to determine a Subgrantee's compliance. The instruments cover Financial and Administrative requirements, health and safety procedures, client eligibility, energy audit procedures, client education procedures, and compliance with the SWS. Compliance Monitors also review the hard copy of the NEAT or MHEA audit which is required to be in the client file to assure that the scope of the work was directed by the audit.

Monitors scan documents as support if there will be findings noted.

The following list provides additional monitoring details that may occur during the monitoring review.

- Monitors may request copies of fiscal records/support documentation and perform a desk review to gauge the fiscal condition of the Subgrantee prior to onsite monitoring.
- In addition, as needed, monitors may perform a desk review of records requested but not provided during the onsite review and records requested to clarify issues identified during the onsite monitoring visit. The Department recognizes the requirement to issue the monitoring letter within 30 days of the review. The Department does not consider the review complete until receipt of information needed to ascertain compliance. Monitoring letters will be issued within 30 days of receipt of all necessary information.
- Monitors may test that weatherization activities, including but not limited to: energy audits, energy conservation measures, incidental repair measures and health and safety measures are only performed by properly trained Retrofit Installer/Technicians, Crew Leaders, and Energy Auditors that have received comprehensive training (not necessarily certification) that is aligned with DOE's Job Task Analysis for the position in which the weatherization worker is employed.

The Department will issue monitoring reports within 30 days of completion of the review. Subgrantees are provided a 30 day corrective action period to respond and provide evidence of correction. On a case by case basis, the Department may grant an extension to respond to the report if there is good cause and the request is made during the corrective action period. The Department will review each response and determine if the Subgrantee has resolved the compliance issue. If the Department determines that the issue is not resolved, the Subgrantee will be notified and required to submit an additional response(s) until the compliance issue is resolved. In certain circumstances, the Department may "close" a compliance issue when there remains no additional actions that can be taken to resolve the issue. At the conclusion of this process, any unresolved compliance issues will be reported to DOE (instances of suspected fraud or serious program abuse will be reported immediately to DOE and the Texas State Auditors Office).

The Department will review the annual financial audits of each Subgrantee agency. The Department requires each Subgrantee to complete an Audit Certification form within 60 days of the end of the entity's fiscal year. This is used to determine if a Single Audit is required. All single audits and management letters must be uploaded to the Federal Clearinghouse within nine months of the Subgrantee's fiscal year end. Upon receipt of the Single Audit, a review is completed to determine if the packet submitted is complete and all opinions are provided. If the audit contains findings, they are reviewed and discussed by the Director of Internal Audit, the Chief of Compliance and staff to determine the appropriate steps to ensure the entity corrects the issues identified in the audit report or management letter. The Department issues correspondence to the entity, identifying that corrective action measures must be performed and requiring that support documentation be provided. The entity is provided a time frame to complete the corrective action and to respond to the correspondence. The entity must correct all identified issues within six months of the Single Audit being submitted to the Federal Clearinghouse.

The Department's Compliance Monitor(s) keep abreast of the required timeframe for the entity to complete the corrective action and to provide the response. When the response is received, the Department reviews the documentation to determine if the corrective action requirements have been met. If the issues have not been corrected, the Compliance Monitor and/or Compliance Subrecipient Monitoring Director will notify the Chief of Compliance. The Chief of Compliance may determine if the matter should be referred to the Department's Enforcement Committee in accordance with Department Rules and standard operating procedures. During the next monitoring visit to the entity, the Department will determine if the selection of expenditures or materials reviewed reflect compliance with the respective requirement.

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1. Program Oriented Management Training – Prior to continuing any weatherization-related program activity, all Subgrantee staff that perform any action related to the WAP will be required to complete Program Oriented Management Training ("POM"). POM will include:

- A. Review of WAP statutes and rules
- B. Review of state program requirements
- C. Review of financial and administrative best practices
- D. Review of program best practices

2. Intensive Training and Technical Assistance – Once POM is completed, Subgrantee staff will receive training on critical program components. At each stage of Intensive T&TA, TDHCA team members will provide one-on-one guidance to Subgrantee staff to ensure the correct completion of each component. At the end of Intensive T&TA, Subgrantee staff will have completed another step toward completion a weatherized unit.

- A. Client file documentation
- B. Payment and reimbursement documentation
- C. Accompanied unit assessment
- D. Accompanied Audit completion
- E. Accompanied Interim construction walk-through
- F. Accompanied Final inspection

3. Staged Program Operation – When Subgrantee staff has completed Intensive T&TA, the Subgrantee will complete a pre-determined number of client intakes. Once the client intakes are completed, TDHCA team members will review the ensuing steps of the weatherization process in the following steps:

- A. Review of the client file documentation
- B. Review of unit assessments
- C. Review of audit input and completion to work order
- D. Accompanied final inspection

Once the Subgrantee has completed the determined number of units and the units have passed TDHCA monitoring, the Subgrantee will resume normal operations for the remainder of the program year. The Subgrantee will be reviewed in April of each year for determination of continued funding.

If it is determined that the Subgrantee is not able to administer the weatherization program, the Department will follow the requirements in 10 TAC §2.202 Contract Closeout.

V.8.4 Training and Technical Assistance Approach and Activities

The Department provides Subgrantees with sufficient T&TA funding to obtain and/or maintain required certifications; such as: QCI, MF-QCI, Building Analyst/Energy Auditor, Lead Safe Renovator, Lead Safe Worker, and OSHA 10 or 30. All training provided includes requirements for compliance with QWP specifications. The Department will conduct trainings based upon the following:

- Grant Requirements or as directed by DOE monitor or audit reports.
- Subgrantee Request. The Department has an online request system, with a T&TA menu list, or section for the Subgrantee to make a specific request or ask specific questions. The Department will contact the requestor and customize training to meet the need. <https://tdhca.wufoo.com/forms/request-for-ca-program-assistance>
 - In addition, submitted questions or requests are reviewed for creating FAQs or to identify topics for regional trainings, workshops, or individualized training.

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- Monitor Reports. The Department's compliance team shares monitoring issues with the training team. The training team will initially provide resources and guides to address any findings, and follow up with T&TA as required.
 - Trends across the Network will be addressed in regional trainings or workshops.
- Management Request. Management may make a specific request and dictate the type of training needed.

Tier 1 Training:

Tier 1 training will be provided by accredited IREC training providers. In compliance with Section 4 of WPN 15-4, the Department will track that comprehensive training for each job category (i.e., Retrofit Installer/Technician, Crew Leader, and Energy Auditor) is obtained within one year of being hired and that re-training occurs thereafter every three years. Whereas it is the responsibility of the Department to provide funds for training through IREC training providers, it is the responsibility of the Subgrantee to ensure training is completed by staff and/or subcontractors. Texas uses outside subcontractors to perform the weatherization measures. Historically, it has been difficult in Texas to find subcontractors to perform weatherization work. The Department will work to develop a plan to assure Subgrantees ensure their contractors obtain and maintain the required Tier 1 training certifications. The Department will monitor Subgrantee progress and track credentials. Weatherization staff may not function unsupervised until training and certification requirements are met.

The Department has five certified QCI staff who monitor and/or train weatherization Subgrantees on quality weatherization work, proper diagnostics, documentation, and compliance. The Department has two certified BPI Proctors who administer exams for BPI written exams. The Department continues to provide T&TA to assist Subgrantees in preparing for and obtaining required certifications. The Department created an online Web-page dedicated to Quality Work Plan requirements that contains guidance and resources. <http://www.tdhca.state.tx.us/community-affairs/wap/quality-work-plan.htm>

NOTE: New Mexico Energy Smart Academy partners with local Subgrantees to provide IREC certified courses in Texas including MFQCI and Energy Auditor.

Tier 2 Training:

Tier 2 training will be provided by Department training and technical assistance staff or its designee. With experience as Program Officers and Trainers, the staff has experience in Subgrantee monitoring, unit assessments, audits, materials installation, inspections, and the training and technical assistance that support each. The staff consists of:

- Laura Saintey – 10+ years' experience in the construction industry and 8+ years' experience in the WAP. QCI certified, Lead Safe Renovator, OSHA 10, BPI Building Analyst Professional, BPI Certified Proctor, and attended DOE sponsored conferences.
- Jason Gagne- 3+ year experience in the WAP, QCI certified BPI Building Analyst, Lead certified, OSHA 10, and attended DOE sponsored conferences.
- Kevin Glienke- 8+ years in weatherization monitoring and training, BPI certified, QCI certified, MF-QCI, and attended DOE sponsored conferences.
- Robert Moore- 8+ years of weatherization experience including as a Texas WAP Subgrantee, QCI certified, BPI & Lead certified, OSHA 30 and attended DOE sponsored conferences.
- Chad Turner- 18+ years of weatherization experience including as a Texas WAP Subgrantee, QCI certified, BPI & Lead certified, OSHA 30 and attended DOE sponsored conferences.

T&TA staff provide new manager training, monitoring report based training, and technical assistance for multiple WAP Subgrantees. New manager training is required within three months of being hired. Subgrantees may request new manager training through the online training request system (i.e., Wufoo). Another form of mandatory training are trainings that arise out of necessity due to monitoring issues. Subgrantees are monitored as described in V.8.3 Monitoring Activities of this Plan and results of those monitoring visits are shared with T&TA staff. Any issues as a result of a monitoring visit are analyzed by T&TA staff to determine how best to train the Subgrantee to resolve the issue(s).

Ramifications for non-compliance with Tier 1 training and/or Tier 2 training can be awards that contain condition(s) which the non-compliant Subgrantee must comply with in order to receive funding. Conditions can be minor (e.g., submittal of a credential to the Department) or severe (e.g., closely supervised final QCIs by Department training staff to determine quality of weatherization measures installed).

Training to execute the Health and Safety Plan will occur via quarterly conference calls via a webinar platform which typically include health and safety concerns. Additionally, training and technical assistance occur throughout the year at random intervals on a case by case basis originating by way of monitoring trends and reports and requests from Subgrantees for assistance. Finally, the Department also hosts a webinar at the beginning of each Program Year to assist Subgrantees in the implementation of the new DOE State Plan and Health and Safety Plan.

QCI testing was coordinated and hosted by the Department through one of its two BPI Proctors.

Training Schedule 2019:

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Quarterly Phone Calls. Agendas will be evaluated for topics based upon need and identified areas of concern. Topics may include:

- Program Ramp-Up
- Production Schedules
- Upcoming training dates
- Relevant topics for the quarter
- Topics identified by compliance
- FAQs needing clarification
- Closeout and Reporting

Projected Dates for PY 2019 WAP Network Calls:

- August 2019
- November 2019
- February 2020
- May 2020

Online trainings opportunities are passed onto the Network via the state association e-newsletter, along with other notifications regarding outside conferences or workshops.

The Department has posted a link to the Energy Audit tutorial on the Department's website. Training staff will provide technical assistance on a one on one basis if necessary.

The Department will address two key topics for 2019. The Department has chosen to focus on the following:

- Quality work through initial assessments
- Continued emphasis on final QCIs

Regional Training locations (as needed):

- Austin
- Dallas
- Houston
- San Antonio
- El Paso

Evaluation of Training Activities

In order to evaluate compliance with the quality work specifications and the efficacy of its training activities, the training staff or its designee will review its training activities semiannually and compare those to the Subgrantee monitoring reports. Additionally, Subgrantees will be given the opportunity to provide feedback through online [Training Evaluation](#). These evaluations are reviewed to make improvements to future provided T&TA. Training staff or its designee will conduct periodic surveys to solicit input from Subgrantees as to their training needs.

More specific training will be designed for each Agency based on the information prompting the request. TA will be documented by using the online training and technical assistance database. Additionally, for onsite T&TA visits, a report will be produced indicating Subgrantee staff present, materials and documents presented to the Subgrantee, and expected outcomes.

Should a Subgrantee hire a new weatherization coordinator, the Subgrantee will be required to notify the Department in writing within 30 days of the date of hiring the coordinator and request training. The Department will contact Subgrantees within 30 days of the date of notification to arrange for training. The Department hosts "New Manager/Executive Director" courses for all new staff who oversee WAP staff/crews upon request.

Program Evaluation

The Department utilizes an online contract system to collect expenditure and performance data from Subgrantees. Each Subgrantee is assigned to a trainer that monitors Subgrantee performance and expenditure on a quarterly basis utilizing dashboards. The Department developed a production tool to monitor expenditure and completed units on a monthly basis. Each month Subgrantees submit a monthly production report that is reviewed by a trainer. Trainer contacts Subgrantees regarding expenditure and performance each month.

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Another method of evaluation is provided by the compliance division. The Department's compliance staff provides the Subgrantees assigned trainer with a copy of the agency's most recent monitor report, which is used to assess performance/expenditures and individualized training needs.

Client Education

The Department requires WAP Subgrantees to provide client education to each WAP client. Subgrantees are required to provide (at a minimum) educational materials in verbal and written format. Client education may include temperature strips that indicate the temperature in the room and energy savings materials, instructions for equipment operation and/or maintenance.

Percent of overall trainings are Tier 1 trainings:

Percent of overall trainings are Tier 2 trainings:

Breakdown of funds spent

Percent of budget spent on auditor/QCI trainings:

Percent of budget spent on crew/installer trainings:

Percent of budget spent on management/financial trainings:

V.9 Energy Crisis and Disaster Plan

n/a



WEATHERIZATION HEALTH AND SAFETY PLAN

TEXAS WEATHERIZATION CONTACT INFORMATION

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Weatherization Grantee Health and Safety Plan

1.0 – GENERAL INFORMATION

Grantees are encouraged to enter additional information here that does not fit neatly in one of the other sections of this document.

Allowable Department of Energy (DOE) related health and safety (H&S) actions and expenditures are those necessary to maintain the physical well-being of both the occupants and/or weatherization workers where:

- Costs are reasonable as determined by The Department of Energy (DOE) in accordance with this approved Master Plan;
- The actions must be taken to effectively perform weatherization; or
- The actions are necessary as a result of weatherization work.

This plan will provide guidance to the Texas Weatherization Network. Health and Safety issues will be identified by Program Assessors during the initial assessment. Weatherization Crews (either subcontracted or in house) will perform the task(s) identified in the initial assessment and listed in the work order(s).

Weatherization agencies and their representatives, including subcontractors, are required to take all reasonable precautions against performing work on homes that will subject the occupants or themselves to health and/or safety risks. In cases where an occupant’s health is fragile, or an occupant has been identified to have a health condition, including allergies, and/or the crew work activities would themselves constitute a health and/or safety hazard, the occupant(s) at risk shall be required to leave during the performance of the work activities. In cases where an occupant is identified as having an allergy to a specific weatherization material, that material will not be installed. If comparable alternative materials are available and the occupant has no known allergies to the alternative materials and they meet DOE regulations, crews/contractors may substitute the alternative material(s). If no safe alternative material meeting DOE standards is available, the measure shall not be installed. This must be well documented in the client file.

This health and safety plan is taken from a DOE approved template. The text at the top of the template is boilerplate language and may not always apply to activities described in TDHCA’s DOE plan. Capitalized terms in the Plan have definitions in Chapters 1, 2, or 6 of Part 1, Title 10 of the Texas Administrative Code.

2.0 – BUDGETING

Grantees are encouraged to budget Health & Safety (H&S) costs as a separate category and, thereby, exclude such costs from the average cost per unit cost (ACPU) limitation. This separate category also allows these costs to be isolated from energy efficiency costs in program evaluations. Grantees are reminded that, if H&S costs are budgeted and reported under the program operations category rather than the H&S category, the related H&S costs must be included in the calculation of the ACPU and cost-justified through the approved energy audit.

Select which option is used below.

Separate Health and Safety Budget

Contained in Program Operations

3.0 – HEALTH AND SAFETY EXPENDITURE LIMITS

Pursuant to [10 CFR 440.16\(h\)](#), Grantees must set H&S expenditure limits for their Program, providing justification by explaining the basis for setting these limits and providing related historical experience.

Low percentages should include a statement of what other funding is being used to support H&S costs, while larger percentages will require greater justification and relevant historical support. It is possible that these limits may vary depending upon conditions found in different geographical areas. These limits must be expressed as a percentage of the ACPU. For example, if the ACPU is \$5,000, then an average expenditure of \$750 per dwelling would equal 15 percent expenditures for H&S.

15 percent is not a limit on H&S expenditures but exceeding this amount will require ample justification. These funds are to be expended by the Program in direct weatherization activities. While required as a percentage of the ACPU, if budgeted separately, the H&S costs are not calculated into the per-house limitation. DOE strongly encourages using the table below in developing justification for the requested H&S budget amount. Each H&S measure the Grantee anticipates addressing with H&S funds should be listed along with an associated cost for each measure, and by using historical data the estimated frequency that each measure is installed over the total production for the year.

It is also recommend reviewing recent budget requests, versus expenditures to see if previous budget estimates have been accurate. The resulting "Total Average H&S Cost per Unit" multiplied by the Grantee's production estimate in the Annual File should correlate to the H&S budget amount listed in the Grantee's state plan.

Should a Grantee request to have more than 15 percent of Program Operations used for health and safety purposes, DOE will conduct a secondary level of review. DOE strongly encourages use of this H&S template and matrix to help expedite this process

DOE PY2019 Health and Safety Measures Matrix*

**Below measures are actual data from Subgrantees; however, TDHCA believes cost and frequency to be too high and therefore has adjusted the Average Health & Safety Cost per Unit (highlighted in green below) to be more in line with what the Department believes based on historical data.*

<u>Measure</u>	<u>Cost (\$)</u>	<u>Frequency %</u>	<u>Auto Calc</u>
Bath Ventilation	\$ 130.00	20%	\$ 26.00
Kitchen Ventilation	\$ 395.00	20%	\$ 79.00
Lead Safe Work, Renovation, Repair, Painting	\$ 250.00	2%	\$ 5.00
Energy Recovery Ventilator	\$ 900.00	40%	\$ 360.00
Plumbing Repair	\$ 1,402.00	30%	\$ 420.60
Furnace Replacement	\$ 1,600.00	20%	\$ 320.00
CAZ Construction	\$ 386.00	2%	\$ 7.72
CO Detector	\$ 43.00	59%	\$ 25.37
Smoke Alarms	\$ 42.88	52%	\$ 22.30
Gas Pipe/Gas Line	\$ 1,750.00	4%	\$ 70.00
HVAC Repair Trip Charge	\$ 95.00	4%	\$ 3.80
Lead Test	\$ 55.00	86%	\$ 47.30
Remove/Cap/Seal Bath Wall Heater	\$ 73.25	29%	\$ 21.24
Smart Exhaust Switch Air Cyclor SE1	\$ 90.00	86%	\$ 77.40
Vent Exhaust Fan to Exterior	\$ 150.00	89%	\$ 133.50
Vent new furnace to code (all materials)	\$ 182.50	11%	\$ 20.08
Vent new space heater to code (all materials)	\$ 200.83	7%	\$ 14.06
Vent water heater to Code (all materials)	\$ 200.83	43%	\$ 86.36
Water heater building	\$ 673.75	4%	\$ 26.95
Wire to Light Switch with Existing Exhaust Fan	\$ 56.25	25%	\$ 14.06
Wire to Light Switch with No Existing Exhaust Fan	\$ 110.00	68%	\$ 74.80
Replace Shut-Off Valve	\$ 180.00	4%	\$ 7.20
Replace Drain Pan	\$ 150.00	4%	\$ 6.00
Run Temp and Pressure Line	\$ 150.00	4%	\$ 6.00
ASHRAE Exhaust Fan	\$ 394.00	88%	\$ 346.72
Vent Existing Exhaust Fan	\$ 223.00	45%	\$ 100.35
Type B Vent Pipe	\$ 265.00	21%	\$ 55.65
Hi Low Venting	\$ 48.00	42%	\$ 20.16
HVAC System Replacement	\$ 4,284.00	21%	\$ 899.64
Natural Gas Appliance Drip Leg	\$ 59.00	15%	\$ 8.85
Water heater replacement	\$ 2,225.00	3%	\$ 66.75
Remove Unvented Space Heater Cap Line	\$ 150.00	3%	\$ 4.50
Temperature Pressure Valve	\$ 60.00	9%	\$ 5.40
Total Average H&S Cost per Unit:			960
Enter Estimated Production (Annual File IV.2 WAP Production Schedule)			877
Enter Estimate Program Operations Budget			4,771,271
H&S Budget (Total Average H&S Cost Per Unit*Estimated Production)			841,920
Requested H&S Percentage Per Unit (H&S Budget/Program Operations)			17.65

4.0 – INCIDENTAL REPAIR MEASURES

If Grantees choose to identify any H&S measures as incidental repair measures (IRMs), they must be implemented as such under the Grantee's weatherization program in all cases – meaning, they can never be applied to the H&S budget category. In order to be considered IRMs, the measure must fit the following definition and be cost justified along with the associated efficiency measure;

Incidental Repairs means those repairs necessary for the effective performance or preservation of weatherization materials. Such repairs include, but are not limited to, framing or repairing windows and doors which could not otherwise be caulked or weather-stripped and providing protective materials, such as paint, used to seal materials installed under this program. ([10 CFR 440 "Definitions"](#))

5.0 – DEFERRAL/REFERRAL POLICY

Deferral of services may be necessary if H&S issues cannot be adequately addressed according to WPN 17-06 guidance. The decision to defer work in a dwelling is difficult but necessary in some cases. This does not mean that assistance will never be available, but that work must be postponed until the problems can be resolved and/or alternative sources of help are found. If, in the judgment of the auditor, any conditions exist which may endanger the health and/or safety of the workers or occupants, the unit should be deferred until the conditions are corrected. Deferral may also be necessary where occupants are uncooperative, abusive, or threatening. Grantees must be specific in their approach and provide the process for clients to be notified in writing of the deferral and what conditions must be met for weatherization to continue. Grantees must also provide a process for the client to appeal the deferral decision to a higher level in the organization.

Grantee has developed a comprehensive written deferral/referral policy that covers both H&S, and other deferral reasons?

Yes No

Where can this deferral/referral policy be accessed?

[10 TAC RULE §6.415](#)

6.0 – HAZARD IDENTIFICATION AND NOTIFICATION FORM(S)

Documentation forms must be developed that include at a minimum: the client's name and address, dates of the audit/assessment and when the client was informed of a potential H&S issue, a clear description of the problem, a statement indicating if, or when weatherization could continue, and the client(s) signature(s) indicating that they understand and have been informed of their rights and options.

Documentation Form(s) have been developed and comply with guidance?

Yes No

7.0 – HEALTH AND SAFETY CATEGORIES

For each of the following H&S categories identified by DOE:

- Explain whether you concur with existing guidance from WPN 17-06 and how that guidance will be implemented in your Program, if you are proposing an alternative action/allowability, or if the identified category will not be addressed and will always result in deferral. Alternatives must be comprehensively explained and meet the intent of DOE guidance.
- Where an Action/Allowability or Testing is “required” or “not allowed” through WPN 17-06, Grantees must concur, or choose to defer all units where the specific category is encountered.
- “Allowable” items under WPN 17-06 leave room for Grantees to determine if the category, or testing, will be addressed and in what circumstances.
- Declare whether DOE funds or alternate funding source(s) will be used to address the particular category.
- Describe the explicit methods to remedy the specific category.
- Describe what testing protocols (if any) will be used.
- Define minimum thresholds that determine minor and major repairs
- Identify minimum documentation requirements for at-risk occupants
- Discuss what explicit steps will be taken to educate the client, if any, on the specific category if this is not explained elsewhere in the Plan. Some categories, like mold and moisture, require client education.
- Discuss how training and certification requirements will be provided for the specific category. Some categories, like Lead Based Paint, require training.
- Describe how occupant health and safety concerns and conditions will be solicited and documented

Grantees may include additional H&S categories for their particular Programs. Additional categories must include, at a minimum, all of the same data fields as the DOE-provided categories. Two additional tables have been created to utilize.

7.1 – AIR CONDITIONING AND HEATING SYSTEMS

Concurrence, Alternative, or Deferral

Concurrence with Guidance Alternative Guidance Results in Deferral

Air Conditioning Unallowable Measure Heating Unallowable Measure

Funding

DOE LIHEAP State Utility Other

How do you address unsafe or non-functioning primary heating/cooling systems?

“Red tagged”, inoperable, or nonexistent primary heating and/or cooling system replacement, repair, or installation is allowed due to extreme climate conditions in Texas for Vulnerable Populations.

Texas’ climate conditions include climate zones 2A, 2B, 3A, 3B, and 4B which can be described as Hot-Humid, Hot-Dry, and Mixed-Dry. This diversity in climate conditions requires Texas to have the flexibility to address all scenarios related to providing heating and cooling to Vulnerable Populations.

Subgrantee will use the ACCA approved Manual J to determine proper sizing of replacement heating and cooling appliances. All heating and cooling systems will be evaluated as an energy conservation measure before consideration as a health and safety measure.

If the heating/cooling system issue is determined to be beyond the scope of DOE WAP, weatherization agencies will defer the work and refer the client to other resource agencies who may be able to address the problem. Texas’ deferral policy and protocols shall always be strictly adhered to when deferring weatherization work. If the client is completely without cooling or heating, the weatherization agencies shall make a referral to an agency with funding that can provide Vulnerable Population clients with a portable air conditioner or temporary means of heat, such as a portable heat pump or blankets.

Texas requires HVAC system installation to follow local and state code and it must be performed by a licensed HVAC professional. Weatherization agencies may subcontract licensed HVAC companies/individuals to perform heating/cooling systems installations and repairs if they follow proper state procurement procedures.

When replacing a primary wood stove in a mobile/manufactured home the new unit must be listed for use with manufactured homes, and must be installed in accordance with their listings. Units that are not manufacturer approved, discovered during an initial assessment, should be replaced with an approved manufactured home appliance, under H&S. All state and local codes must be followed.

Vented space heaters shall be treated as furnaces. Combustion safety testing is required when combustion appliances are present. Weatherization Assessors and Final Inspectors must conduct the combustion appliance safety inspection. This includes all of the following: carbon monoxide testing, draft measurement, spillage evaluation, worst case depressurization of the combustion appliance zone (CAZ), a safe flue pipe, chimney or vent, adequate combustion air, and gas leakage as applicable. Combustion safety test results must be acted upon appropriately according to the Standard Work Specifications and BPI protocols.

How do you address unsafe or non-functioning secondary heating systems, including unvented secondary space heaters?

Maintenance and repair of secondary heating units is allowed.

Minor maintenance activities can be performed for traditional open masonry fireplaces and wood burning stove/pellet stoves. This would be a health and safety issue requiring photo documentation and receipt of services by the professional with a description of what services were performed. Inspection, repair and or cleaning shall be sub-contracted to a qualified solid fuel heating system vendor

An unsafe, unrepairable open masonry fireplace would be treated similarly to that of an unvented space heater if it is the primary source of heat. The fireplace must be rendered inoperable and replaced with a vented heating unit. The type of existing fuel will dictate the replacement. If the client has a combustion fuel source (e.g. - gas, propane, etc) then seal up the fireplace, and add a vented gas heater.

Testing will be required to assure adequate supply of electricity is available for existing standalone electric space heaters. This will be accomplished through the use of three wire circuit testers, GFI electrical outlet testers, and line voltage testers. Repair, replacement or installation is not allowed. Removal is recommended.

Removal is required, except as secondary heat where the unit conforms to ANSI Z21.11.2. Units that do not meet ANSI Z21.11.2 must be removed prior to weatherization but may remain until a replacement heating system is in place.

Testing for air-free carbon monoxide (CO) is to be performed. All units must have an ANSI Z21.11.1 label, and meet IRC and IFGC codes. The client must be informed of the dangers of unvented space heaters – CO, Moisture, and NO2. CO can be dangerous even if CO alarm does not sound.

Assessors must calibrate the CO tester outside the home and test the ambient air in the home; following the standards in the Standard Works Specifications:

- Perform an inspection of the heater. Any of the following conditions are grounds for repair or replacement:
 - Carbon monoxide (CO) test indicates ambient CO levels above 35 PPM
 - Bad burners (missing, broken, or otherwise un-repair-able)
 - Cross-fueled (between NG and LPG) and the orifices and/or pressure regulator have not been changed
 - Missing radiants
 - Open flame burners
 - Rubber supply lines
 - Charring or scorching

If the cause cannot be determined, Subgrantee must calibrate equipment and re-test. If still indeterminable, refer to local gas company. Any time replacement is deemed necessary, first consider performing the replacement as an ECM (energy saving measure) before replacing as a Health & Safety measure.

Indicate Documentation Required for At-Risk Occupants
The application will be used to determine if a household includes Vulnerable Populations (also known as at-risk occupants). Vulnerable Populations are defined as Elderly (60 or older), Disabled or Children 5 and younger.
Testing Protocols
<p>Make sure primary systems are present, operable, and performing correctly.</p> <p>Check DOE-approved audit to determine if the system can be installed as an energy conservation measure (ECM) prior to replacement as an H&S measure.</p> <p>Determine and document presence of Vulnerable Populations when installing air-conditioning as a Health and Safety (H&S) measure.</p> <p>On combustion equipment, inspect chimney and flue and test for Combustion Appliance Zone (CAZ) depressurization.</p> <p>For solid fuel appliances look for visual evidence of soot on the walls, mantel or ceiling or creosote staining near the flue pipe.</p>
Client Education
<p>When deferral is necessary, provide information to the client, in writing, describing conditions that must be met in order for weatherization to commence. A copy of this notification must also be placed in the client file.</p> <p>Discuss appropriate use and maintenance of units.</p> <p>Provide all paperwork and manuals for any installed equipment.</p> <p>Discuss and provide information on proper disposal of bulk fuel tanks when not removed as part of the weatherization work.</p> <p>Where combustion equipment is present, provide safety information including how to recognize depressurization.</p>
Training
<p>Licensing and/or certification for HVAC installers as required by authority having jurisdiction (AHJ).</p> <p>CAZ depressurization test and inspection training.</p> <p>Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees etc.</p>

7.2 - ASBESTOS - ALL

What is the blower door testing policy when suspected Asbestos Containing Material (ACM) is identified?

This is not allowed if vermiculite is present. Subgrantee will inspect pipe and other coverings for asbestos. Encapsulation is allowed by an AHERA asbestos control professional, and should be conducted prior to any blower door testing if the materials are friable.

7.2a – Asbestos - in siding, walls, ceilings, etc.

Concurrence, Alternative, or Deferral

Concurrence with Guidance Alternative Guidance Results in Deferral

Funding

DOE LIHEAP State Utility Other

How do you address suspected ACM's in siding, walls, or ceilings that will be disturbed through the course of weatherization work?
Asbestos is the name given to a number of naturally occurring fibrous minerals with high tensile strength, the ability to be woven, and resistance to heat and most chemicals. Because of these properties, asbestos fibers have been used in a wide range of manufactured goods, including roofing shingles, ceiling and floor tiles, paper and cement products, textiles, coatings, and friction products such as automobile clutch, brake and transmission parts. It is difficult to tell whether a material contains asbestos simply by looking at it, unless it is labeled. If in doubt, treat the material as if it contains asbestos. Do not dust, sweep, or vacuum debris that may contain asbestos. Never saw, sand, scrape, or drill holes in asbestos materials.
Removal of siding is allowed to perform energy conservation measures. All precautions must be taken not to damage siding. Asbestos siding should never be cut or drilled. It is recommended, where possible, to insulate through home interior to avoid disturbing or removing the asbestos siding on the exterior of the home.
Testing Protocols
Testing is allowed by a certified AHERA tester. Visual inspection of exterior wall surface and subsurface, floors, walls, and ceilings for suspected ACM is required prior to drilling or cutting.
Client Education
In every instance, clients shall be informed both verbally and in writing that suspected asbestos containing materials are present. Clients shall also be informed as to the precautions that will be taken. Client written materials shall include information about the potential health risks associated with asbestos.
Training and Certification Requirements
The OSHA Fact Sheet on Asbestos is available on the Department's website under Health and Safety for all Subgrantees' use: http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm On-going Health & Safety training will continue via regional training, Q&As, and postings of FAQs to Department Website. http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm . Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees, etc. AHERA certification required for testing and allowable removal.

7.2b – Asbestos - in vermiculite				
Concurrence, Alternative, or Deferral				
Concurrence with Guidance <input checked="" type="checkbox"/>	Alternative Guidance <input type="checkbox"/>	Results in Deferral <input type="checkbox"/>		
Funding				
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/>	Utility <input type="checkbox"/>	Other <input type="checkbox"/>
How do you address suspected ACM's in vermiculite that will be disturbed through the course of weatherization work?				
When vermiculite is present, unless testing determines otherwise, take precautionary measures as if it contains asbestos, such as not using blower door tests and utilizing personal air monitoring while in attics. Where blower door tests are performed, it is a best practice to perform pressurization instead of depressurization. Encapsulation by an AHERA certified asbestos control professional shall be allowed. Removal shall not be allowed.				
Testing Protocols				
Testing is allowed by a certified AHERA tester.				

Client Education
In every instance, clients shall be informed both verbally and in writing that suspected asbestos containing materials are present. Clients shall also be informed as to the precautions that will be taken. Client written materials shall include information about the potential health risks associated with asbestos.
Training and Certification Requirements
The OSHA Fact Sheet on Asbestos is available on the Department's website under Health and Safety for all Subgrantees' use: http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm On-going Health & Safety training will continue via regional training, Q&As, and postings of FAQs to Department Website. http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm . Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees, etc. AHERA certification required for testing and allowable removal.

7.2c – Asbestos - on pipes, furnaces, other small covered surfaces				
Concurrence, Alternative, or Deferral				
Concurrence with Guidance <input checked="" type="checkbox"/>	Alternative Guidance <input type="checkbox"/>	Results in Deferral <input type="checkbox"/>		
Funding				
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/>	Utility <input type="checkbox"/>	Other <input type="checkbox"/>
How do you address suspected ACM's (e.g., pipes, furnaces, other small surfaces) that will be disturbed through the course of weatherization work?				
Inspect pipes, furnaces, and other coverings for asbestos. Encapsulation is allowed by an AHERA asbestos control professional and should be conducted prior to any blower door testing. Removal may also be allowed by an AHERA asbestos control professional based on the situation as determined by the inspector or Agency Representative				
Testing Protocols				
Testing is allowed by a certified AHERA tester.				
Client Education				
In every instance, clients shall be informed both verbally and in writing that suspected asbestos containing materials are present. Clients shall also be informed as to the precautions that will be taken. Client written materials shall include information about the potential health risks associated with asbestos.				
Training and Certification Requirements				
The OSHA Fact Sheet on Asbestos is available on the Department's website under Health and Safety for all Subgrantees' use: http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm On-going Health & Safety training will continue via regional training, Q&As, and postings of FAQs to Department Website. http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm . Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees, etc. AHERA certification required for testing and allowable removal.				

7.5 – BIOLOGICALS AND UNSANITARY CONDITIONS (ODORS, MUSTINESS, BACTERIA, VIRUSES, RAW SEWAGE, ROTTING WOOD, ETC.)			
Concurrence, Alternative, or Deferral			
Concurrence with Guidance <input checked="" type="checkbox"/>	Alternative Guidance <input type="checkbox"/>	Results in Deferral <input type="checkbox"/>	
Unallowable Measure <input type="checkbox"/>			

Funding				
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/>	Utility <input type="checkbox"/>	Other <input type="checkbox"/>
What guidance do you provide Subgrantees for dealing with biological and/or unsanitary conditions in homes slated for weatherization?				
<p>Remediation of conditions that may lead to or promote biological concerns and unsanitary conditions is allowed. Addressing bacteria and viruses is not an allowable cost. Deferral may be necessary in cases where a known agent is present in the home that may create a serious risk to occupants or weatherization workers.</p> <p>The use of personal protective equipment shall be strictly enforced. Respirators, protective eyewear, and protective clothing will be worn when there is suspicion or knowledge that biological agents may be present in order to eliminate or minimize crew exposure.</p> <p>In the past, remediation of conditions listed under this health and safety category was not allowed. It is allowable under WPN 17-7, except for the removal of known bacteria and viruses. Texas will assess the cost effectiveness and necessity of remediation of conditions that lead to or promote biological concerns and unsanitary conditions, on a case by case basis.</p>				
Testing Protocols				
A sensory inspection is required.				
Client Education				
Client must be informed of observed conditions. Clients must be provided information and explanation on how to maintain a sanitary home and steps to correct deferral conditions, if applicable.				
Training				
<p>On-going Health & Safety training will continue via regional training, Q&As, and postings of FAQs to Department Website. http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm.</p> <p>Additional training specific to identifying structural and roofing issues will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees, etc.</p>				

7.6 – BUILDING STRUCTURE AND ROOFING		
Concurrence, Alternative, or Deferral		
Concurrence with Guidance <input checked="" type="checkbox"/>	Alternative Guidance <input type="checkbox"/>	Results in Deferral <input type="checkbox"/>
Funding		
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/>
Utility <input type="checkbox"/>	Other <input type="checkbox"/>	

What guidance do you provide Subgrantees for dealing with structural issues (e.g., roofing, wall, foundation) in homes slated for weatherization?
<p>Building rehabilitation is beyond the scope of the WAP. Homes with conditions that require more than incidental repair should be deferred.</p> <p>While conducting the initial audit, the building structure shall be inspected for structural integrity. Minor repairs to protect the DOE materials installed may be performed to protect the energy saving investment. Dwellings whose structural integrity is in question should be referred to agencies that deliver HUD funds or other appropriate local and state agencies. Weatherization services may need to be delayed or deferred until the dwelling can be made safe for crews/contractors and occupants. Incidental (minor) repairs necessary to effectively perform or preserve weatherization materials/measures are allowed. Examples of these include sealing minor roof leaks to preserve new attic insulation and repairing water-damaged flooring as part of replacing a water heater. Incidental structural repairs shall not include cosmetic applications, such as replacing a floor covering such as a carpet or linoleum. Only the structural part shall be replaced/repaired.</p>
How do you define “minor” or allowable structure and roofing repairs, and at what point are repairs considered beyond the scope of weatherization?
<p>Minor repairs would be repairs that are necessary for weatherization work to proceed, but that can be justified in the whole house SIR by the site-specific audit. Repairs would be beyond the scope of weatherization when causing the whole house SIR to drop below one.</p>
If priority lists are used, and these repairs are designated as Incidental Repairs, at what point is a site-specific audit required?
N/A – Priority List is not used.
Client Education
<p>Clients shall be notified verbally and in writing regarding any structurally compromised areas. Appropriate referral resources shall also be provided to the client.</p>
Training
<p>On-going Health & Safety training will continue via regional training, Q&As, and postings of FAQs to Department Website. http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm. Additional training specific to identifying structural and roofing issues will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees etc.</p>

7.7 – CODE COMPLIANCE				
Concurrence, Alternative, or Deferral				
Concurrence with Guidance <input checked="" type="checkbox"/>	Alternative Guidance <input type="checkbox"/>	Results in Deferral <input type="checkbox"/>		
Funding				
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/>	Utility <input type="checkbox"/>	Other <input type="checkbox"/>

What guidance do you provide Subgrantees for dealing with code compliance issues in homes receiving weatherization measures?
<p>Correction of pre-existing code compliance issues is not an allowable cost other than where weatherization measures are being conducted. When correction of preexisting code compliance issues is triggered and paid for with WAP funds, Subgrantee must cite specific code requirements with reference to the weatherization measure(s) that triggered the code compliance issue in the client file.</p> <p>State and local (or jurisdiction having authority) codes must be followed while installing weatherization measures. Condemned properties and properties where “red tagged” health and safety conditions exist that cannot be corrected under this guidance should be deferred.</p> <p>WAP funds may be used when weatherization measures are being conducted. They may not be used simply to correct pre-existing code compliance issues.</p> <p>Acquire all required permits and licenses pertinent to installing weatherization measures. These vary by jurisdiction and it is the responsibility of each Subgrantee agency to know what the codes are in each of the areas they work, as well as what permits and licenses are required in each of the areas they work.</p>
What specific situations commonly trigger code compliance work requirements for your network? How are they addressed?
<p>Condemned properties shall be deferred. Properties where “red-tagged” health and safety conditions exist, structural instability or damage (roof), electrical wiring type, condition or provisioning deficiencies, sewage drainage deficiencies that cannot be addressed with DOE H&S funding, should be deferred.</p>
Client Education
<p>Inform client of observed code compliance issues. Make appropriate referrals as necessary.</p>
Training
<p>The Department is working with the State Energy Conservation Office (DOE State Energy Program Subgrantee and is the State Authority to adopt code) on a collaborative effort to address code compliance issues. The group will address code education throughout the state of Texas. Classes will be available to all Subgrantees to attend at a nominal fee set by the group to cover costs.</p>

7.8 – COMBUSTION GASES				
Concurrence, Alternative, or Deferral				
Concurrence with Guidance <input checked="" type="checkbox"/>	Alternative Guidance <input type="checkbox"/>	Results in Deferral <input type="checkbox"/>		
Funding				
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/>	Utility <input type="checkbox"/>	Other <input type="checkbox"/>

Testing Protocols

IRC 2015

D.2 Occupant and Inspector Safety. Prior to entering a building, the inspector should have both a combustible gas detector (CGD) and CO detector turned on, calibrated, and operating. Immediately upon entering the building, a sample of the ambient atmosphere should be taken.

A complete mechanical systems assessment is required to be completed on every home. The procedure includes collecting general information; collecting and recording mechanical systems information; visual and diagnostic inspection of the venting and distribution system; and, combustion analysis and diagnostic testing of gas/propane fired equipment, and post-installation safety tests for CO. Combustion safety testing is required when combustion appliances are present. Pre and post combustion appliance safety inspections include all of the following: carbon monoxide testing, draft measurement, spillage evaluation, and worst case depressurization of the combustion appliance zone (CAZ).

As applicable, every combustion appliance will be checked for a safe flue pipe, chimney or vent, adequate combustion air, and gas leakage. DOE will not permit any DOE-funded weatherization work where the dwelling unit is heated with an unvented gas- and/or liquid-fueled space heater as the primary heat source. In such cases the primary space heater must be removed and a vented code compliant heat source must be installed prior to the installation of weatherization measures. DOE will allow unvented gas- or liquid-fueled space heaters to remain as secondary heat sources provided they comply with ANSI Z21.11.2, the IRC, and the IFGC. LIHEAP-WAP may replace non-compliant secondary unvented gas- or liquid-fueled space heaters.

Client shall be provided with combustion safety and hazards information, including the importance of using exhaust ventilation when cooking and keeping burners clean to limit the production of CO.

Best Practice:

- [Combustion Appliance Zone \(CAZ\) Testing](#)
- [Isolating the Combustion Appliance Zone \(CAZ\)](#)

How are crews instructed to handle problems discovered during testing, and what are the specific protocols for addressing hazards that require an immediate response?

Proper venting to the outside for combustion appliances, including gas dryers, is required. Correction of venting is allowed when testing indicates a problem.

Based on CGD and CO detector readings, the inspector should take the following actions:

(1) The CO detector indicates a carbon monoxide level of 70 ppm or greater. The inspector should immediately notify the occupant of the need for themselves and any building occupant to evacuate; the inspector shall immediately evacuate and call 911.

(2) Where the CO detector indicates a reading between 30 ppm and 70 ppm. The inspector should advise the occupant that high CO levels have been found and recommend that all possible sources of CO should be turned off immediately and windows and doors opened. Where it appears that the source of CO is a permanently installed appliance, advise the occupant to keep the appliance off and have the appliance serviced by a qualified servicing agent.

(3) Where CO detector indicates CO below 30 ppm the inspection can continue.

Client Education

Client shall be provided with combustion safety and hazards information, including the importance of using exhaust ventilation when cooking and the importance of keeping burners clean to limit the production of CO.

Training
<p>On-going Health & Safety training will continue via regional training, Q&As, and postings of FAQs to Department Website. http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm. Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees etc.</p>

7.9 – ELECTRICAL

Concurrence, Alternative, or Deferral

Concurrence with Guidance Alternative Guidance Results in Deferral

Funding

DOE LIHEAP State Utility Other

What guidance do you provide Subgrantees for dealing with electrical hazards, including knob & tube wiring, in homes slated for weatherization?

Minor electrical repairs are allowed where health or safety of the occupant(s) may be at risk. Upgrades and repairs are allowed when necessary to perform specific weatherization measures.

Aluminum wiring should be thoroughly inspected before any insulation work is done. If aluminum wiring is found to be active and in the areas to be insulated, no insulation should be added. When electrical repairs within the scope of the DOE WAP are required, the typical standard of remedy shall be to subcontract the repair work to a licensed electrician. All appropriate procurement procedures shall be followed when subcontracting. Testing shall include visual inspection, as well as voltage drop and voltage detection testing. Provide client information on overloading circuits and electrical safety and risks.

How do you define “minor” or allowable electrical repairs, and at what point are repairs considered beyond the scope of weatherization?

Minor upgrades and repairs necessary for weatherization measures and where the health or safety of the occupant(s) is at risk may be allowed. Examples of minor repairs include exposed electrical connections, damaged or nonworking switches and receptacles, and damaged or unsafe electrical wire conditions.

Prior to insulating around Knob and Tube wiring, cost effectiveness must be evaluated and barriers must be installed to keep insulation at least three inches from the K&T. If K&T is permanently disabled (cannot be energized again) then it may be insulated over.

Best Practice:

- [Knob & Tube Wiring](#)

If priority lists are used, and these repairs are designated as Incidental Repairs, at what point is a site-specific audit required?

N/A – Priority List is not used.

Client Education

Provide information on overloading circuits and electrical safety and risks.

Training
<p>On-going Health & Safety training will continue via regional training, Q&As, and postings of FAQs to Department Website. http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm.</p> <p>Additional training for how to identify electrical hazards and code compliance will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees etc.</p>

7.10 – FORMALDEHYDE, VOLATILE ORGANIC COMPOUNDS (VOCs), FLAMMABLE LIQUIDS, AND OTHER AIR POLLUTANTS

Concurrence, Alternative, or Deferral		
Concurrence with Guidance <input checked="" type="checkbox"/>	Alternative Guidance <input type="checkbox"/>	Results in Deferral <input type="checkbox"/>

Funding				
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/>	Utility <input type="checkbox"/>	Other <input type="checkbox"/>

What guidance do you provide Subgrantees for dealing with formaldehyde, VOCs, flammable liquids, and other air pollutants identified in homes slated for weatherization?

WAP workers may not remove pollutants. Removal of pollutants must be done by the client or a contracted professional prior to weatherization work being performed. If pollutants pose a risk to workers and removal cannot be performed by a professional or the client refuses to remove the pollutants, the unit must be deferred.

Visual, sensory, combustion appliances inspection/testing and completion of Client Questionnaire and Inspection Checklist shall be the primary detection method. All reasonable steps shall be taken to limit worker exposure to VOCs, air pollutants and biological contaminants utilizing OSHA PPE guidelines. Many VOCs are human-made chemicals that are used and produced in the manufacture of paints, paint thinner, petroleum fuels, sealants, and refrigerants. When using products known to emit VOCs, increase ventilation is required. Meet or exceed any label precautions. Identify, and if possible, have client or a contracted professional remove the source. Biological contaminants include bacteria, molds, mildew, viruses, animal dander and cat saliva, house dust, mites, cockroaches, and pollen. Identification of these contaminants can indicate elevated relative humidity level in a home and improper ventilation which would need to be addressed. State and local codes and regulations regarding disposal of toxic household wastes must be followed. Texas WAP crews/contractors shall take every precaution necessary to minimize exposure to air pollutants.

When using chemicals and products that may contain any of the pollutants within this category, strict adherence to label instructions and precautions shall be required. Known pollutants must be removed by the client or a contracted professional prior to performance of weatherization work.

- Health and Safety Guidance
- [EPA Guidance on Common Household Wastes & Materials](#)
 - [Indoor Air Quality](#)

Testing Protocols

Sensory inspection shall be the primary detection method.

Client Education		
Clients must be informed of any conditions and/or associated risks observed. Client must be given written information on safety and proper disposal of household pollutants, if applicable.		
Training		
Guidance on how to recognize potential hazards and when removal is necessary is posted to the Department Website: http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm On-going Health & Safety training will continue via regional training, Q&As, and postings of FAQs to Department Website. http://www.tdhca.state.tx.us/community-affairs/wap/guidance.htm Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees, etc.		
7.11 – FUEL LEAKS		
(PLEASE INDICATE SPECIFIC FUEL TYPE IF POLICY DIFFERS BY TYPE)		
Concurrence, Alternative, or Deferral		
Concurrence with Guidance <input checked="" type="checkbox"/>	Alternative Guidance <input type="checkbox"/>	Results in Deferral <input type="checkbox"/>
Funding		
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/> Utility <input type="checkbox"/> Other <input type="checkbox"/>
Remediation Protocols		
Natural gas and LP gas piping system inspection and leakage testing will be conducted. An inspection of the accessible gas piping and connections, from the natural gas meter or LP gas tank to a point where the supply line connects to the gas valve of all appliances shall be completed.		
When a minor gas leak is found on the utility side of service, the utility service must be contacted before work may proceed.		
Where the auditor confirms gas leakage or identifies deficiencies in gas piping materials, connections, components, or supports, the deficiencies shall be marked and noted in project documentation. The homeowner/occupant shall be notified that repairs must be made. The auditor shall recommend that the homeowner/occupant immediately notify the gas company and/or a qualified professional to evaluate and perform all necessary repairs. Notify utilities and temporarily halt work when leaks are discovered that are the responsibility of the utility to address.		
How do you define allowable fuel leak repairs, and at what point are repairs considered beyond the scope of weatherization?		
Allowable repairs/replacement includes but is not limited to: Worn and/or leaking flexible gas lines and any flexible connectors manufactured prior to 1973; Worn or damaged gas valves; and Appliance gas valve/regulator housing and connections.		
Client Education		
Inform clients in writing if fuel leaks are detected.		
Training		
Fuel leak testing.		

7.12 – GAS OVENS / STOVETOPS / RANGES

Concurrence, Alternative, or Deferral

Concurrence with Guidance Alternative Guidance Results in Deferral

Funding

DOE LIHEAP State Utility Other

What guidance do you provide Subgrantees for addressing unsafe gas ovens/stoves/ranges in homes slated for weatherization?

Replacement of cook stoves may be done with unrestricted funds from a funding source other than DOE. Repair and cleaning are allowed.

Cook Stoves with high CO:

- Clean or repair.
- If it still has high CO levels, then see if another funding source is able to pay for the stove replacement.
- If no other source, the house must be deferred until the occupant can address the stove.
- Houses with stoves with CO levels of 150 ppm or higher which cannot be remedied must be deferred. The money spent trying to fix it, unsuccessfully, would be charged to Program Support.

The Department has defined maximum acceptable CO readings of stoves as follows:

- (1) 25 parts per million for cook stove burners.
- (2) 150 parts per million for cook stove ovens.

Testing Protocols

Test gas ovens and burners for CO.
Inspect cooking burners and ovens for operability and flame quality.

Client Education

Inform clients of the importance of using exhaust ventilation when cooking and the importance of keeping burners clean to limit the production of CO.

Training

Testing techniques
CO action levels

7.13 – HAZARDOUS MATERIALS DISPOSAL

[LEAD, REFRIGERANT, ASBESTOS, MERCURY (INCLUDING CFLS/FLUORESCENTS), ETC.]
(PLEASE INDICATE MATERIAL WHERE POLICY DIFFERS BY MATERIAL)

Concurrence, Alternative, or Deferral

Concurrence with Guidance Alternative Guidance Results in Deferral

Funding

DOE LIHEAP State Utility Other

Client Education
Inform client in writing of hazards associated with hazardous waste materials being generated/handled in the home.
Training
Appropriate Personal Protective Equipment (PPE) for working with hazardous waste materials. Disposal requirements and locations. Health and environmental risks related to hazardous materials.
Disposal Procedures and Documentation Requirements
Refrigerants shall be pumped into a recovery tank and disposed at an EPA approved site. Proper disposal procedures for Asbestos are available at Texas Commission on Environmental Quality (TCEQ): Special Waste Disposal: http://www.tceq.texas.gov/permitting/waste_permits/msw_permits/msw_specialwaste.html Texas WAP crews/contractors will follow all EPA RRP requirements for disposal of lead as well as state and local code requirements. Disposal procedures for mercury will follow TCEQ guidance available here: https://www.tceq.texas.gov/assets/public/comm_exec/pubs/rg/rg-377.pdf

7.14 – INJURY PREVENTION OF OCCUPANTS AND WEATHERIZATION WORKERS (MEASURES SUCH AS REPAIRING STAIRS AND REPLACING HANDRAILS)				
Concurrence, Alternative, or Deferral				
Concurrence with Guidance <input checked="" type="checkbox"/>	Alternative Guidance <input type="checkbox"/>	Results in Deferral <input type="checkbox"/>		
Funding				
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/>	Utility <input type="checkbox"/>	Other <input type="checkbox"/>
What guidance do you provide Subgrantees regarding allowable injury-related repairs (e.g., stairs, handrails, porch deck board)?				
Workers must take all reasonable precautions against performing work on homes that will subject workers or occupants to health and safety risks. Porch or stair repairs that would be required to make a home safe for weatherization workers are not an allowable measure in the program. Such situations are considered to be beyond the scope of Texas WAP.				
How do you define “minor” or allowable injury prevention measures, and at what point are repairs considered beyond the scope of weatherization? Quantify “minor” or allowable injury prevention measures.				
Minor injury prevention measures can include minor electrical repairs as described in section 7.9. Proper safety protocols should be followed to reduce risk of injury as described in sections 7.20 and 7.23. Any other injury prevention measure would be considered beyond the scope of WAP and shall result in unit deferral.				
Training				
OSHA 10 for crew members and OSHA 30 for supervisors.				

7.15 – LEAD BASED PAINT

Concurrence, Alternative, or Deferral

Concurrence with Guidance Alternative Guidance Results in Deferral

Funding

DOE LIHEAP State Utility Other

Safe Work Protocols

Weatherization requires all weatherization crews/contractors working in pre-1978 housing to be trained in Lead Safe Weatherization (LSW) and follow EPA's Lead; Renovation, Repair and Painting Program (RRP) rule. Deferral is required when the extent and condition of lead-based paint in the house would potentially create further health and safety hazards.

In all pre-1978 homes, crews/contractors must assess the physical condition of the home prior to conducting an audit. Texas recommends assuming that lead paint may be present in any house built prior to 1978 and to follow the proper DOE LSW protocols, OSHA regulations and EPA regulations in all pre-1978 homes. Mobile homes are exempt because lead was not used in the original manufacture of mobile homes. However, crews/contractors must be alert to any mobile home remodels/add-ons that could have contained lead-based paint or varnish.

Texas WAP crews/contractors will follow all EPA RRP requirements for disposal as well as state and local code requirements.

Deferral is required when the extent and condition of lead-based paint in the house would potentially create further H&S hazards.

Only those costs directly associated with the testing and lead safe practices for surfaces directly disturbed during weatherization activities are allowable.

State policy mandates all workers on site on any weatherization project, whether they be a crew based employee of one of the sub-contractors or a private sector contractor, must complete an eight (8) hour Lead Safe Worker Practices Workshop.

Best Practice:

- [Lead-safe Process and RRP Requirement](#)

WX Videos

- [12 Steps to Lead Safety](#)
- [Health & Safety Series: Respirators & Personal Protective Equipment](#)

Health and Safety Guidance

- [Lead; Renovation, Repair, and Painting Program; Lead Hazard Information;](#)
- [Renovate Right](#)

Testing Protocols
Testing is allowed per RRP requirements. Job site set up and cleaning verification is required by a Certified Renovator. Texas WAP crews/contractors will use LSW work practices that decrease the amount of dust generated.
Client Education
All Subgrantees are required to provide a copy of "Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools" to an adult occupant prior to work starting on the home. This procedure is documented by a written acknowledgement that the adult occupant has received the brochure and that the information was not only distributed, but also explained, or certify in writing that a brochure had been delivered to an adult occupant and the provider has been unsuccessful in obtaining a written acknowledgement, as directed in the publication. Confirmation of receipt of this brochure by the client will be maintained in the client file.
Training and Certification Requirements
Each Subgrantee must be an EPA Certified Firm and have a Certified Lead Renovator on staff. The Subgrantee is responsible to obtain and maintain the required certifications.
Documentation Requirements
Documentation in the client file must include Certified Renovator certification; any training provided on-site; description of specific actions taken; lead testing and assessment documentation; and, photos of site and containment set up. Include the location of photos referenced if not in file.

7.16 – MOLD AND MOISTURE				
(INCLUDING BUT NOT LIMITED TO: DRAINAGE, GUTTERS, DOWN SPOUTS, EXTENSIONS, FLASHING, SUMP PUMPS, DEHUMIDIFIERS, LANDSCAPE, VAPOR RETARDERS, MOISTURE BARRIERS, ETC.)				
Concurrence, Alternative, or Deferral				
Concurrence with Guidance <input checked="" type="checkbox"/>	Alternative Guidance <input type="checkbox"/>	Results in Deferral <input type="checkbox"/>		
Funding				
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/>	Utility <input type="checkbox"/>	Other <input type="checkbox"/>

What guidance do you provide Subgrantees for dealing with moisture related issues (e.g., drainage, gutters, down spouts, moisture barriers, dehumidifiers, vapor barrier on bare earth floors) in homes slated for weatherization?

Limited water damage repairs can be addressed by weatherization workers. Correction of moisture and mold creating conditions are allowed when necessary in order to weatherize the home and to ensure the long term stability and durability of the measures. Where severe mold-like substance and moisture issues cannot be addressed, deferral is required.

Visual assessment is required and diagnostics such as moisture meters are recommended pre-assessment and prior to final inspection. The assessment shall assure existing mold-like conditions are noted, documented and disclosed to the client; and, shall assure existing building envelope conditions do not contribute to mold-like growth when weatherization measures are applied. Mold-like substance assessment means a visual assessment combined with certain allowable diagnostics. It does not mean testing for mold. **DOE funds may not be used to test for mold-like substances.**

Texas WAP crews/contractors shall follow the Mold/Moisture Assessment Checklist when conducting the mold-like substances assessment at the time of the audit. Assessment shall include a general examination of the building, to include:

- Examine structure, maintenance activities, occupancy patterns
- Visually look for mold-like substances and water staining
- Look for evidence of standing water
- Look for evidence of condensation
- Check basement or crawl space and attic for proper venting and exhaust

Outdoors:

- Soil grade or drainage toward foundation
- Standing water adjacent to foundation
- Wall and roof damage allowing water intrusion
- Missing or blocked rain gutters
- No downspout extensions
- Firewood stacked adjacent to house
- Excessive shrubbery around foundation

Heating/cooling systems:

- Air intakes: debris (organic) vs. clean air
- Filters: dirty, damp, poor type
- Heat exchangers: dirty & damp coils, condensate pans, drainage, stagnant water
- Ducts: contamination, moisture

Occupied Space:

- Plumbing leaks
- Water stains on walls, ceilings and around windows
- Musty odor
- Surface Condensation (especially during mild weather)
- Mold-like substances on carpeting
- Humidifiers
- Window air conditioners
- Lack of bathroom, kitchen exhaust
- Clothes dryer not vented to outside
- Firewood stored indoors
- Wet clothes drying indoors

The DOE Training Resource:

- [Mold and Moisture](#) given by Michael Vogel of MSU Weatherization Training Center is available to all Subgrantees through TDHCA’s website
- [Energy Related Mold and Moisture...awareness and impacts for weatherization](#)

Best Practice:

- [Mold-safe Process](#)

How do you define “minor” or allowable moisture-related measures, and at what point is work considered beyond the scope of weatherization?

Defined in Mold-Safe process flow-chart <http://www.tdhca.state.tx.us/community-affairs/wap/docs/WAP-BP-Mold-Flowchart.pdf>

Client Education
Provide client notification and disclaimer on mold-like substances and moisture awareness. The unified weatherization form that identifies if there are mold-like substances, must be included in the client files, regardless of whether there is mold-like substance in the home or not. A Mold -Like Substance Notification and Release Form for Texas Weatherization Programs must be filled out if mold or mold-like substances are found in the home. Texas Department of State Health Services, Consumer Mold Information Sheet is required to be given to clients who have moisture problems or mold-like substances, as part of client education.
Training
The DOE power-point presentation training on Mold and Moisture given by Michael Vogel of MSU Weatherization Training Center is available to all Subgrantees through TDHCA's website: http://www.tdhca.state.tx.us/community-affairs/wap/wap-training-videos.htm . Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees etc.

7.17 – PESTS				
Concurrence, Alternative, or Deferral				
Concurrence with Guidance <input checked="" type="checkbox"/>	Alternative Guidance <input type="checkbox"/>	Results in Deferral <input type="checkbox"/>		
Funding				
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/>	Utility <input type="checkbox"/>	Other <input type="checkbox"/>
What guidance do you provide Subgrantees for dealing with pests and pest intrusion prevention in homes slated for weatherization?				
Pest removal is allowed only where infestation would prevent weatherization or poses a health and safety concern for workers. Infestation of pests may be cause for deferral where it cannot be reasonably removed.				
Determine whether the pest infestation would prevent or hamper the weatherization work. If removal is a viable and cost-effective option, take the necessary steps to remove the pest infestation problem so that the weatherization work can proceed. If removal is not a viable and cost-effective option or significant health and safety risks exist, defer the weatherization work and provide client with appropriate referral information.				
Best Practice:				
<ul style="list-style-type: none"> • Pests 				
Define Pest Infestation Thresholds, Beyond Which Weatherization Is Deferred				
Costs beyond \$50 in labor and materials to mitigate pest infestations will be addressed by TDHCA to determine if deferral is necessary.				
Testing Protocols				
Assessment of presence and degree of infestation and risk to worker.				
Client Education				
Inform client of observed pest condition and associated risks and document in client file.				
Training				
How to assess presence and degree of infestation, associated risks, and deferral policy. Additional training will be handled on an ongoing and as-needed basis as identified by new requirements, new staff hires, results of monitoring reports, requests by Subgrantees etc.				

7.18 – RADON				
Concurrence, Alternative, or Deferral				
Concurrence with Guidance <input checked="" type="checkbox"/>	Alternative Guidance <input type="checkbox"/>	Results in Deferral <input type="checkbox"/>		
Funding				
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/>	Utility <input type="checkbox"/>	Other <input type="checkbox"/>
What guidance do you provide Subgrantees around radon?				
<p>TDHCA will provide Subgrantees with a Radon Informed Consent Form and the EPA's <i>A Citizen's Guide to Radon</i>.</p> <p>State specific resources can be found at: https://www.epa.gov/radon/find-information-about-local-radon-zones-and-state-contact-information#stateradon</p> <p>The Texas Department of State Health Services website also contains useful information:</p> <ul style="list-style-type: none"> • Radon 				
Testing Protocols				
Testing is not authorized in Texas WAP as Texas has no areas of "Highest Potential," according to the United States Environmental Protection Agency standards.				
Client Education				
Provide all clients EPA's <i>A Citizen's Guide to Radon</i> and inform them of radon related risks. https://www.epa.gov/radon/citizens-guide-radon-guide-protecting-yourself-and-your-family-radon				
Training and Certification Requirements				
Training will be provided regarding updated requirements per WPN 17-7 including use of the informed consent form.				
Documentation Requirements				
Client signed informed consent form.				

7.19 – SAFETY DEVICES: SMOKE AND CARBON MONOXIDE ALARMS, FIRE EXTINGUISHERS				
Concurrence, Alternative, or Deferral				
Concurrence with Guidance <input checked="" type="checkbox"/>	Alternative Guidance <input type="checkbox"/>	Results in Deferral <input type="checkbox"/>		
Funding				
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/>	Utility <input type="checkbox"/>	Other <input type="checkbox"/>

What is your policy for installation or replacement of the following:

Smoke Alarms:

Smoke alarms may be installed where alarms are not present or are inoperable.

At minimum, all Dwelling Units should have at least one smoke alarm on each level, including one near the combustion zone and at least one near the bedrooms. Ceiling-mounted smoke alarms must be mounted at least 6 inches from any wall. Wall-mounted smoke alarms must be installed at least 6 but less than 18 inches from the ceilings. They should always be installed according to applicable local codes or ordinances.

Smoke Alarms shall be installed per IRC. R314.3 Location. Smoke alarms shall be installed in the following locations:

1. In each sleeping room.
2. Outside each separate sleeping area in the immediate vicinity of the sleeping room.
3. On each additional story of the dwelling, including basements and habitable attics and not including crawl spaces and uninhabitable attics. In Dwelling Units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.
4. Smoke alarms shall be installed not less than 3 feet (914 mm) horizontally from the door or opening of a bathroom that contains a bathtub or shower unless this would prevent placement of a smoke alarm required by Section R314.3.

Carbon Monoxide Alarms:

Per ASHRAE 62.2, at least one CO alarm must be present in every home. CO alarms must be installed in all homes with combustion appliances; combustion appliances include: cook stoves, furnaces, water heaters, wood and coal burning stoves. Combustion appliances must be installed to the IRC or local code regulations.

CO alarms must be installed where alarms are not present or are inoperable.

A CO alarm should also be installed in accordance with SWS. CO alarms should be installed in all homes with unvented space heaters (all unvented space heaters must comply with ANSI Z21.11.2) and in all homes where backdrafting could occur in a furnace, space heater, wood stove, fireplace, or water heater. Always install CO alarms according to the manufacturer's instructions.

Don't install CO alarms in these cases:

- In a room that may get too hot or cold for alarm to function properly;
- Within 5 feet of a combustion appliance, vent, or chimney;
- Within 5 feet of a storage area for vapor-producing chemicals;
- Within 12 inches of exterior doors and windows;
- Within a furnace closet or room;
- With an electrical connection to a switched circuit; or
- With a connection to a ground-fault circuit interrupter (GFCI).

R315.3 Location. Carbon monoxide alarms in Dwelling Units shall be installed outside, in the immediate vicinity, of each separate sleeping area. Where a fuel-burning appliance is located within a bedroom or its attached bathroom, a carbon monoxide alarm shall be installed within the bedroom. R315.6.1

General. Household carbon monoxide detection systems shall comply with NFPA 720. Carbon monoxide detectors shall be listed in accordance with UL 2075.

R315.6.4 Combination detectors. Combination carbon monoxide and smoke detectors shall be permitted to be installed in carbon monoxide detection systems in lieu of carbon monoxide detectors, provided that they are listed in accordance with UL 2075 and UL 268.

Fire Extinguishers: A fire extinguisher may be provided in homes with solid fuel burning equipment. The fire extinguisher must be installed according to the manufacturer's standards and local code in the vicinity of the primary heating source.

Testing Protocols

Check existing alarms for operation.
Verify operation of installed alarms.

Client Education

The client will be provided with the manufacturer's information sheet on use of smoke/CO detectors.

Training

Location and code requirements for installation of alarms.

7.20 – OCCUPANT HEALTH AND SAFETY CONCERNS AND CONDITIONS

Concurrence, Alternative, or Deferral		
Concurrence with Guidance <input checked="" type="checkbox"/>	Alternative Guidance <input type="checkbox"/>	Results in Deferral <input type="checkbox"/>
Funding		
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/>
Utility <input type="checkbox"/>	Other <input type="checkbox"/>	
What guidance do you provide Subgrantees for soliciting the occupants' health and safety concerns related to components of their homes?		
<p>A Health & Safety Questionnaire/ Checklist for use by Subgrantees can be found under Client and Field Assessment Forms on the Department Website: http://www.tdhca.state.tx.us/communityaffairs/wap/guidance.htm</p>		
What guidance do you provide Subgrantees for determining whether occupants suffer from health conditions that may be negatively affected by the act of weatherizing their home?		
<p>Subgrantee must discuss results of survey with clients and potential measures list to determine if any measures could have an effect on the client's health.</p>		
What guidance do you provide Subgrantees for dealing with potential health concerns when they are identified?		
<p>When a person's health may be at risk and/or the work activities could create an H&S hazard the at-risk occupant will be required to take appropriate action based on the severity of the risk.</p> <p>Temporary relocation of Vulnerable Populations may be allowed. Failure or inability to take appropriate actions will result in a deferral.</p>		
Client Education		
<p>Provide client information of any known risks. Provide worker contact information so client can inform of any issues.</p>		
<p>Documentation Form(s) have been developed and comply with guidance? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>		

7.21 – VENTILATION AND INDOOR AIR QUALITY

Concurrence, Alternative, or Deferral		
Concurrence with Guidance <input checked="" type="checkbox"/>	Alternative Guidance <input type="checkbox"/>	Results in Deferral <input type="checkbox"/>
Funding		
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/>
Utility <input type="checkbox"/>	Other <input type="checkbox"/>	
Identify the Most Recent Version of ASHRAE 62.2 Implemented (optional: identify Addenda used)		
<p>Texas WAP has adopted the ASHRAE 62.2 2016 standard.</p>		
Testing and Final Verification Protocols		
<p>Required measurements, including fan flow of existing fans installed equipment, will be captured on the TDHCA provided Blower Door and Duct Blower Data Sheet (XLS). Pre and post measurements must be calculated using the ASHRAE 62.2-2016 Calculator or other certified software.</p>		

Client Education
<p>Provide client with information on function, use, and maintenance (including location of service switch and cleaning instructions) of ventilation system and components.</p> <p>Provide client with equipment manuals for installed equipment.</p> <p>Include disclaimer that ASHRAE 62.2 does not account for high polluting sources or guarantee indoor air quality.</p>
Training
<p>Training for use of the new ASHRAE 62.2-2016 Calculator is available on the RedCalc website and TDHCA provides training on the difference between the 2013 and 2016 standard on an as needed basis.</p> <p>Tools and Guides:</p> <ul style="list-style-type: none"> • Exhaust Fan Flow Meter Quick Guide (PDF) • Single-Family Homes: Standard Work Specifications Field Guide (PDF)

7.22 – WINDOW AND DOOR REPLACEMENT, WINDOW GUARDS		
Concurrence, Alternative, or Deferral		
Concurrence with Guidance <input checked="" type="checkbox"/>	Alternative Guidance <input type="checkbox"/>	Results in Deferral <input type="checkbox"/>
Funding		
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/> Utility <input type="checkbox"/> Other <input type="checkbox"/>
What guidance do you provide to Subgrantees regarding window and door replacement and window guards?		
<p>Replacement, repair, or installation is not an allowable health and safety cost but may be allowed as an efficiency measure if cost justified.</p> <p>When working on windows follow LSW requirements for pre-1978 homes.</p>		
Testing Protocols		
Not applicable		
Client Education		
Provide written information on lead risks wherever issues are identified.		
Training		
<p>Guidance is provided through two best practices:</p> <p>Window Repair or Replacement</p> <p>Door Repair or Replacement</p>		

7.23 – WORKER SAFETY (OSHA, ETC.)		
Concurrence, Alternative, or Deferral		
Concurrence with Guidance <input checked="" type="checkbox"/>	Alternative Guidance <input type="checkbox"/>	Results in Deferral <input type="checkbox"/>
Funding		
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/> Utility <input type="checkbox"/> Other <input type="checkbox"/>

How do you verify safe work practices? What is your policy for in-progress monitoring?
<p>Workers must follow OSHA standards and Safety Data Sheets (SDS) and take precautions to ensure the health and safety of themselves and other workers. SDS must be posted wherever workers may be exposed to hazardous materials.</p> <p>As part of the safety for crew, assessors will identify health and safety hazards according the OSHA method “Focus Four” which includes, electrical, fall protection, caught in and between, and struck-by hazards. The client will be informed in writing of any hazards and the associated risks that may have been observed.</p> <p>Health and Safety Guidance OSHA Focus Four</p>
Training and Certification Requirements
<p>OSHA 10-hour training for all crew level WAP employees OSHA 30-hour training for all crew leaders All OSHA training shall be updated as required and kept current. SDS must be present at the work sites.</p>

7.24 – WATER HEATERS				
Concurrence, Alternative, or Deferral				
Concurrence with Guidance <input type="checkbox"/>	Alternative Guidance <input checked="" type="checkbox"/>	Results in Deferral <input type="checkbox"/>		
Funding				
DOE <input checked="" type="checkbox"/>	LIHEAP <input type="checkbox"/>	State <input type="checkbox"/>	Utility <input type="checkbox"/>	Other <input type="checkbox"/>
Remediation Protocols				
<p>Replacement or repair of water heaters is allowed on a case by case basis. The Subgrantee must initially attempt to qualify existing Water Heater as an ECM. If the Water Heater does not rank, the Subgrantee may repair or replace the existing unit as a Health and Safety Measure. Further detailed in the Water Heater Replacement Best Practice on the TDHCA Website: http://www.tdhca.state.tx.us/community-affairs/wap/docs/WAP-BP-WaterHeaterRepairorReplace.pdf</p>				
Testing Protocols				
Appropriate combustion appliance testing and water temperature testing.				
Client Education				
Clients shall be given all manufacturers information on the appropriate use and maintenance of water heating units.				
Training				
Combustion Appliance Zone (CAZ) training and identifying potential hazards associated with water heaters.				

PY2019 Monitoring Schedule*

July-September 2019	October - November 2019	January - March 2020	April - June 2020
El Paso Community Action Program, Project Bravo, Inc.	Community Council of South Central Texas, Inc.	Combined Community Action, Inc.	Panhandle Community Services
Big Bend Community Action Committee, Inc.	Hill Country Community Action Association, Inc.	Rolling Plains Management Corporation	Alamo Area Council of Governments
Greater East Texas Community Action Program (GETCAP)	Neighborhood Centers Inc.	Concho Valley Community Action Agency	West Texas Opportunities, Inc.
Brazos Valley Community Action Agency, Inc.	Community Action Committee of Victoria, Texas	Dallas County Department of Health and Human Services	Nueces County Community Action Agency
Community Action Corporation of South Texas	City of Fort Worth	Travis County	South Plains Community Action Association, Inc.
	Economic Opportunities Advancement Corporation of PR XI	Texoma Council of Governments	

* Schedule is subject to change based on production and/or other unforeseen circumstances.

Fiscal/Administrative (F/A)

These reviews will typically be done as a desk review. As often as possible, the F/A reviews will happen in the same month as the technical visit to hopefully end with one comprehensive WAP monitoring report. F/A reviews will be done by any available qualified compliance staff.

Technical/Inspections

These reviews will always be conducted onsite. Inspections will be conducted by state staff that are QCI certified. Full QCI inspections will be conducted on each unit reported as "inspected" by the state. Inspection percentages at each Subrecipient will be based off QCI staff and separation of assignments in accordance with WPN 15-4 (5 or 10%). TDHCA staff will also conduct LIHEAP inspections on the same trip to minimize visits to the Subrecipient, which is why trips begin so early in the DOE program year, because LIHEAP program year ends December 31.

Quoted from the TDHCA Fiscal Year 2019 Monitoring Plan

Monitoring Schedule

The Fiscal Year 2019 monitoring schedule is aggregate in nature. The schedule is created on an as-risk assessed basis. The schedule is maintained on the Compliance Subrecipient Monitoring (CMSM) Calendar in Outlook. A tentative schedule for CSBG and DOE is provided in accordance with the State Plan addendum.

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BOARD ACTION REQUEST
BOND FINANCE DIVISION
FEBRUARY 21, 2019

Presentation, discussion, and possible action on Inducement Resolution No. 19-027, for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority for Northgate Village Apartments (#19603) in Dallas

RECOMMENDED ACTION

WHEREAS, a bond pre-application for Northgate Village Apartments, as further detailed below, was submitted to the Department for consideration of an inducement resolution;

WHEREAS, Board approval of the inducement resolution is the first step in the application process for a multifamily bond issuance by the Department; and

WHEREAS, approval of the inducement will allow staff to submit an application to the Bond Review Board (BRB) for the issuance of a Certificate of Reservation associated with the Development;

NOW, therefore, it is hereby

RESOLVED, that based on the foregoing, Inducement Resolution No. 19-027 to proceed with the application submission to the BRB for possible receipt of State Volume Cap issuance authority under the Private Activity Bond Program for Northgate Village Apartments, is hereby approved in the form presented to this meeting.

BACKGROUND

The BRB administers the state's annual private activity bond authority for the State of Texas. The Department is an issuer of Private Activity Bonds and is required to induce an application for bonds prior to the submission to the BRB. Approval of the inducement resolution does not constitute approval of the development but merely allows the Applicant the opportunity to move into the full application phase of the process. Once the application receives a Certificate of Reservation, the Applicant has 150 days to close on the private activity bonds.

During the 150-day process, the Department will review the complete application for compliance with the Department's Rules, including but not limited to site eligibility and threshold as well as previous participation as it relates to previously funded developments through the Department. During the review of the full application, staff will also underwrite the transaction and determine financial feasibility in accordance with the Real Estate Analysis Rules. The Department will schedule and conduct

a public hearing, and the complete application, including a transcript from the hearing, will then be presented to the Board for a decision on the issuance of bonds as well as a determination on the amount of housing tax credits anticipated to be allocated to the development. This inducement resolution would reserve approximately \$20 million in private activity bond volume cap.

Northgate Village Apartments is located at 12303 North Plano Road in Dallas, Dallas County, and proposes the acquisition and rehabilitation of 168 units serving the general population. This transaction is proposed to be Priority 3 with all of the units rent and income restricted at 60% of the Area Median Family Income and all are covered by a HAP contract. The Department has not received any letters of support or opposition for this development.

RESOLUTION NO. 19-027

RESOLUTION DECLARING INTENT TO ISSUE MULTIFAMILY REVENUE BONDS WITH RESPECT TO RESIDENTIAL RENTAL DEVELOPMENT; AUTHORIZING THE FILING OF ONE OR MORE APPLICATIONS FOR ALLOCATION OF PRIVATE ACTIVITY BONDS WITH THE TEXAS BOND REVIEW BOARD; AND AUTHORIZING OTHER ACTION RELATED THERETO

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended, (the "Act") for the purpose, among others, of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe, and affordable living environments for persons and families of low, very low and extremely low income and families of moderate income (all as defined in the Act); and

WHEREAS, the Act authorizes the Department: (a) to make mortgage loans to housing sponsors to provide financing for multifamily residential rental housing in the State of Texas (the "State") intended to be occupied by persons and families of low, very low and extremely low income and families of moderate income, as determined by the Department; (b) to issue its revenue bonds, for the purpose, among others, of obtaining funds to make such loans and provide financing, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such multifamily residential rental development loans, and to mortgage, pledge or grant security interests in such loans or other property of the Department in order to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, it is proposed that the Department issue its revenue bonds in one or more series for the purpose of providing financing for the multifamily residential rental development (the "Development") more fully described in Exhibit A attached hereto. The ownership of the Development as more fully described in Exhibit A will consist of the applicable ownership entity and its principals or a related person (the "Owners") within the meaning of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, the Owners have made not more than 60 days prior to the date hereof, payments with respect to the Development and expect to make additional payments in the future and desire that they be reimbursed for such payments and other costs associated with the Development from the proceeds of tax-exempt and taxable, as applicable, obligations to be issued by the Department subsequent to the date hereof; and

WHEREAS, the Owners have indicated their willingness to enter into contractual arrangements with the Department providing assurance satisfactory to the Department that the requirements of the Act and the Department will be satisfied and that the Development will

satisfy State law, Section 142(d) and other applicable Sections of the Code and Treasury Regulations; and

WHEREAS, the Department desires to reimburse the Owners for the costs associated with the Development listed on Exhibit A attached hereto, but solely from and to the extent, if any, of the proceeds of tax-exempt and taxable, as applicable, obligations to be issued in one or more series to be issued subsequent to the date hereof; and

WHEREAS, at the request of the Owners, the Department reasonably expects to incur debt in the form of tax-exempt and taxable, as applicable, obligations for purposes of paying the costs of the Development described on Exhibit A attached hereto; and

WHEREAS, in connection with the proposed issuance of the Bonds (defined below), the Department, as issuer of the Bonds, is required to submit for the Development one or more Applications for Allocation of Private Activity Bonds or Applications for Carryforward for Private Activity Bonds (the "Application") with the Texas Bond Review Board (the "Bond Review Board") with respect to the tax-exempt Bonds to qualify for the Bond Review Board's Allocation Program in connection with the Bond Review Board's authority to administer the allocation of the authority of the State to issue private activity bonds; and

WHEREAS, the Governing Board of the Department (the "Board") has determined to declare its intent to issue its multifamily revenue bonds for the purpose of providing funds to the Owners to finance the Development on the terms and conditions hereinafter set forth; NOW, THEREFORE,

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

ARTICLE 1

OFFICIAL INTENT; APPROVAL OF CERTAIN ACTIONS

Section 1.1. Authorization of Issue. The Department declares its intent to issue its Multifamily Housing Revenue Bonds (the "Bonds") in one or more series and in amounts estimated to be sufficient to (a) fund a loan or loans to the Owners to provide financing for the respective Development in an aggregate principal amount not to exceed those amounts, corresponding to the Development, set forth in Exhibit A; (b) fund a reserve fund with respect to the Bonds if needed; and (c) pay certain costs incurred in connection with the issuance of the Bonds. Such Bonds will be issued as qualified residential rental development bonds. Final approval of the Department to issue the Bonds shall be subject to: (i) the review by the Department's credit underwriters for financial feasibility; (ii) review by the Department's staff and legal counsel of compliance with federal income tax regulations and State law requirements regarding tenancy in the respective Development; (iii) approval by the Bond Review Board, if required; (iv) approval by the Attorney General of the State of Texas (the "Attorney General");

(v) satisfaction of the Board that the respective Development meets the Department's public policy criteria; and (vi) the ability of the Department to issue such Bonds in compliance with all federal and State laws applicable to the issuance of such Bonds.

Section 1.2. Terms of Bonds. The proposed Bonds shall be issuable only as fully registered bonds in authorized denominations to be determined by the Department; shall bear interest at a rate or rates to be determined by the Department; shall mature at a time to be determined by the Department but in no event later than 40 years after the date of issuance; and shall be subject to prior redemption upon such terms and conditions as may be determined by the Department.

Section 1.3. Reimbursement. The Department reasonably expects to reimburse the Owners for all costs that have been or will be paid subsequent to the date that is 60 days prior to the date hereof in connection with the acquisition of real property and construction or rehabilitation of its Development and listed on Exhibit A attached hereto ("Costs of the Development") from the proceeds of the Bonds, in an amount which is reasonably estimated to be sufficient: (a) to fund a loan to provide financing for the acquisition and construction or rehabilitation of its Development, including reimbursing the applicable Owner for all costs that have been or will be paid subsequent to the date that is 60 days prior to the date hereof in connection with the acquisition and construction or rehabilitation of the Development; (b) to fund any reserves that may be required for the benefit of the holders of the Bonds; and (c) to pay certain costs incurred in connection with the issuance of the Bonds.

Section 1.4. Principal Amount. Based on representations of the Owners, the Department reasonably expects that the maximum principal amount of debt issued to reimburse the Owners for the Costs of the Development will not exceed the amount set forth in Exhibit A which corresponds to the applicable Development.

Section 1.5. Limited Obligations. The Owners may commence with the acquisition and construction or rehabilitation of the Development, which Development will be in furtherance of the public purposes of the Department as aforesaid. On or prior to the issuance of the Bonds, each Owner will enter into a loan agreement, on terms agreed to by the parties, on an installment payment basis with the Department under which the Department will make a loan to the applicable Owner for the purpose of reimbursing the Owner for the Costs of the Development and the Owner will make installment payments sufficient to pay the principal of and any premium and interest on the applicable Bonds. The proposed Bonds shall be special, limited obligations of the Department payable solely by the Department from or in connection with its loan or loans to the Owner to provide financing for its Development, and from such other revenues, receipts and resources of the Department as may be expressly pledged by the Department to secure the payment of the Bonds.

Section 1.6. The Development. Substantially all of the proceeds of the Bonds shall be used to finance the Development, which are to be occupied entirely by Eligible Tenants, as determined by the Department, and which are to be occupied partially by persons and families

of low income such that the requirements of Section 142(d) of the Code are met for the period required by the Code.

Section 1.7. Payment of Bonds. The payment of the principal of and any premium and interest on the Bonds shall be made solely from moneys realized from the loan of the proceeds of the Bonds to reimburse the Owners for costs of its Development.

Section 1.8. Costs of Development. The Costs of the Development may include any cost of acquiring, constructing, reconstructing, improving, installing and expanding the Development. Without limiting the generality of the foregoing, the Costs of the Development shall specifically include the cost of the acquisition of all land, rights-of-way, property rights, easements and interests, the cost of all machinery and equipment, financing charges, inventory, raw materials and other supplies, research and development costs, interest prior to and during construction and for one year after completion of construction whether or not capitalized, necessary reserve funds, the cost of estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenue, other expenses necessary or incident to determining the feasibility and practicability of acquiring, constructing, reconstructing, improving and expanding the Development, administrative expenses and such other expenses as may be necessary or incident to the acquisition, construction, reconstruction, improvement and expansion of the Development, the placing of the Development in operation and that satisfy the Code and the Act. The Owners shall be responsible for and pay any costs of its Development incurred by it prior to issuance of the Bonds and will pay all costs of its Development which are not or cannot be paid or reimbursed from the proceeds of the Bonds.

Section 1.9. No Commitment to Issue Bonds. Neither the Owners nor any other party is entitled to rely on this Resolution as a commitment to issue the Bonds and to loan funds, and the Department reserves the right not to issue the Bonds either with or without cause and with or without notice, and in such event the Department shall not be subject to any liability or damages of any nature. Neither the Owners nor any one claiming by, through or under the Owners shall have any claim against the Department whatsoever as a result of any decision by the Department not to issue the Bonds.

Section 1.10. Conditions Precedent. The issuance of the Bonds following final approval by the Board shall be further subject to, among other things: (a) the execution by the Owners and the Department of contractual arrangements, on terms agreed to by the parties, providing assurance satisfactory to the Department that all requirements of the Act will be satisfied and that the Development will satisfy the requirements of Section 142(d) of the Code (except for portions to be financed with taxable bonds); (b) the receipt of an opinion from Bracewell LLP or other nationally recognized bond counsel acceptable to the Department ("Bond Counsel"), substantially to the effect that the interest on the tax-exempt Bonds is excludable from gross income for federal income tax purposes under existing law; and (c) receipt of the approval of the Bond Review Board, if required, and the Attorney General.

Section 1.11. Authorization to Proceed. The Board hereby authorizes staff, Bond Counsel and other consultants to proceed with preparation of the Development's necessary review and legal documentation for the filing of one or more Applications and the issuance of the Bonds, subject to satisfaction of the conditions specified in this Resolution. The Board further authorizes staff, Bond Counsel and other consultants to re-submit an Application that was withdrawn by an Owner.

Section 1.12. Related Persons. The Department acknowledges that financing of all or any part of the Development may be undertaken by any company or partnership that is a "related person" to the respective Owner within the meaning of the Code and applicable regulations promulgated pursuant thereto, including any entity controlled by or affiliated with the Owners.

Section 1.13. Declaration of Official Intent. This Resolution constitutes the Department's official intent for expenditures on Costs of the Development which will be reimbursed out of the issuance of the Bonds within the meaning of Sections 1.142-4(b) and 1.150-2, Title 26, Code of Federal Regulations, as amended, and applicable rulings of the Internal Revenue Service thereunder, to the end that the Bonds issued to reimburse Costs of the Development may qualify for the exemption provisions of Section 142 of the Code, and that the interest on the Bonds (except for any taxable Bonds) will therefore be excludable from the gross incomes of the holders thereof under the provisions of Section 103(a)(1) of the Code.

Section 1.14. Execution and Delivery of Documents. The Authorized Representatives named in this Resolution are each hereby authorized to execute and deliver all Applications, certificates, documents, instruments, letters, notices, written requests and other papers, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.15. Authorized Representatives. The following persons are hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Board, the Executive Director or Acting Director of the Department, the Director of Administration of the Department, the Director of Bond Finance and Chief Investment Officer of the Department, the Director of Texas Homeownership of the Department and the Secretary or any Assistant Secretary to the Board. Such persons are referred to herein collectively as the "Authorized Representatives." Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

ARTICLE 2

CERTAIN FINDINGS AND DETERMINATIONS

Section 2.1. Certain Findings Regarding Development and Owners. The Board finds that:

(a) the Development is necessary to provide decent, safe and sanitary housing at rentals that individuals or families of low and very low income and families of moderate income can afford;

(b) the Owners will supply, in their Development, well-planned and well-designed housing for individuals or families of low and very low income and families of moderate income;

(c) the Owners are financially responsible;

(d) the financing of the Development is a public purpose and will provide a public benefit; and

(e) the Development will be undertaken within the authority granted by the Act to the Department and the Owners.

Section 2.2. No Indebtedness of Certain Entities. The Board hereby finds, determines, recites and declares that the Bonds shall not constitute an indebtedness, liability, general, special or moral obligation or pledge or loan of the faith or credit or taxing power of the State, the Department or any other political subdivision or municipal or political corporation or governmental unit, nor shall the Bonds ever be deemed to be an obligation or agreement of any officer, director, agent or employee of the Department in his or her individual capacity, and none of such persons shall be subject to any personal liability by reason of the issuance of the Bonds. The Bonds will be a special limited obligation of the Department payable solely from amounts pledged for that purpose under the financing documents.

Section 2.3. Certain Findings with Respect to the Bonds. The Board hereby finds, determines, recites and declares that the issuance of the Bonds to provide financing for the Development will promote the public purposes set forth in the Act, including, without limitation, assisting persons and families of low and very low income and families of moderate income to obtain decent, safe and sanitary housing at rentals they can afford.

ARTICLE 3

GENERAL PROVISIONS

Section 3.1. Books and Records. The Board hereby directs this Resolution to be made a part of the Department's books and records that are available for inspection by the general public.

Section 3.2. Notice of Meeting. This Resolution was considered and adopted at a meeting of the Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Board.

Section 3.3. Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

[Execution page follows]

PASSED AND APPROVED this 21st day of February, 2019.

[SEAL]

By: _____
Chair, Governing Board

ATTEST:

Secretary to the Governing Board

Signature Page to Inducement Resolution

EXHIBIT "A"

Description of the Owner and the Development

Project Name	Owner	Principals	Amount Not to Exceed
Northgate Village Apartments	Northgate Preservation, L.P., a New York limited partnership	General Partner: Northgate Preservation GP, LLC, a New York limited liability company	\$20,000,000
Costs: Acquisition/rehabilitation of a 168-unit affordable, multifamily housing development to be known as Northgate Village Apartments, to be located at 12303 North Plano Road, Dallas, Dallas County, Texas 75243.			

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BOARD ACTION REQUEST
BOND FINANCE DIVISION
FEBRUARY 21, 2019

Presentation, discussion, and possible action on Inducement Resolution No. 19-028, for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority for Ventura at Hickory Tree (#19604) in Balch Springs

RECOMMENDED ACTION

WHEREAS, a bond pre-application for Ventura at Hickory Tree, as further detailed below, was submitted to the Department for consideration of an inducement resolution;

WHEREAS, Board approval of the inducement resolution is the first step in the application process for a multifamily bond issuance by the Department;

WHEREAS, approval of the inducement will allow staff to submit an application to the Bond Review Board (BRB) for the issuance of a Certificate of Reservation associated with the Development;

WHEREAS, the applicant disclosed the presence of a Neighborhood Risk Factor, specifically that the elementary school located in the attendance zone of the development did not achieve a 2018 Met Standard rating by the Texas Education Agency (TEA); and

WHEREAS, while the aforementioned Neighborhood Risk Factor has been disclosed, information regarding mitigation was not submitted so that staff could evaluate further; therefore, a recommendation as to eligibility under 10 TAC §11.101(a)(3) of the QAP will be considered at the time of full application;

NOW, therefore, it is hereby

RESOLVED, that based on the foregoing, Inducement Resolution No. 19-028 to proceed with the application submission to the BRB for possible receipt of State Volume Cap issuance authority under the Private Activity Bond Program for Ventura at Hickory Tree, is hereby approved in the form presented to this meeting.

BACKGROUND

The BRB administers the annual private activity bond authority for the State of Texas. The Department is an issuer of Private Activity Bonds and is required to induce an application for bonds prior to the submission to the BRB. Approval of the inducement resolution does not constitute approval of the development but merely allows the Applicant the opportunity to move into the full application phase of the process. Once the application receives a Certificate of Reservation, the Applicant has 150 days to close on the private activity bonds.

During the 150-day process, the Department will review the complete application for compliance with the Department's Rules, including but not limited to site eligibility and threshold as well as previous participation as it relates to developments previously funded through the Department. During the review of the full application, staff will underwrite the transaction and determine financial feasibility in accordance with the Real Estate Analysis Rules. The Department will schedule and conduct a public hearing, and the complete application, including a transcript from the hearing, will be presented to the Board for a decision on the issuance of bonds as well as a determination on the amount of housing tax credits anticipated to be allocated to the development. This inducement resolution would reserve approximately \$27 million in private activity bond volume cap.

Ventura at Hickory Tree (19604): This development is located at 3401 Hickory Tree Road in Balch Springs, Dallas County, and proposes the new construction of 216 units serving the general population. This transaction is proposed to be Priority 3 with all of the units rent and income restricted at 60% of the Area Median Family Income. The Department has not received any letters of support or opposition for this development. The pre-application disclosed the presence of a Neighborhood Risk Factor; specifically, that the elementary school in the attendance zone of the proposed development site did not achieve the Met Standard rating based on the 2018 TEA Accountability Ratings. The school achieved the desired Met Standard rating in 2017 and 2016. There was no mitigation submitted with the pre-application for staff to evaluate and therefore, a recommendation of eligibility will be made at the time the full application is submitted to the Department.

RESOLUTION NO. 19-028

RESOLUTION DECLARING INTENT TO ISSUE MULTIFAMILY REVENUE BONDS WITH RESPECT TO RESIDENTIAL RENTAL DEVELOPMENT; AUTHORIZING THE FILING OF ONE OR MORE APPLICATIONS FOR ALLOCATION OF PRIVATE ACTIVITY BONDS WITH THE TEXAS BOND REVIEW BOARD; AND AUTHORIZING OTHER ACTION RELATED THERETO

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended, (the "Act") for the purpose, among others, of providing a means of financing the costs of residential ownership, development and rehabilitation that will provide decent, safe, and affordable living environments for persons and families of low, very low and extremely low income and families of moderate income (all as defined in the Act); and

WHEREAS, the Act authorizes the Department: (a) to make mortgage loans to housing sponsors to provide financing for multifamily residential rental housing in the State of Texas (the "State") intended to be occupied by persons and families of low, very low and extremely low income and families of moderate income, as determined by the Department; (b) to issue its revenue bonds, for the purpose, among others, of obtaining funds to make such loans and provide financing, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such multifamily residential rental development loans, and to mortgage, pledge or grant security interests in such loans or other property of the Department in order to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, it is proposed that the Department issue its revenue bonds in one or more series for the purpose of providing financing for the multifamily residential rental development (the "Development") more fully described in Exhibit A attached hereto. The ownership of the Development as more fully described in Exhibit A will consist of the applicable ownership entity and its principals or a related person (the "Owners") within the meaning of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, the Owners have made not more than 60 days prior to the date hereof, payments with respect to the Development and expect to make additional payments in the future and desire that they be reimbursed for such payments and other costs associated with the Development from the proceeds of tax-exempt and taxable, as applicable, obligations to be issued by the Department subsequent to the date hereof; and

WHEREAS, the Owners have indicated their willingness to enter into contractual arrangements with the Department providing assurance satisfactory to the Department that the requirements of the Act and the Department will be satisfied and that the Development will

satisfy State law, Section 142(d) and other applicable Sections of the Code and Treasury Regulations; and

WHEREAS, the Department desires to reimburse the Owners for the costs associated with the Development listed on Exhibit A attached hereto, but solely from and to the extent, if any, of the proceeds of tax-exempt and taxable, as applicable, obligations to be issued in one or more series to be issued subsequent to the date hereof; and

WHEREAS, at the request of the Owners, the Department reasonably expects to incur debt in the form of tax-exempt and taxable, as applicable, obligations for purposes of paying the costs of the Development described on Exhibit A attached hereto; and

WHEREAS, in connection with the proposed issuance of the Bonds (defined below), the Department, as issuer of the Bonds, is required to submit for the Development one or more Applications for Allocation of Private Activity Bonds or Applications for Carryforward for Private Activity Bonds (the "Application") with the Texas Bond Review Board (the "Bond Review Board") with respect to the tax-exempt Bonds to qualify for the Bond Review Board's Allocation Program in connection with the Bond Review Board's authority to administer the allocation of the authority of the State to issue private activity bonds; and

WHEREAS, the Governing Board of the Department (the "Board") has determined to declare its intent to issue its multifamily revenue bonds for the purpose of providing funds to the Owners to finance the Development on the terms and conditions hereinafter set forth; NOW, THEREFORE,

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

ARTICLE 1

OFFICIAL INTENT; APPROVAL OF CERTAIN ACTIONS

Section 1.1. Authorization of Issue. The Department declares its intent to issue its Multifamily Housing Revenue Bonds (the "Bonds") in one or more series and in amounts estimated to be sufficient to (a) fund a loan or loans to the Owners to provide financing for the respective Development in an aggregate principal amount not to exceed those amounts, corresponding to the Development, set forth in Exhibit A; (b) fund a reserve fund with respect to the Bonds if needed; and (c) pay certain costs incurred in connection with the issuance of the Bonds. Such Bonds will be issued as qualified residential rental development bonds. Final approval of the Department to issue the Bonds shall be subject to: (i) the review by the Department's credit underwriters for financial feasibility; (ii) review by the Department's staff and legal counsel of compliance with federal income tax regulations and State law requirements regarding tenancy in the respective Development; (iii) approval by the Bond Review Board, if required; (iv) approval by the Attorney General of the State of Texas (the "Attorney General");

(v) satisfaction of the Board that the respective Development meets the Department's public policy criteria; and (vi) the ability of the Department to issue such Bonds in compliance with all federal and State laws applicable to the issuance of such Bonds.

Section 1.2. Terms of Bonds. The proposed Bonds shall be issuable only as fully registered bonds in authorized denominations to be determined by the Department; shall bear interest at a rate or rates to be determined by the Department; shall mature at a time to be determined by the Department but in no event later than 40 years after the date of issuance; and shall be subject to prior redemption upon such terms and conditions as may be determined by the Department.

Section 1.3. Reimbursement. The Department reasonably expects to reimburse the Owners for all costs that have been or will be paid subsequent to the date that is 60 days prior to the date hereof in connection with the acquisition of real property and construction or rehabilitation of its Development and listed on Exhibit A attached hereto ("Costs of the Development") from the proceeds of the Bonds, in an amount which is reasonably estimated to be sufficient: (a) to fund a loan to provide financing for the acquisition and construction or rehabilitation of its Development, including reimbursing the applicable Owner for all costs that have been or will be paid subsequent to the date that is 60 days prior to the date hereof in connection with the acquisition and construction or rehabilitation of the Development; (b) to fund any reserves that may be required for the benefit of the holders of the Bonds; and (c) to pay certain costs incurred in connection with the issuance of the Bonds.

Section 1.4. Principal Amount. Based on representations of the Owners, the Department reasonably expects that the maximum principal amount of debt issued to reimburse the Owners for the Costs of the Development will not exceed the amount set forth in Exhibit A which corresponds to the applicable Development.

Section 1.5. Limited Obligations. The Owners may commence with the acquisition and construction or rehabilitation of the Development, which Development will be in furtherance of the public purposes of the Department as aforesaid. On or prior to the issuance of the Bonds, each Owner will enter into a loan agreement, on terms agreed to by the parties, on an installment payment basis with the Department under which the Department will make a loan to the applicable Owner for the purpose of reimbursing the Owner for the Costs of the Development and the Owner will make installment payments sufficient to pay the principal of and any premium and interest on the applicable Bonds. The proposed Bonds shall be special, limited obligations of the Department payable solely by the Department from or in connection with its loan or loans to the Owner to provide financing for its Development, and from such other revenues, receipts and resources of the Department as may be expressly pledged by the Department to secure the payment of the Bonds.

Section 1.6. The Development. Substantially all of the proceeds of the Bonds shall be used to finance the Development, which are to be occupied entirely by Eligible Tenants, as determined by the Department, and which are to be occupied partially by persons and families

of low income such that the requirements of Section 142(d) of the Code are met for the period required by the Code.

Section 1.7. Payment of Bonds. The payment of the principal of and any premium and interest on the Bonds shall be made solely from moneys realized from the loan of the proceeds of the Bonds to reimburse the Owners for costs of its Development.

Section 1.8. Costs of Development. The Costs of the Development may include any cost of acquiring, constructing, reconstructing, improving, installing and expanding the Development. Without limiting the generality of the foregoing, the Costs of the Development shall specifically include the cost of the acquisition of all land, rights-of-way, property rights, easements and interests, the cost of all machinery and equipment, financing charges, inventory, raw materials and other supplies, research and development costs, interest prior to and during construction and for one year after completion of construction whether or not capitalized, necessary reserve funds, the cost of estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenue, other expenses necessary or incident to determining the feasibility and practicability of acquiring, constructing, reconstructing, improving and expanding the Development, administrative expenses and such other expenses as may be necessary or incident to the acquisition, construction, reconstruction, improvement and expansion of the Development, the placing of the Development in operation and that satisfy the Code and the Act. The Owners shall be responsible for and pay any costs of its Development incurred by it prior to issuance of the Bonds and will pay all costs of its Development which are not or cannot be paid or reimbursed from the proceeds of the Bonds.

Section 1.9. No Commitment to Issue Bonds. Neither the Owners nor any other party is entitled to rely on this Resolution as a commitment to issue the Bonds and to loan funds, and the Department reserves the right not to issue the Bonds either with or without cause and with or without notice, and in such event the Department shall not be subject to any liability or damages of any nature. Neither the Owners nor any one claiming by, through or under the Owners shall have any claim against the Department whatsoever as a result of any decision by the Department not to issue the Bonds.

Section 1.10. Conditions Precedent. The issuance of the Bonds following final approval by the Board shall be further subject to, among other things: (a) the execution by the Owners and the Department of contractual arrangements, on terms agreed to by the parties, providing assurance satisfactory to the Department that all requirements of the Act will be satisfied and that the Development will satisfy the requirements of Section 142(d) of the Code (except for portions to be financed with taxable bonds); (b) the receipt of an opinion from Bracewell LLP or other nationally recognized bond counsel acceptable to the Department ("Bond Counsel"), substantially to the effect that the interest on the tax-exempt Bonds is excludable from gross income for federal income tax purposes under existing law; and (c) receipt of the approval of the Bond Review Board, if required, and the Attorney General.

Section 1.11. Authorization to Proceed. The Board hereby authorizes staff, Bond Counsel and other consultants to proceed with preparation of the Development's necessary review and legal documentation for the filing of one or more Applications and the issuance of the Bonds, subject to satisfaction of the conditions specified in this Resolution. The Board further authorizes staff, Bond Counsel and other consultants to re-submit an Application that was withdrawn by an Owner.

Section 1.12. Related Persons. The Department acknowledges that financing of all or any part of the Development may be undertaken by any company or partnership that is a "related person" to the respective Owner within the meaning of the Code and applicable regulations promulgated pursuant thereto, including any entity controlled by or affiliated with the Owners.

Section 1.13. Declaration of Official Intent. This Resolution constitutes the Department's official intent for expenditures on Costs of the Development which will be reimbursed out of the issuance of the Bonds within the meaning of Sections 1.142-4(b) and 1.150-2, Title 26, Code of Federal Regulations, as amended, and applicable rulings of the Internal Revenue Service thereunder, to the end that the Bonds issued to reimburse Costs of the Development may qualify for the exemption provisions of Section 142 of the Code, and that the interest on the Bonds (except for any taxable Bonds) will therefore be excludable from the gross incomes of the holders thereof under the provisions of Section 103(a)(1) of the Code.

Section 1.14. Execution and Delivery of Documents. The Authorized Representatives named in this Resolution are each hereby authorized to execute and deliver all Applications, certificates, documents, instruments, letters, notices, written requests and other papers, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.15. Authorized Representatives. The following persons are hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Board, the Executive Director or Acting Director of the Department, the Director of Administration of the Department, the Director of Bond Finance and Chief Investment Officer of the Department, the Director of Texas Homeownership of the Department and the Secretary or any Assistant Secretary to the Board. Such persons are referred to herein collectively as the "Authorized Representatives." Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

ARTICLE 2

CERTAIN FINDINGS AND DETERMINATIONS

Section 2.1. Certain Findings Regarding Development and Owners. The Board finds that:

(a) the Development is necessary to provide decent, safe and sanitary housing at rentals that individuals or families of low and very low income and families of moderate income can afford;

(b) the Owners will supply, in their Development, well-planned and well-designed housing for individuals or families of low and very low income and families of moderate income;

(c) the Owners are financially responsible;

(d) the financing of the Development is a public purpose and will provide a public benefit; and

(e) the Development will be undertaken within the authority granted by the Act to the Department and the Owners.

Section 2.2. No Indebtedness of Certain Entities. The Board hereby finds, determines, recites and declares that the Bonds shall not constitute an indebtedness, liability, general, special or moral obligation or pledge or loan of the faith or credit or taxing power of the State, the Department or any other political subdivision or municipal or political corporation or governmental unit, nor shall the Bonds ever be deemed to be an obligation or agreement of any officer, director, agent or employee of the Department in his or her individual capacity, and none of such persons shall be subject to any personal liability by reason of the issuance of the Bonds. The Bonds will be a special limited obligation of the Department payable solely from amounts pledged for that purpose under the financing documents.

Section 2.3. Certain Findings with Respect to the Bonds. The Board hereby finds, determines, recites and declares that the issuance of the Bonds to provide financing for the Development will promote the public purposes set forth in the Act, including, without limitation, assisting persons and families of low and very low income and families of moderate income to obtain decent, safe and sanitary housing at rentals they can afford.

ARTICLE 3

GENERAL PROVISIONS

Section 3.1. Books and Records. The Board hereby directs this Resolution to be made a part of the Department's books and records that are available for inspection by the general public.

Section 3.2. Notice of Meeting. This Resolution was considered and adopted at a meeting of the Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with §2306.032 of the Texas Government Code, regarding meetings of the Board.

Section 3.3. Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

[Execution page follows]

PASSED AND APPROVED this 21st day of February, 2019.

[SEAL]

By: _____
Chair, Governing Board

ATTEST:

Secretary to the Governing Board

Signature Page to Inducement Resolution

EXHIBIT "A"

Description of the Owner and the Development

Project Name	Owner	Principals	Amount Not to Exceed
Ventura at Hickory Tree	Balch Springs Leased Housing Associates I, LLLP, a Minnesota limited liability limited partnership	General Partner: Balch Springs Leased Housing Associates GP I, LLC, a Minnesota limited liability company	\$27,000,000
Costs: Acquisition/construction of a 216-unit affordable, multifamily housing development to be known as Ventura at Hickory Tree, to be located at 3401 Hickory Tree Road, Balch Springs, Dallas County, Texas 75180			

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BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
FEBRUARY 21, 2019

Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits with another Issuer, and on an Award of Direct Loan Funds (#18448 RBJ Phase I, Austin)

RECOMMENDED ACTION

WHEREAS, an application for 4% Housing Tax Credits for RBJ Phase I, sponsored by The Austin Geriatric Center, Inc., and DMA Development Company was submitted on October 25, 2018;

WHEREAS, the Direct Loan application was submitted under the Supportive Housing/Soft Repayment set-aside in the 2018-1 Multifamily Direct Loan Notice of Funding Availability (2018-1 NOFA);

WHEREAS, in lieu of a Certification of Reservation, a Carryforward Designation Certificate was issued by the Texas Bond Review Board on January 4, 2018, and will expire on December 31, 2020;

WHEREAS, the proposed issuer of the bonds is the Austin Housing Finance Corporation;

WHEREAS, pursuant to 10 TAC §10.101(a)(3) of the 2018 Uniform Multifamily Rules related to Undesirable Neighborhood Characteristics, applicants are required to disclose to the Department the existence of certain characteristics of a proposed development site;

WHEREAS, the applicant has disclosed the presence of a middle school (Martin Middle School) within the attendance zone of the proposed development site that did not achieve a Met Standard rating based on the 2017 Accountability Ratings by the Texas Education Agency (TEA);

WHEREAS, a 2018 Competitive HTC application (#18081 Pathways at Chalmers Court East) was submitted for a development within the same attendance zone and mitigation submitted in response to the undesirable neighborhood characteristic was considered acceptable to staff and subsequently the Board as evidenced by the award recommendation of the application;

WHEREAS, staff recommends the proposed site be found eligible under 10 TAC §10.101(a)(3) of the 2018 Uniform Multifamily Rules; and

WHEREAS, due to the Carryforward Designation Certificate, Executive Award and Review Advisory Committee (EARAC) recommends the issuance of the Determination Notice with the condition that the closing occur within 120 days (on or before June 21, 2019);

NOW, therefore, it is hereby

RESOLVED, that the site for RBJ Phase I is hereby found to be eligible;

FURTHER RESOLVED, that the issuance of a Determination Notice of \$2,495,284 in 4% Housing Tax Credits and \$2,000,000 in National Housing Trust Fund (NHTF), subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website for RBJ Phase I, is hereby approved as presented to this meeting; and

FURTHER RESOLVED, that provided the Applicant has not closed on the bond financing on or before June 21, 2019, the Board authorizes the Director of Multifamily Finance or the Acting Director to approve or deny an extension of the Determination Notice date and Direct Loan Commitment, subject to an updated previous participation review, if necessary.

BACKGROUND

General Information: RBJ Phase I is a proposed new construction development that will be located at 21 Waller Street, in Austin, Travis County. The development will be composed of 279 units, of which 18 will be rent and income restricted at 30% of the Area Median Family Income (AMFI), 72 units will be rent and income restricted at 50% of AMFI, 156 units will be rent and income restricted at 60% of AMFI, 27 units will be rent and income restricted at 80% of AMFI, and the remaining six units will be rented at market rate. Layered among the non 30% HTC-restricted units will be 15 Direct Loan restricted units that will carry NHTF income and rent restrictions for households. While the application indicated the development will serve the elderly population (elderly limitation), the target population is still under review by staff regarding whether the development can exclusively lease to elderly, or if it can only have a preference for such target population for some of its units. The award is conditioned upon a resolution as to the allowable target population prior to initiating lease-up activities, as reflected in the underwriting report. The development site conforms to current zoning requirements. The proposed development will be on land currently owned by the Rebekah Baines Johnson Center (RBJ Tower), which originally opened in 1972. The RBJ Tower is currently owned and operated by the Austin Geriatric Center.

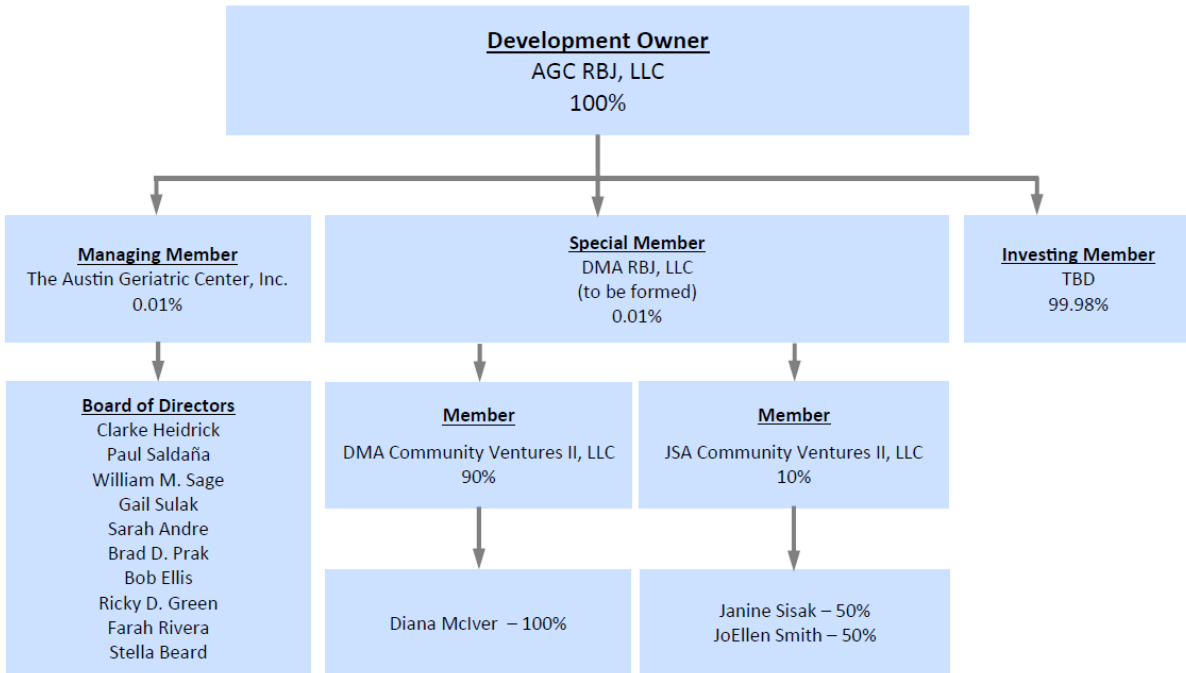
The \$2,000,000 Direct Loan award will be sourced with NHTF, and structured as a second lien surplus cash flow loan, with a 40-year amortization and an 18-year term. As a result of the NHTF investment, the Department, prior to initiating lease-up activities, must approve the tenant selection criteria and review the populations served in connection with the 100 Project Based Vouchers that are anticipated to be utilized temporarily. Additionally, none of the 100 Project Based Vouchers may be placed on the NHTF units at any point during the NHTF federal affordability period.

Site Analysis: The applicant disclosed the presence of a middle school (Martin Middle School) within the attendance zone of the proposed development site that did not achieve a Met Standard rating based on the 2017 Accountability Ratings by the Texas Education Agency (TEA). The middle school did achieve a Met Standard rating for the 2016 school year. A 2018 Competitive HTC application (#18081 Pathways at Chalmers Court East) was submitted for a development within the same attendance zone and mitigation submitted in response to the undesirable neighborhood characteristic was considered acceptable to staff, and subsequently the Board as evidenced by the award recommendation of the application at the Board meeting of June 28, 2018. Based on this, staff recommends the proposed site be found eligible under 10 TAC §10.101(a)(3) of the 2018 Uniform Multifamily Rules.

Organizational Structure and Previous Participation: The Borrower is AGC RBJ, LLC, and includes the entities and principals as illustrated in Exhibit A. The applicant's portfolio is considered a Category 2 and the previous participation was deemed acceptable by the EARAC without further review or discussion.

Public Comment: There have been no letters of support or opposition submitted to the Department.

EXHIBIT A



18448 RBJ Phase I - Application Summary

REAL ESTATE ANALYSIS DIVISION

February 14, 2019

PROPERTY IDENTIFICATION		RECOMMENDATION					
Application #	18448	TDHCA Program		Request		Recommended	
Development	RBJ Phase I	LIHTC (4% Credit)		\$2,504,073	\$2,495,284	\$8,944/Unit	\$0.95
City / County	Austin / Travis			Amount	Rate	Amort	Term
Region/Area	7 / Urban	TDHCA Soft Repayable		\$2,000,000		40	18
Population	Elderly Limitation						Lien
Set-Aside	General						2
Activity	New Construction						

KEY PRINCIPAL / SPONSOR		
DMA- Developer, Special Member		
Austin Geriatric Center- Managing Member, Non-profit, owner of master development land		
Related Parties	Contractor - No	Seller - Yes

TYPICAL BUILDING ELEVATION/PHOTO



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	47	17%	30%	18	6%
1	208	75%	40%	-	0%
2	24	9%	50%	81	29%
3	-	0%	60%	147	53%
4	-	0%	MR	6	2%
TOTAL	279	100%	TOTAL	252	100%

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	1.20	Expense Ratio	50.9%
Breakeven Occ.	85.1%	Breakeven Rent	\$796
Average Rent	\$867	B/E Rent Margin	\$70
Property Taxes	\$538/unit	Exemption/PILOT	50%
Total Expense	\$4,941/unit	Controllable	\$3,148/unit

SITE PLAN



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)			4.5%
Highest Unit Capture Rate	34%	1 BR/60%	126
Dominant Unit Cap. Rate	34%	1 BR/60%	126
Premiums (↑60% Rents)	#N/A	#N/A	
Rent Assisted Units	N/A		

DEVELOPMENT COST SUMMARY			
Costs Underwritten		Applicant's Costs	
Avg. Unit Size	741 SF	Density	200.0/acre
Acquisition		#VALUE!	#VALUE!
Building Cost	\$164.70/SF	\$122K/unit	\$34,064K
Hard Cost		\$146K/unit	\$40,760K
Total Cost		\$233K/unit	\$65,082K
Developer Fee	\$7,440K	(47% Deferred)	Paid Year: 12
Contractor Fee	\$4,413K	30% Boost	Yes

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES		
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount	
Barings, LLC	18/40	4.75%	\$19,900,000	1.20	Sale Proceeds from South Market	0/0	0.00%	\$4,315,164	1.20	National Equity Fund	\$23,825,199	
TDHCA Soft Repayable	18/40	0.00%	\$2,000,000	1.20	Sale Proceeds from Mixed Use Tra	0/0	0.00%	\$1,492,957	1.20			
					Sale Proceeds from North Market	0/0	0.00%	\$3,500,000	1.20	Deferred Developer Fee	\$3,469,458	
					City of Austin Forgivable Loan	0/0	0.00%	\$6,479,000	1.20	Additional (Excess) Funds Req'd	(\$0)	
					Nelson Arch MDL Match	0/0	0.00%	\$100,000	1.20	TOTAL EQUITY SOURCES	\$27,294,657	
TOTAL DEBT (Must Pay)			\$21,900,000		CASH FLOW DEBT / GRANTS			\$15,887,121		TOTAL DEBT SOURCES	\$37,787,121	
										TOTAL CAPITALIZATION		\$65,081,778

CONDITIONS

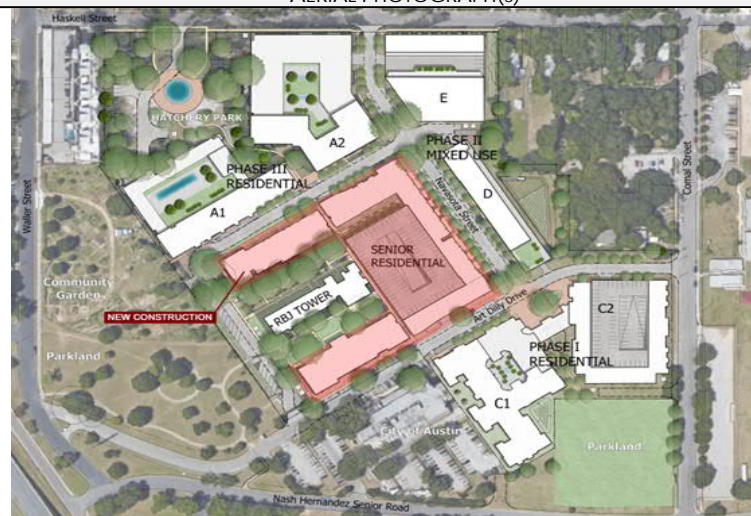
- 1 Receipt and acceptance before Direct Loan Closing
 - a: Substantially final construction contract with Schedule of Values.
 - b: Updated term sheets with substantially final terms from all lenders.
 - c: Substantially final draft of limited partnership agreement.
 - d: Documentation identifying any required matching funds, and confirming that the source is eligible to be counted as matching funds under HUD and TDHCA requirements.
 - e: Certification from the Architect that all recommendations from the noise study are incorporated into the development plans.
- 2 Receipt and acceptance before lease-up activities
 - a: Confirmation of approval for HAP contract temporary pass through.
 - b: Approval of tenant selection criteria and confirmation of populations served.
- 3 Receipt and acceptance by Cost Certification:
 - a: Architect certification that all noise assessment recommendations were implemented and the Development is compliant with HUD noise guidelines.
 - b: Certification that testing for asbestos and lead-based paint was performed on the existing structure(s) prior to demolition, and if necessary, a certification that any appropriate abatement procedures were implemented by a qualified abatement company.
 - c: Attorney opinion validating federally sourced funds can be considered bona fide debt with a reasonable expectation that it will be repaid in full and further stating that the funds should not be deducted from eligible basis.

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

BOND RESERVATION / ISSUER	
Issuer	Austin HFC
Expiration Date	12/31/2020
Bond Amount	\$50,000,000
BRB Priority	NA
Close Date	TBD
Bond Structure	Private Placement
% Financed with Tax-Exempt Bonds	64.6%

RISK PROFILE	
STRENGTHS/MITIGATING FACTORS	
▫	Developer experience
▫	Location; master development
▫	Non-profit commitment and experience
WEAKNESSES/RISKS	
▫	HUD temporary pass through of HAP
▫	Complex master development
▫	Sponsor loans from future land sales

AERIAL PHOTOGRAPH(S)



19409/18454 Grim Hotel

PULLED FROM THE AGENDA

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PULLED FROM THE AGENDA

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BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
FEBRUARY 21, 2019

Presentation, discussion, and possible action on the re-issuance of a Determination Notice for Housing Tax Credits with another Issuer (#18424 Flora Lofts, Dallas)

RECOMMENDED ACTION

WHEREAS, a 4% Housing Tax Credit award for Flora Lofts, sponsored by Graham Greene, City Square and La Reunion, TX, was previously approved by the Board at the meetings of September 7, 2017, and April 26, 2018;

WHEREAS, this application has had numerous Certificates of Reservation (Reservation) issued by the Texas Bond Review Board and the applicant has been unable to close by the deadline associated with those Reservations previously issued and subsequently had those Reservations withdrawn;

WHEREAS, the fourth Reservation was issued by the Bond Review Board on November 15, 2018, with a closing deadline of April 14, 2019; and

WHEREAS, upon review of the changes that have occurred since the Determination Notice was re-issued, as further explained herein, and given the length of time that has passed since the last Board approval, the certification process allowed under 10 TAC §11.201(3) could not be utilized and the application is being presented before the Board for consideration of a new Determination Notice;

NOW, therefore, it is hereby

RESOLVED, that the issuance of a Determination Notice of \$754,702 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the original Real Estate Analysis report posted to the Department's website for Flora Lofts is hereby approved as presented to this meeting.

BACKGROUND

General Information: Flora Lofts, proposed to be located at 901 Pearl Street in Dallas, Dallas County, involves the new construction of 52 units, of which 38 units will be income and rent restricted at 60% of Area Median Family Income (AMFI), five units will be income and rent restricted at 50% AMFI and the remaining nine units will be at market rate with no rent or income restrictions. The development, intended to serve a general population, involves three separate properties/separate condominium ownerships that will be housed in a luxury tower in the downtown Dallas arts district. The

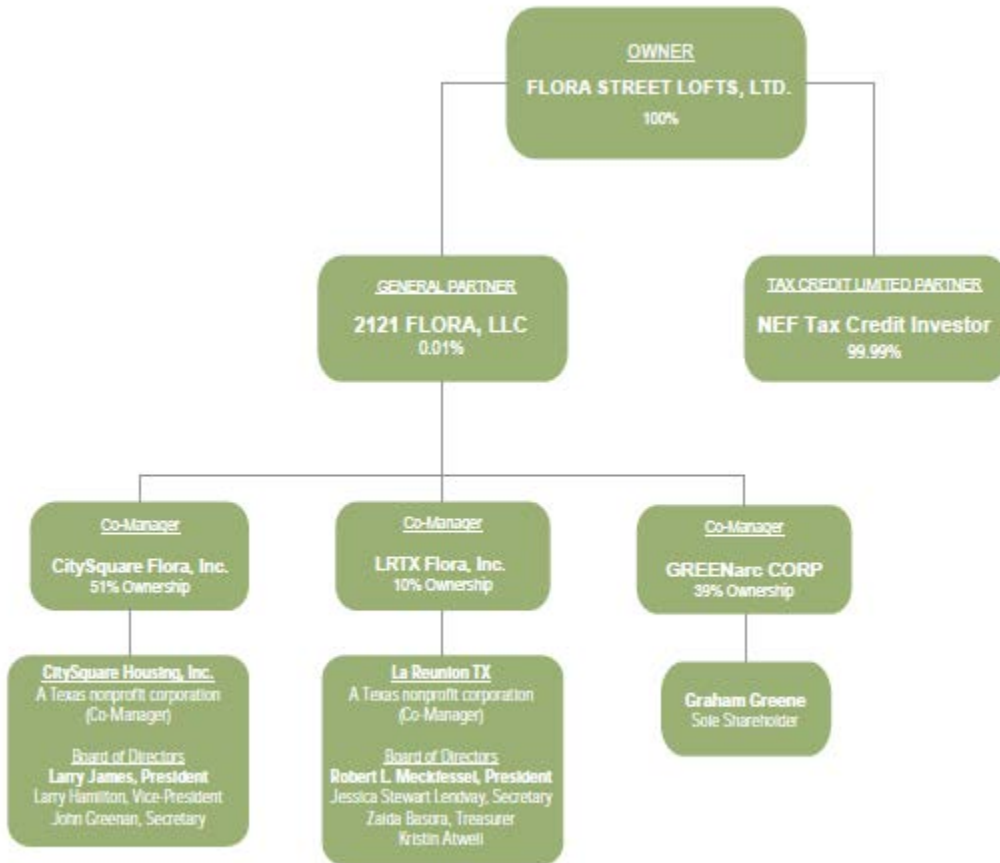
development will include a tower/retail section, containing 29 stories of luxury market rate rental residences (named Atelier) placed above a nine-story structured parking podium/amenity deck, which will contain 364 units with 544 structured parking spaces, and approximately 14,000 square feet of ground level retail space. This is a separate, non-related ownership entity from the tax credit ownership. The other component of the development will include Flora Lofts, located on floors 2 through 6 lining the aforementioned podium parking of the tower.

Summary of Changes Since Prior Award: The applicant has indicated that the design, number of units/unit mix and square footage have not changed. After attempting to close the transaction under several different equity providers, the proposal now includes National Equity Fund as the equity investor. An additional general partner, City Square, has been added to the organizational structure who will also be contributing approximately \$3.2 million in gap financing. The underwriting report speaks in more detail regarding other changes to some of the numbers that have occurred since the most recent Board approval.

Organizational Structure and Previous Participation: The Borrower is Flora Street Lofts, Ltd. and includes the entities and principals as illustrated in Exhibit A. The applicant's portfolio is considered a Category 2 and the previous participation was deemed acceptable by EARAC.

Public Comment: There have been no letters of support or opposition submitted to the Department.

EXHIBIT A





Addendum to Underwriting Report

TDHCA Application #: 18424 Program(s): 4% HTC

Flora Lofts

Address/Location: 901 Pearl Street (a.k.a 2121 Flora Street)

City: Dallas County: Dallas Zip: 75201

APPLICATION HISTORY	
Report Date	PURPOSE
02/13/19	Re-issuance of Determination Notice
04/19/18	Amendment
09/27/17	Determination Notice Memo
09/06/17	Original Underwriting Report

ALLOCATION

TDHCA Program	Previous Allocation				RECOMMENDATION				
	Amount	Rate	Amort	Term	Amount	Rate	Amort	Term	Lien
LIHTC (Annual)	\$696,992				\$754,702				

CONDITIONS STATUS

- Receipt and acceptance before Determination Notice:
 - Possible structure of the units and buildings that conform with Section 42 with respect to minimum set-aside requirements and any other related building designation issues.
Status: Cleared. Applicant supplied a possible structure for units and buildings. Note any possible structure will include all 52 Flora Lofts units, land, and common/shared areas to be encumbered by the LURA.
- Receipt and acceptance by Cost Certification:
 - Executed 40 year Parking Agreement with Arts District Properties parking condo for 31 parking spaces (including 2 accessible spaces, of which one is a van accessible space). These spaces must be free to Flora Loft residents and only a nominal fee to the Flora Lofts as the operating budget cannot support a parking expense.

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

ANALYSIS

This underwriting review is for a second Re-issuance of the Determination Notice. Flora Lofts was not able to close by the original bond reservation expiration date in 2017 and therefore a Second Determination Notice was issued in April of 2018.

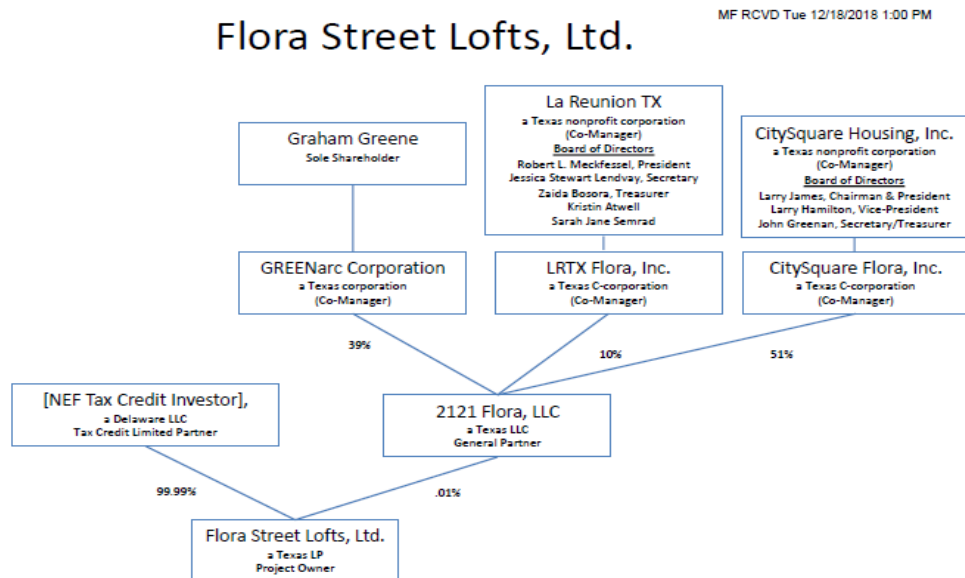
Since the April 2018 underwriting, development costs have increased slightly, the equity partner has changed with credit pricing decreasing from \$1.04 to \$0.93, the managing member/non-profit partner has changed from Artspace Projects, Inc. to CitySquare Housing, Inc.

The design, number of units, square footages, unit mix and income targeting have not changed. The Walker Settlement Project-Based Voucher rents are updated to 2019 amounts and affordable units remain at the published 2018 rents as 2019 rents are not yet available. Market rents remain at the assumed amounts from previous underwriting. Operating expenses assumptions have not changed.

CitySquare Housing, Inc. replaced Artspace Projects, Inc. as the managing member and non-profit in the project. Consequently, the Artspace loan is replaced by CitySquare loans to be discussed in the Sources of Funds section. Per Applicant, CitySquare was able to raise more gap funds than Artspace, and therefore is the new managing member. Artspace will still be involved in the management of the development in terms of the artist component.

CitySquare Housing, Inc. is a Dallas based non-profit. Per their website, " Since our humble beginnings in 1988 to present day, CitySquare has grown into a broad community development organization offering a comprehensive array of social services that address four key areas related to the persistence of poverty: hunger, health, housing, and hope. Together, our 17 social service programs provide more than 50,000 human touches in Dallas, Waco, and Denver, Colorado." <https://www.citysquare.org>

Below is the current organization chart for the tax credit partnership.



Operating Pro Forma

Applicant's pro forma is within 5% of Underwriter's, therefore Applicant's pro forma is used. Rental income has decreased 0.2% due to the 2019 Walker Voucher amounts. The six studio vouchers increased \$95/mo, while the ten one bedroom vouchers decreased \$71/mo. The net change is minimal.

Per Applicant, they are using the 2019 Small Area Fair Market rents for the Walker voucher units. Walker vouchers are allowed up to 110% of SAFMR's. If we include 110% instead of 100% SAFMR's for the 16 voucher units, DCR increases from 1.22 to 1.28.

Development Cost

Applicant's costs are within 5% of Underwriter's, therefore Applicant's costs are used for analysis. Total development costs have increased \$707k, or 3% from prior underwriting. Total eligible basis claimed has increased \$1.7M or 8%.

Building costs have not changed. The increased development cost comes from newly assumed \$150k soft cost contingency, \$480k increase in real estate attorney fees, and \$600k increase in interest included in basis (marginal change in actual interest cost). Developer fee increased \$500k, but only an increase of \$300k developer fee included in basis.

Underwriter reclassified the \$150k soft cost contingency to the total contingency; total amount is still below the 7% contingency allowed. Total developer fee is overstated by \$500k, but the amount included in basis is below the 15% threshold.

Sources of Funds

Due to market conditions, credit pricing decreased from \$1.04 to \$0.93. The increased amount of credits requested is due to increased eligible basis on interest expense, developer fee, etc. Even with the larger credit request, total equity decreases \$268k due to the decreased credit pricing. Equity partner has changed from Enterprise to National Equity Fund (NEF).

Citibank perm loan has decreased \$100k and the perm interest rate increased 0.33%. The Citibank construction loan increased \$700k and the construction rate increased 0.5%. To fill the gap of decreased credit pricing and increased interest rates, CitySquare is investing three cash flow/forgivable loans in the total amount of \$3.18M. This is replacing the previous \$1.59M cash flow loan from Artspace.

Greenes' cash flow/forgivable loan has increased \$100k to help fill the gap.
Developer fee pays off in year 10 with a 15 year cumulative cash flow of \$925k.

REA recommends the increased credit allocation of \$754,702 as requested by Applicant.

Underwriter:	<u>Jeanna Rolsing</u>
Manager of Real Estate Analysis:	<u>Thomas Cavanagh</u>
Director of Real Estate Analysis:	<u>Brent Stewart</u>

UNIT MIX/RENT SCHEDULE

Flora Lofts, Dallas, 4% HTC #17413

LOCATION DATA	
CITY:	Dallas
COUNTY:	Dallas
Area Median Income	\$77,200
PROGRAM REGION:	3

UNIT DISTRIBUTION						
# Beds	# Units	% Total	Assisted	Income	# Units	% Total
Eff	6	11.5%	6	30%	-	0.0%
1	26	50.0%	10	40%	-	0.0%
2	18	34.6%	0	50%	5	9.6%
3	2	3.8%	0	60%	38	73.1%
4	-	0.0%	0	MR	9	17.3%
TOTAL	52	100.0%	16	TOTAL	52	100.0%

Applicable Programs
4% Housing Tax Credits

Pro Forma ASSUMPTIONS	
Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjust	130%
Applicable Fraction	73.44%
APP % Acquisition	3.47%
APP % Construction	3.47%
Average Unit Size	985 sf

UNIT MIX / MONTHLY RENT SCHEDULE

HTC		RENT ASSISTED UNIT		UNIT MIX				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS		
Type	Gross Rent	Type	Gross Rent	# Units	# Beds	# Baths	NRA	Gross Rent	Utility Allow	Max Net Program Rent	Delta to Max	Rent psf	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent psf	Delta to Max	Underwritten	Mrkt Analyst	
TC 60%	\$811	PBV	\$1,375	1	0	1	527	\$1,375	\$65	\$1,310	(\$125)	\$2.25	\$1,185	\$1,185	\$1,310	\$1,310	\$2.49	\$0	\$1,455	\$2.76	\$1,455
TC 50%	\$676	PBV	\$1,375	3	0	1	618	\$1,375	\$65	\$1,310	(\$125)	\$1.92	\$1,185	\$3,555	\$3,930	\$1,310	\$2.12	\$0	\$1,515	\$2.45	\$1,515
TC 50%	\$676	PBV	\$1,375	1	0	1	639	\$1,375	\$65	\$1,310	(\$125)	\$1.85	\$1,185	\$1,185	\$1,310	\$1,310	\$2.05	\$0	\$1,558	\$2.44	\$1,558
TC 50%	\$676	PBV	\$1,375	1	0	1	639	\$1,375	\$65	\$1,310	(\$125)	\$1.85	\$1,185	\$1,185	\$1,310	\$1,310	\$2.05	\$0	\$1,558	\$2.44	\$1,558
TC 60%	\$869	PBV	\$1,628	2	1	1	702	\$1,628	\$74	\$1,554	(\$148)	\$2.00	\$1,406	\$2,812	\$3,108	\$1,554	\$2.21	\$0	\$1,636	\$2.33	\$1,636
TC 60%	\$869	PBV	\$1,628	3	1	1	702	\$1,628	\$74	\$1,554	(\$148)	\$2.00	\$1,406	\$4,218	\$4,662	\$1,554	\$2.21	\$0	\$1,636	\$2.33	\$1,636
TC 60%	\$869	0		6	1	1	713	\$869	\$74	\$795	(\$11)	\$1.10	\$784	\$4,704	\$4,770	\$795	\$1.12	\$0	\$1,658	\$2.33	\$1,658
TC 60%	\$869	0		3	1	1	721	\$869	\$74	\$795	(\$11)	\$1.09	\$784	\$2,352	\$2,385	\$795	\$1.10	\$0	\$1,674	\$2.32	\$1,674
TC 60%	\$869	0		3	1	1	723	\$869	\$74	\$795	(\$11)	\$1.08	\$784	\$2,352	\$2,385	\$795	\$1.10	\$0	\$1,678	\$2.32	\$1,678
TC 60%	\$869	PBV	\$1,628	2	1	1	770	\$1,628	\$74	\$1,554	(\$148)	\$1.83	\$1,406	\$2,812	\$3,108	\$1,554	\$2.02	\$0	\$1,840	\$2.39	\$1,840
TC 60%	\$869	PBV	\$1,628	1	1	1	771	\$1,628	\$74	\$1,554	(\$148)	\$1.82	\$1,406	\$1,406	\$1,554	\$1,554	\$2.02	\$0	\$1,842	\$2.39	\$1,842
TC 60%	\$869	PBV	\$1,628	2	1	1	771	\$1,628	\$74	\$1,554	(\$148)	\$1.82	\$1,406	\$2,812	\$3,108	\$1,554	\$2.02	\$0	\$1,842	\$2.39	\$1,842
TC 60%	\$869	0		1	1	1	849	\$869	\$74	\$795	(\$11)	\$0.92	\$784	\$784	\$795	\$795	\$0.94	\$0	\$2,198	\$2.59	\$2,198
TC 60%	\$869	0		1	1	1.5	1,087	\$869	\$74	\$795	(\$11)	\$0.72	\$784	\$784	\$795	\$795	\$0.73	\$0	\$2,460	\$2.26	\$2,460
TC 60%	\$869	0		1	1	1.5	1,596	\$869	\$74	\$795	(\$11)	\$0.49	\$784	\$784	\$795	\$795	\$0.50	\$0	\$3,075	\$1.93	\$3,075
TC 60%	\$869	0		1	1	2	1,217	\$869	\$74	\$795	(\$11)	\$0.64	\$784	\$784	\$795	\$795	\$0.65	\$0	\$2,833	\$2.33	\$2,833
TC 60%	\$1,042	0		2	2	2	1,103	\$1,042	\$96	\$946	(\$14)	\$0.84	\$932	\$1,864	\$1,892	\$946	\$0.86	\$0	\$3,685	\$3.34	\$3,685
MR		0		1	2	2	1,103	\$0	\$96		NA	\$1.86	\$2,056	\$2,056	\$2,056	\$2,056	\$1.86	NA	\$2,056	\$1.86	\$3,685
MR		0		1	2	2	1,293	\$0	\$96		NA	\$1.59	\$2,056	\$2,056	\$2,056	\$2,056	\$1.59	NA	\$2,056	\$1.59	\$3,805
TC 60%	\$1,042	0		2	2	2	1,110	\$1,042	\$96	\$946	(\$14)	\$0.84	\$932	\$1,864	\$1,892	\$946	\$0.85	\$0	\$3,692	\$3.33	\$3,692
TC 60%	\$1,042	0		3	2	2	1,220	\$1,042	\$96	\$946	(\$14)	\$0.76	\$932	\$2,796	\$2,838	\$946	\$0.78	\$0	\$3,832	\$3.14	\$3,832
TC 60%	\$1,042	0		2	2	2	1,293	\$1,042	\$96	\$946	(\$14)	\$0.72	\$932	\$1,864	\$1,892	\$946	\$0.73	\$0	\$3,805	\$2.94	\$3,805
TC 60%	\$1,042	0		1	2	2	1,301	\$1,042	\$96	\$946	(\$14)	\$0.72	\$932	\$932	\$946	\$946	\$0.73	\$0	\$3,913	\$3.01	\$3,913
MR		0		1	2	2	1,407	\$0	\$96		NA	\$1.46	\$2,056	\$2,056	\$2,056	\$2,056	\$1.46	NA	\$2,056	\$1.46	\$4,204
MR		0		1	2	2	1,429	\$0	\$96		NA	\$1.44	\$2,056	\$2,056	\$2,056	\$2,056	\$1.44	NA	\$2,056	\$1.44	\$4,226
MR		0		1	2	2	1,441	\$0	\$96		NA	\$1.43	\$2,056	\$2,056	\$2,056	\$2,056	\$1.43	NA	\$2,056	\$1.43	\$4,323
MR		0		1	2	2	1,700	\$0	\$96		NA	\$1.21	\$2,056	\$2,056	\$2,056	\$2,056	\$1.21	NA	\$2,056	\$1.21	\$5,073
MR		0		1	2	2	1,900	\$0	\$96		NA	\$1.08	\$2,056	\$2,056	\$2,056	\$2,056	\$1.08	NA	\$2,056	\$1.08	\$5,592
TC 60%	\$1,042	0		1	2	2.5	1,253	\$1,042	\$96	\$946	(\$14)	\$0.74	\$932	\$932	\$946	\$946	\$0.75	\$0	\$3,939	\$3.14	\$3,939
MR		0		1	3	3	1,597	\$0	\$0		NA	\$1.49	\$2,376	\$2,376	\$2,376	\$2,376	\$1.49	NA	\$2,376	\$1.49	\$5,394
MR		0		1	3	3	1,731	\$0	\$0		NA	\$1.37	\$2,376	\$2,376	\$2,376	\$2,376	\$1.37	NA	\$2,376	\$1.37	\$5,664
TOTALS/AVERAGES:				52				51,208			(\$49)	\$1.23	\$1,214	\$63,110	\$65,670	\$1,263	\$1.28	\$0	\$2,268	\$2.30	\$2,707

ANNUAL POTENTIAL GROSS RENT:	\$757,320	\$788,040
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STABILIZED PRO FORMA

Flora Lofts, Dallas, 4% HTC #17413

STABILIZED FIRST YEAR PRO FORMA

	COMPARABLES		APPLICANT				PRIOR REPORT		TDHCA				VARIANCE	
	Database	Other	% EGI	Per SF	Per Unit	Amount	Applicant	TDHCA	Amount	Per Unit	Per SF	% EGI	%	\$
POTENTIAL GROSS RENT				\$1.23	\$1,214	\$757,320	\$759,000	\$762,960	\$788,040	\$1,263	\$1.28		-3.9%	(\$30,720)
Laundry					\$10.00	\$6,240	6,240							
Storage, parking & misc					\$45.00	\$28,080	28,080							
Total Secondary Income					\$55.00			12,480	\$12,480	\$20.00			175.0%	\$21,840
POTENTIAL GROSS INCOME						\$791,640	\$793,320	\$775,440	\$800,520				-1.1%	(\$8,880)
Vacancy & Collection Loss					7.5% PGI	(59,373)	(59,499)	(58,158)	(60,039)	7.5% PGI			-1.1%	666
Rental Concessions								0	-				0.0%	-
EFFECTIVE GROSS INCOME						\$732,267	\$733,821	\$717,282	\$740,481				-1.1%	(\$8,214)

General & Administrative	\$24,250	\$466/Unit	22,346	\$430	1.34%	\$0.19	\$189	\$9,807	\$9,807	\$9,807	\$9,807	\$189	\$0.19	1.32%	0.0%	-
Management	\$26,903	6.6% EGI	18,380	\$353	3.99%	\$0.57	\$562	\$29,200	\$29,200	\$28,691	\$29,619	\$570	\$0.58	4.00%	-1.4%	(419)
Payroll & Payroll Tax	\$52,718	\$1,014/Unit	75,235	\$1,447	5.69%	\$0.81	\$801	\$41,631	\$41,631	\$41,631	\$41,631	\$801	\$0.81	5.62%	0.0%	-
Repairs & Maintenance	\$34,478	\$663/Unit	53,616	\$1,031	3.55%	\$0.51	\$500	\$26,000	\$26,000	\$26,000	\$26,000	\$500	\$0.51	3.51%	0.0%	-
Electric/Gas	\$9,066	\$174/Unit	11,759	\$226	1.99%	\$0.28	\$280	\$14,580	\$14,580	\$14,580	\$14,580	\$280	\$0.28	1.97%	0.0%	-
Water, Sewer, & Trash	\$30,883	\$594/Unit	44,466	\$855	3.31%	\$0.47	\$466	\$24,216	\$24,216	\$24,216	\$24,216	\$466	\$0.47	3.27%	0.0%	-
Property Insurance	\$18,294	\$0.36 /sf	15,330	\$295	2.53%	\$0.36	\$357	\$18,550	\$18,550	\$18,550	\$18,550	\$357	\$0.36	2.51%	0.0%	-
Property Tax (@ 100%) 2.7193	\$29,610	\$569/Unit		\$0	7.10%	\$1.02	\$1,000	\$52,000	\$52,000	\$52,000	\$52,000	\$1,000	\$1.02	7.02%	0.0%	-
Reserve for Replacements	\$16,842	\$324/Unit	-	\$0	2.13%	\$0.30	\$300	\$15,600	\$15,600	\$15,600	\$15,600	\$300	\$0.30	2.11%	0.0%	-
Supportive Services			-	\$0	2.73%	\$0.39	\$385	\$20,000	\$20,000	\$20,000	\$20,000	\$385	\$0.39	2.70%	0.0%	-
TDHCA LIHTC/HOME Compliance Fees			-	\$0	0.23%	\$0.03	\$33	\$1,720	\$1,720	\$1,720	\$1,720	\$33	\$0.03	0.23%	0.0%	-
ZOM Condo Expense			-	\$0	1.11%	\$0.16	\$156	\$8,115	\$8,115	\$8,115	\$8,115	\$156	\$0.16	1.10%	0.0%	-
TOTAL EXPENSES					35.70%	\$5.11	\$5,027	\$ 261,419	\$261,419	\$260,910	\$ 261,838	\$5,035	\$5.11	35.36%	-0.2%	\$ (419)
NET OPERATING INCOME ("NOI")					64.30%	\$9.19	\$9,055	\$470,848	\$472,402	\$456,372	\$478,643	\$9,205	\$9.35	64.64%	-1.6%	\$ (7,795)

CONTROLLABLE EXPENSES							\$2,235/Unit						\$2,235/Unit			
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CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS

Flora Lofts, Dallas, 4% HTC #17413

		DEBT / GRANT SOURCES															
		APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE							Prior Underwriting		AS UNDERWRITTEN DEBT/GRANT STRUCTURE						
DEBT (Must Pay)	Fee	Cumulative DCR		Pmt	Rate	Amort	Term	Principal	Prior Underwriting		Principal	Term	Amort	Rate	Pmt	Cumulative	
		UW	App						Applicant	TDHCA						DCR	LTC
Citibank		1.27	1.25	377,833	5.71%	35	15	\$5,850,000	\$5,950,000	\$5,950,000	\$5,850,000	15	35	5.71%	\$386,696	1.22	22.5%
Adjustment to Debt Per §10.302(c)(2)		1.27	1.25							\$0	\$0	0	0	0.00%		1.22	0.0%
CASH FLOW DEBT / GRANTS																	
Greenes Loan		1.27	1.25		4.00%	0	15	\$1,105,610	\$1,000,000	\$1,000,000	\$1,105,610	15	0	4.00%		1.22	4.2%
LRTX Loan		1.27	1.25		4.00%	0	15	\$500,000	\$500,000	\$500,000	\$500,000	15	0	4.00%		1.22	1.9%
City Square Loan		1.27	1.25		5.00%	0	15	\$3,179,000	\$1,587,000	\$1,587,000	\$1,634,000	15	0	5.00%		1.22	6.3%
City Square Loan		1.27	1.25								\$945,000	15	0	4.00%		1.22	3.6%
City Square Loan		1.27	1.25								\$600,000	15	0	4.00%		1.22	2.3%
City of Dallas Grant		1.27	1.25		0.00%	0	0	\$2,500,000	\$2,500,000	\$2,500,000	\$2,500,000	0	0	0.00%		1.22	9.6%
Tax Increment Reinvest Zone		1.27	1.25		0.00%	0	0	\$4,650,000	\$4,650,000	\$4,650,000	\$4,650,000	0	0	0.00%		1.22	17.9%
Flora Lofts Ltd. Investment Income		1.27	1.25		0.00%	0	0	\$148,526	\$211,250	\$211,250	\$148,526	0	0	0.00%		1.22	0.6%
								\$377,833	TOTAL DEBT / GRANT SOURCES	\$17,933,136	\$16,398,250	TOTAL DEBT SERVICE	\$386,696	1.22	68.9%		
NET CASH FLOW		\$100,810	\$93,015							APPLICANT	NET OPERATING INCOME	\$470,848	\$84,152	NET CASH FLOW			

		EQUITY SOURCES											
		APPLICANT'S PROPOSED EQUITY STRUCTURE					Prior Underwriting		AS UNDERWRITTEN EQUITY STRUCTURE				
EQUITY / DEFERRED FEES	DESCRIPTION	% Cost	Annual Credit	Credit Price	Amount	Prior Underwriting		Amount	Credit Price	Annual Credit	% Cost	Annual Credits per Unit	Allocation Method
						Applicant	TDHCA						
NEF	LIHTC Equity	26.8%	\$754,702	0.92	\$6,979,597	\$7,247,267	\$7,247,267	\$6,979,597	\$0.925	\$754,702	26.8%	\$14,514	Applicant Request
Graham Greene/City Square	Deferred Developer Fees	6.3%	(46% Deferred)		\$1,629,880	\$1,889,568	\$1,673,658	\$1,113,498		(37% Deferred)	4.3%		Total Developer Fee: \$3,026,327
Additional (Excess) Funds Req'd		0.0%					\$0	(\$0)			0.0%		
TOTAL EQUITY SOURCES		33.1%			\$8,609,477	\$9,136,835	\$8,920,925	\$8,093,095			31.1%		
TOTAL CAPITALIZATION					\$26,542,613	\$25,535,085	\$25,319,175	\$26,026,231				15-Yr Cash Flow after Deferred Fee:	\$925,469

DEVELOPMENT COST / ITEMIZED BASIS														
		APPLICANT COST / BASIS ITEMS				Prior Underwriting		TDHCA COST / BASIS ITEMS				COST VARIANCE		
		Eligible Basis		Total Costs	Prior Underwriting		Total Costs		Eligible Basis		%	\$		
		Acquisition	New Const. Rehab		Applicant	TDHCA	Acquisition	New Const. Rehab						
Land Acquisition				\$25,090 / Unit	\$1,304,678	\$1,304,678	\$1,304,678	\$25,090 / Unit			0.0%	\$0		
ROW				\$ / Unit	\$41,674	\$41,674	\$41,674	\$ / Unit			0.0%	\$0		
Off-Sites				\$ / Unit	\$0	\$0	\$0	\$ / Unit			0.0%	\$0		
Site Work		\$0		\$ / Unit	\$0	\$0	\$0	\$ / Unit	\$0		0.0%	\$0		
Site Amenities		\$0		\$ / Unit	\$0	\$0	\$0	\$ / Unit	\$0		0.0%	\$0		
Building Cost		\$13,821,487	\$270.68 /sf	\$266,554/Unit	\$13,860,790	\$13,860,790	\$12,854,528	\$247,202/Unit	\$251.03 /sf	\$12,854,528	7.8%	\$1,006,262		
Contingency		\$900,834	6.52%	6.50%	\$900,834	\$777,000	\$777,000	\$899,817	7.00%	7.00%	\$899,817	0.1%	\$1,017	
Contractor Fees		\$1,295,224	8.80%	8.77%	\$1,295,224	\$1,295,224	\$1,295,224	\$1,295,224	9.42%	9.42%	\$1,295,224	0.0%	\$0	
Soft Costs		0	\$1,938,614	\$38,831 / Unit	\$2,019,229	\$1,586,245	\$1,586,245	\$2,019,229	\$38,831 / Unit	\$1,938,614	\$0	0.0%	\$0	
Financing		0	\$2,180,050	\$62,259 / Unit	\$3,237,475	\$3,274,505	\$3,274,505	\$3,237,475	\$62,259 / Unit	\$2,180,050	\$0	0.0%	\$0	
Developer Fee		\$0	\$2,960,000	14.70%	\$3,542,709	\$3,067,229	\$2,700,380	\$2,875,235	15.00%	15.00%	\$2,875,235	\$0	23.2%	\$667,474
Reserves				\$6,538 / Unit	\$340,000	\$327,740	\$319,372	\$340,000	\$6,538 / Unit		\$0	0.0%	\$0	
TOTAL HOUSING DEVELOPMENT COST (UNADJUSTED BASIS)		\$0	\$23,096,209	\$510,435 / Unit	\$26,542,613	\$25,535,085	\$24,153,606	\$24,867,860	\$478,228 / Unit	\$22,043,468	\$0	6.7%	\$1,674,753	
Acquisition Cost		\$0				\$0								
Contingency			\$0			\$0								
Contractor's Fee			\$0											
Interim Interest			\$0											
Developer Fee		\$0				(\$516,382)	(\$215,910)							
Reserves						\$0								
ADJUSTED BASIS / COST		\$0	\$23,096,209	\$500,504/unit	\$26,026,231	\$25,319,175	\$24,867,860	\$478,228/unit	\$22,043,468	\$0	4.7%	\$1,158,371		
TOTAL HOUSING DEVELOPMENT COSTS (Applicant's Uses are within 5% of TDHCA Estimate):							\$26,026,231							

CAPITALIZATION / DEVELOPMENT COST BUDGET / ITEMIZED BASIS ITEMS

Flora Lofts, Dallas, 4% HTC #17413

CREDIT CALCULATION ON QUALIFIED BASIS

	Applicant		TDHCA	
	Acquisition	Construction Rehabilitation	Acquisition	Construction Rehabilitation
	ADJUSTED BASIS	\$0	\$23,096,209	\$0
Deduction of Federal Grants	\$0	\$0	\$0	\$0
TOTAL ELIGIBLE BASIS	\$0	\$23,096,209	\$0	\$22,043,468
High Cost Area Adjustment		130%		130%
TOTAL ADJUSTED BASIS	\$0	\$30,025,072	\$0	\$28,656,509
Applicable Fraction	73.44%	73.44%	73.44%	73.44%
TOTAL QUALIFIED BASIS	\$0	\$22,050,322	\$0	\$21,045,253
Applicable Percentage	3.47%	3.47%	3.47%	3.47%
ANNUAL CREDIT ON BASIS	\$0	\$765,146	\$0	\$730,270
CREDITS ON QUALIFIED BASIS		\$765,146		\$730,270

ANNUAL CREDIT CALCULATION BASED ON APPLICANT BASIS

Method	Annual Credits		FINAL ANNUAL LIHTC ALLOCATION		
	Annual Credits	Proceeds	Credit Price \$0.9248	Variance to Request	
Eligible Basis	\$765,146	\$7,076,186	----	----	----
Needed to Fill Gap	\$875,104	\$8,093,095	----	----	----
Applicant Request	\$754,702	\$6,979,597	\$754,702	\$0	\$0

50% Test for Bond Financing for 4% Tax Credits

Tax-Exempt Bond Amount	\$13,700,000	
Aggregate Basis Limit for 50% Test	\$27,400,000	
	Applicant	TDHCA
Land Cost	\$1,304,678	\$1,304,678
Depreciable Bldg Cost	\$20,256,127	\$19,248,848
Aggregate Basis for 50% Test	\$21,560,805	\$20,553,526

Percent Financed by Tax-Exempt Bonds	Applicant	TDHCA
	63.5%	66.7%

amount aggregate basis can increase before 50% test fails	Applicant	TDHCA
	\$5,839,195	\$6,846,474
	27.1%	33.3%

BUILDING COST ESTIMATE

CATEGORY	FACTOR	UNITS/SF	PER SF	
Base Cost: Mid-Rise (Over 5 Stories)		51,208 SF	\$217.00	11,111,931
Adjustments				
Exterior Wall Finish	16.00%		34.72	\$1,777,909
Elderly	0.00%		0.00	0
11' 8"-Ft. Ceilings	1.055		11.93	611,156
Roof Adjustment(s)			3.93	201,000
Subfloor			2.98	152,600
Floor Cover			5.04	258,088
Breezeways	\$29.03	0	0.00	0
Balconies	\$49.25	5,532	5.32	272,451
Plumbing Fixtures	\$1,710	98	3.27	167,580
Rough-ins	\$510	104	1.04	53,040
Built-In Appliances	\$3,225	52	3.27	167,700
Exterior Stairs	\$4,175	10	0.82	41,750
Heating/Cooling			2.14	109,585
Enclosed Corridors	\$208.10	8,410	34.18	1,750,087
Carports	\$11.94	0	0.00	0
Solar Shades		0	1.25	64,056
Comm &/or Aux Bldgs: 10%	\$182.56	9,450	2.98	152,679
Elevators		2	0.00	0
Other: Interior Stairs	\$3,300	12	0.77	39,600
Fire Sprinklers	\$3.09	69,068	4.17	213,644
SUBTOTAL			334.81	17,144,857
Current Cost Multiplier	1.01		3.35	171,449
Local Multiplier	0.87		(43.53)	(2,228,831)
TOTAL BUILDING COSTS			294.63	\$15,087,474
Plans, specs, survey, bldg permits	3.30%		(9.72)	(\$497,887)
Contractor's OH & Profit	11.50%		(33.88)	(1,735,060)
NET BUILDING COSTS		\$247,202/unit	\$251.03/sf	\$12,854,528

Long-Term Pro Forma

Flora Lofts, Dallas, 4% HTC #17413

	Growth Rate	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15	Year 20	Year 25	Year 30	Year 35
EFFECTIVE GROSS INCOME	2.00%	\$732,267	\$746,912	\$761,851	\$777,088	\$792,629	\$875,127	\$966,211	\$1,066,775	\$1,177,806	\$1,300,392	\$1,435,738
TOTAL EXPENSES	3.00%	\$261,419	\$268,970	\$276,741	\$284,739	\$292,972	\$337,890	\$389,781	\$449,736	\$519,020	\$599,094	\$693,930
NET OPERATING INCOME ("NOI")		\$470,848	\$477,943	\$485,110	\$492,348	\$499,658	\$537,237	\$576,430	\$617,038	\$658,786	\$701,299	\$741,808
EXPENSE/INCOME RATIO		35.7%	36.0%	36.3%	36.6%	37.0%	38.6%	40.3%	42.2%	44.1%	46.1%	48.3%
MUST -PAY DEBT SERVICE												
TOTAL DEBT SERVICE		\$386,696	\$386,696	\$386,696	\$386,696	\$386,696	\$386,696	\$386,696	\$386,696	\$386,696	\$386,696	\$386,696
DEBT COVERAGE RATIO		1.22	1.24	1.25	1.27	1.29	1.39	1.49	1.60	1.70	1.81	1.92
ANNUAL CASH FLOW												
ANNUAL CASH FLOW		\$84,152	\$91,247	\$98,414	\$105,652	\$112,962	\$150,541	\$189,734	\$230,342	\$272,090	\$314,602	\$355,112
Deferred Developer Fee Balance		\$1,029,346	\$938,099	\$839,686	\$734,034	\$621,072	\$0	\$0	\$0	\$0	\$0	\$0
CUMULATIVE NET CASH FLOW		\$0	\$0	\$0	\$0	\$0	\$55,797	\$925,469	\$1,995,445	\$3,272,010	\$4,759,778	\$6,455,599

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BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
FEBRUARY 21, 2019

Presentation, discussion, and possible action regarding site eligibility under 10 TAC §11.101(a)(2) related to Undesirable Site Features for 19076 Bellfort Park Apartments

RECOMMENDED ACTION

WHEREAS, pursuant to 10 TAC §11.101(a)(2) of the 2019 Qualified Allocation Plan related to Undesirable Site Features, Development Sites within the applicable distance of any of the undesirable features identified therein may be considered ineligible as determined by the Board;

WHEREAS, Development Sites within 500 feet of active railroad tracks may be considered eligible if the city/community has adopted a Railroad Quiet Zone; and

WHEREAS, a request for a determination under the rule was submitted by the applicant for the proposed Bellfort Park Apartments (19076) development in Houston, which is within 500 feet of a railway and is within a Railroad Quiet Zone;

NOW, therefore, it is hereby,

RESOLVED, that the Board determine that the rule-based exception to this undesirable site feature (proximity to active railroad tracks) is met.

BACKGROUND

The Department received a request from TX Bellfort Apartments, LP seeking a determination on site eligibility for a proposed development, Bellfort Park Apartments, in Houston. The site, intended to include the Acquisition and Rehabilitation of 64 Units for the General population and funded through the 9% Housing Tax Credit program, is within 500 feet of a railway which constitutes an undesirable site feature requiring disclosure under the QAP. Specifically, the QAP states the following:

“Development Sites located within 500 feet of active railroad tracks, measured from the closest rail to the boundary of the Development Site, unless:

(i) the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone;”

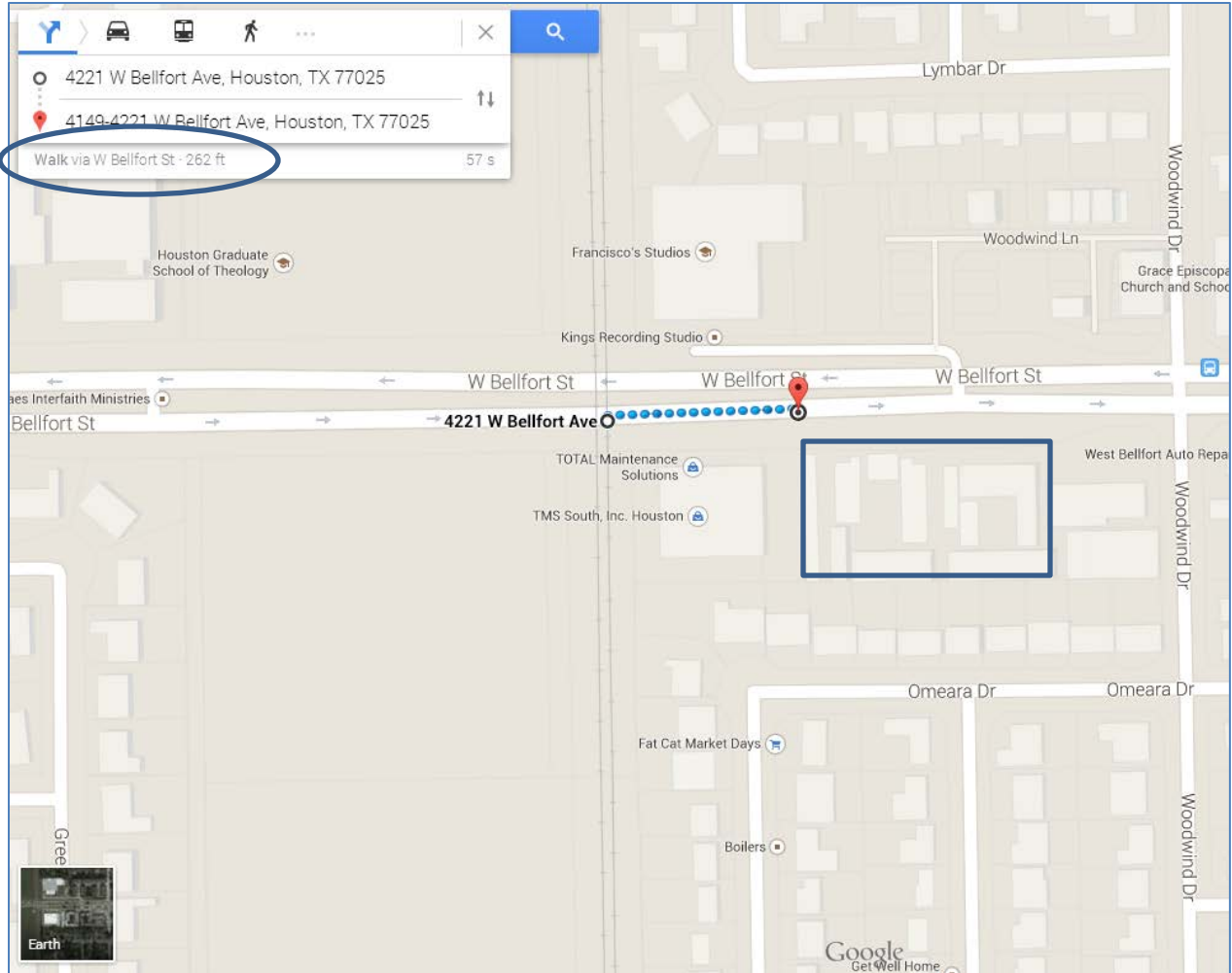
According to the request, the railroad track is approximately 262 feet away from the closest boundary of the Development. Evidence provided to the Department by the Applicant shows that the Development Site is within the designated Railroad Quiet Zone.

Staff recommends the Board find the Development Site eligible under 10 TAC §11.101(a)(2) as it relates to proximity to railroad tracks.

Applicant Request Letter

19076 Belfort Park Apartments

Undesirable Site Feature Railroad Crossing



The Belfort Park Apartments, encumbered by a HAP contract, are located within 300 feet of a quiet zone rail line. Please find the material regarding the quiet zone, adopted in 2006, behind this page.

West Loop Quiet Zone




Presented by
Katherine Parker
Senior Project Manager


Traffic and Transportation Division
Public Works & Engineering Department
City of Houston, Texas

National Highway-Rail Grade Crossing Safety & Training
Conference
November 6, 2007




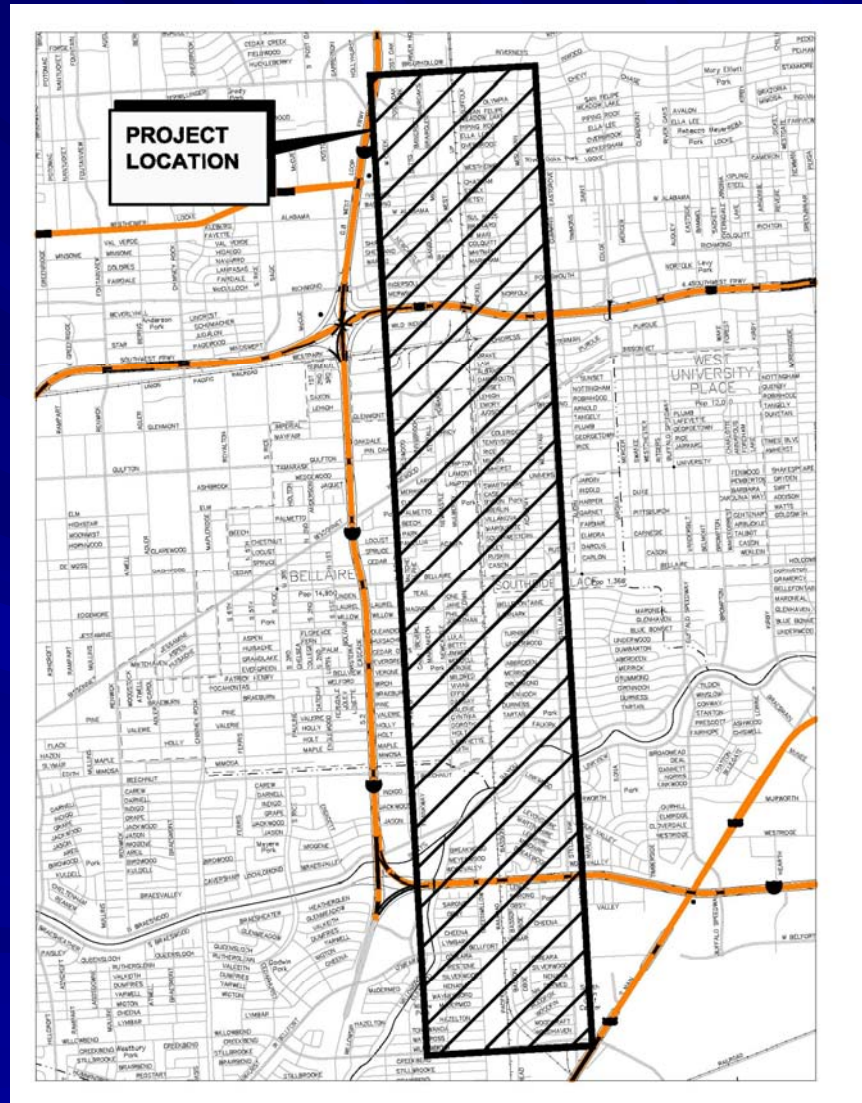
Existing Conditions

 The West Loop Quiet Zone is a 6.4 mile corridor just east of and generally parallel to IH 610 West Loop and South Post Oak Road in Houston, Texas.

 The corridor incorporates one private at grade crossing owned by CenterPoint Energy and 13 public at grade crossings operated by Union Pacific Railroad Company.

 Two of the crossings are within the cities of Bellaire and West University Place. These cities shared in the initial cost of the project.

 Mixed land use of residential, and commercial along the corridor.



History

- April 2003-At the request of community representatives a meeting was called to discuss possibility of creating a quiet zone along corridor.
- May 2004-tour of the area with concerned citizens, UPRR and COH.
- June 04 to November 05 a series of meetings were held to determine cost of improvements and agreements with cities of West University Place and Bellaire and CenterPoint Energy. Devices were installed.
- April 22, 2005 FRA issued Final Rule for quiet zones
- May 2005-the Notice of Intent was sent out. Comment period.
- July 27, 2005- Application for Quiet Zone was sent out. Comment period few adjustments to application and modification to devices.
- July 11, 2006-Notice of Establishment sent out.
- August 3, 2006-West Loop Quiet Zone Established.



Crossing Treatment by location

■ Gates with channelization devices:

- San Felipe
- Westheimer
- Bissonnet



Eastbound-San Felipe



Westbound-San Felipe

Crossing Treatment by location



CenterPoint
Energy Private
Driveway



Crossing Treatment by location cont.

■ Gates with Medians and channelization devices:

- Richmond
- Bellaire
- Beechnut
- South Braeswood
- West Bellfort
- Willowbend



Eastbound West Bellfort



Westbound West Bellfort

Crossing Treatment by location cont.

Eastbound-
Richmond



Westbound-
Richmond



Eastbound-
Bellaire



Westbound-
Bellaire



Crossing Treatment location cont.

■ One way street with gates :

➤ US 59 North service road

➤ US 59 South service road

➤ IH 610 North service road

➤ IH 610 South service road



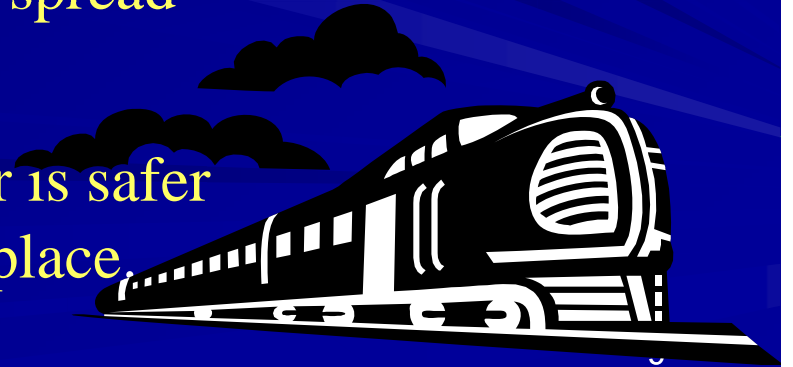
Eastbound-IH 610 N. service road



Westbound-IH 610 S. service road

Additional info:

- Material costs for the improvements was \$303,000. This amount does not include consultant work or staff time.
- We monitored the West Loop Quiet zone for a year to track any issues or maintenance concerns. The panels have been replaced on two occasions.
- The City of Houston currently has 12 additional potential quiet zone requests spread throughout the City.
- Union Pacific reports that the corridor is safer now with the current improvements in place.



Questions?????



BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
FEBRUARY 21, 2019

Presentation, discussion, and possible action regarding site eligibility under 10 TAC §11.101(a)(2) related to Undesirable Site Features for 19112 Hebbroville Seniors Apartments

RECOMMENDED ACTION

WHEREAS, pursuant to 10 TAC §11.101(a)(2) of the 2019 Qualified Allocation Plan related to Undesirable Site Features, Development Sites within the applicable distance of any of the undesirable features identified therein may be considered ineligible as determined by the Board;

WHEREAS, Rehabilitation (excluding Reconstruction) Developments with existing and ongoing federal assistance from HUD, USDA, or the VA may be granted an exemption by the Board; however, depending on the undesirable site feature(s) staff may recommend mitigation still be provided as appropriate; and

WHEREAS, a request for exemption was submitted by the applicant for the proposed Hebbroville Seniors Apartments (19112) development in Hebbroville which is within 500 feet of a railway and, per the Applicant, has existing and ongoing federal assistance from USDA;

NOW, therefore, it is hereby,

RESOLVED, that the Board determine that exemption from the undesirable site feature is granted.

BACKGROUND

The Department received a request from Hebbroville Housing, LP seeking a determination on site eligibility for a proposed development, Hebbroville Seniors Apartments, in Hebbroville. The site, intended to include the Acquisition and Rehabilitation of 20 Units for the Elderly population and funded through the 9% Housing Tax Credit program, is within 500 feet of a railway which constitutes an undesirable site feature requiring disclosure under the QAP. Specifically, the QAP states the following:

“Development Sites located within 500 feet of active railroad tracks, measured from the closest rail to the boundary of the Development Site, unless the Applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail.”

The rule includes the possibility of exemption from the undesirable site feature. Pursuant to 10 TAC §11.101(a)(2):

“Rehabilitation (excluding Reconstruction) Developments with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs (“VA”) may be granted an exemption by the Board; however, depending on the undesirable site feature(s) staff may recommend mitigation still be provided as appropriate. Such an exemption must be requested at the time of or prior to the filing of an Application.”

According to the request, the proposed development that is the subject of the Application has existing and ongoing USDA financing. The Applicant has also represented that the railroad track is 375 feet away from the closest boundary of the development, but is 500 feet away from the closest residential structure. Between the Development Site and the tracks is an area of vacant land, Highway 359 (a two-lane highway), and another area of vacant land. While staff is not recommending mitigation be provided for the Acquisition and Rehabilitation activity, such may be recommended if any New Construction occurs on the Development Site.

Staff recommends the Board find the Development Site eligible under 10 TAC §11.101(a)(2).

Applicant Request Letter

19112 Hebronville Seniors Apartments

Hebbronville Apartments, Ltd.

3224 26th St • Metairie, LA 70002 • Telephone (504) 561-1172
Email murraycalhoun@mac-relc.com

January 8, 2019

Ms. Marni Holloway
Director of Multifamily Finance
Texas Department of Housing and Community Affairs
P O Box 13941
Austin, TX 78711

Re: Hebbronville Apartments Application 19112

Dear Ms. Holloway:

In accordance with 10 TAC §11.101(2)(E) Undesirable Site Features for Developments Sites located within 500 feet of an active railroad, Hebbronville Apartments, Ltd., as the Owner-Applicant is requesting an exemption from ineligibility due to the existence and ongoing federal assistance from USDA financing. This development is requesting application under the USDA set-aside.

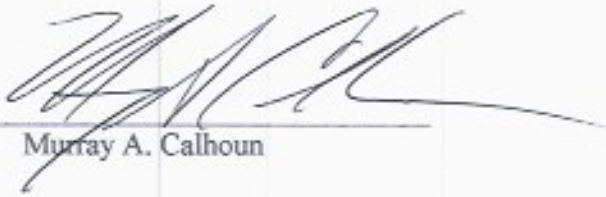
The Development Site is within 500 feet of an active railroad; however, all of the buildings are located outside the 500 foot requirement (see attached map).

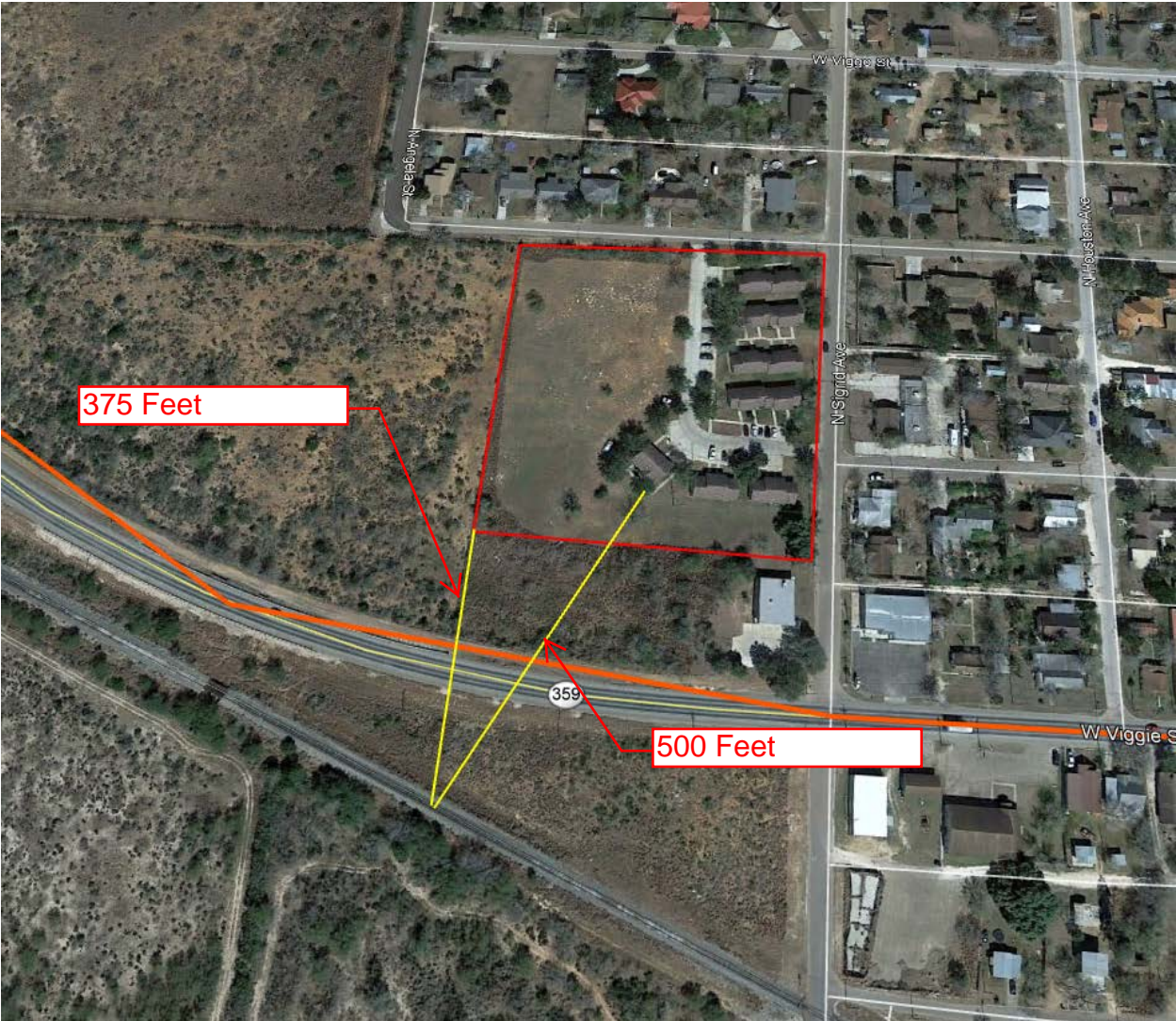
Should you need additional information, please contact me.

Yours truly,

Hebbronville Apartments, Ltd.

By: _____


Murray A. Calhoun



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BOARD ACTION REQUEST
HOME PROGRAM DIVISION
FEBRUARY 21, 2019

Presentation, discussion, and possible action to authorize the issuance of the 2019 HOME Investment Partnerships Program Single Family Development Notice of Funding Availability and publication in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, the Texas Department of Housing and Community Affairs (TDHCA or the Department) has approximately \$4,000,000 of Community Housing Development Organization (CHDO) set-aside deobligated funds to make available for the HOME Single Family Development Program, and \$200,000 in funding from HOME Program funds for CHDO operating expenses;

WHEREAS, it is important that the Department commit HOME funding as expeditiously as possible to assist Texans as timely as possible and to provide greater assurance that federal HOME Program commitment deadlines can be achieved, which, if not met, could result in the return of funds to the U.S. Department of Housing and Urban Development (HUD); and

WHEREAS, the Department wishes to release a NOFA for the HOME Single Family Development Program totaling \$4,000,000 in CHDO set-aside funds and \$200,000 in HOME Program funds for CHDO operating expenses in accordance with 10 Texas Administrative Code §1.19 concerning reallocation of financial assistance, and federally mandated set-asides;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to post on the Department's website and to publish a notification in the *Texas Register* a 2019 HOME Single Family Development Program NOFA for the amount of \$4,000,000 in deobligated funds and \$200,000 in HOME Program funds for CHDO operating expenses, and to make any technical corrections or perform such other acts as may be necessary to effectuate the foregoing.

BACKGROUND

On January 26, 2017, TDHCA released a Notice of Funding Availability for Single Family Development (SFD) in the amount of \$2,000,000. All funding under the NOFA was requested and awarded to eligible CHDOs. Previously awarded funds have been successfully committed to eligible homebuyers, and demand for funding for the SFD activity continues to grow.

In response to this increased demand, staff proposes moving \$4,000,000 of deobligated HOME funds from the disaster set-aside within the HOME Reservation System, and an additional \$200,000 of HOME Funds for CHDO operating expenses, to be programmed for use for SFD for eligible CHDOs, in accordance with 10 Texas Administrative Code (TAC), Chapter 1, §1.19, Reallocation of Financial Assistance. The remaining balance in the disaster set-aside will still exceed \$1,000,000 as of the date of this board action request, thereby ensuring that funds remain available for that purpose.

Request for funds under the proposed NOFA allow CHDO applicants to request up to \$1,000,000 per application for the development of new and/or rehabilitation of existing single family housing for sale to low-income households. CHDO operating expense funds may be awarded in an amount not to exceed \$50,000 per applicant to provide operational support to the CHDO during the development period. Applicants may apply for more than one award of CHDO funds, but will not be considered for more than one award of CHDO operating expenses.

Applicants must meet the minimum threshold requirements established in 10 TAC Chapter 23 for the Single Family Development Program to be considered for award.

The availability and use of these funds are subject to the Department's rules governing Administration at 10 TAC Chapter 1; Enforcement at 10 TAC Chapter 2; Single Family Programs Umbrella Rule; at 10 TAC Chapter 20; Minimum Energy Efficiency Requirements for Single Family Construction Activities at 10 TAC Chapter 21; Single Family HOME Program Rule at 10 TAC Chapter 23; and the federal regulations governing the HOME Program at 24 CFR Part 92. The HOME SFD NOFA was developed in accordance with the Single Family Umbrella and HOME Program Rules.

Funds will be provided under the NOFA as follows:

Fund Distribution

CHDO Set-Aside Activity - \$4,000,000

CHDO Operating Activity - \$200,000

Award Process

In accordance with 10 TAC §23.22(a), applications received in response to an open application cycle will be prioritized for review based on its "Received Date and Time." Awards will be made for the first received eligible applicants for which sufficient funding is available.

Details on the award selection process, handling of administrative deficiencies, funding limitations, eligible and ineligible applicants and activities, threshold requirements, award

selection criteria, and application submission requirements are included in the NOFA provided with this action item and, upon approval, will be posted to the Department's website with notification of the NOFA posting in the *Texas Register*.

Application Acceptance Period

Applications will be accepted statewide except for within areas served by Participating Jurisdictions (PJ) until Friday, July 12, 2019, at 5:00 pm Austin local time.



**HOME Investment Partnerships Program (HOME)
CFDA# 14.239**

**2019 HOME Single Family Development Program
Notice of Funding Availability (NOFA)**

1) Summary.

- a) The Texas Department of Housing and Community Affairs (TDHCA or the Department) announces a NOFA of approximately \$4,000,000 in funding from the HOME Investment Partnerships Program (HOME) for Community Housing Development Organizations (CHDOs) contract awards to develop single-family housing for low-income Texans.
- b) The availability and use of these funds are subject to the HOME rules including, but not limited to the following Texas Administrative Code (TAC) rules in effect at the time of application: Title 10, Part 1, Chapter 1, Administration; Chapter 2, Enforcement; Chapter 20, the Single Family Programs Umbrella Rule; Chapter 21, the Minimum Energy Efficiency Requirements for Single Family Construction Activities; Chapter 23, the Single Family HOME Program (State HOME Rules); and Tex. Gov't Code §2306. Other federal and state regulations include but are not limited to, 24 CFR Part 58 for environmental requirements, 24 CFR Part 200 Subpart F, Audit Requirements, 24 CFR §135.38 for Section 3 requirements, and 24 CFR Part 5, Subpart A for fair housing, (Federal HOME Rules). Applicants must familiarize themselves with all of the applicable state and federal rules that govern the HOME Program.
- c) Capitalized terms in this NOFA have the meanings defined herein or as defined in State HOME Rules, Tex. Gov't Code §2306, and the Federal HOME Rules.
- d) In the event that the Resale and Recapture provisions in 10 TAC §23.29 conflict with the Resale and Recapture provisions in the Department's action plan as approved by the U.S. Department of Housing and Urban Development (HUD), the provisions in the action plan will prevail, in accordance with 24 CFR §92.254(a)(5).

e) If changes to the contract are required during the Contract Term due to required changes in Federal or State law, the Department may initiate an amendment process to ensure compliance.

2) Source of Funds. Funds totaling approximately \$4,000,000 are made available for Single Family Development from prior year HOME allocations in accordance with 10 TAC, Chapter 1, §1.19, Reallocation of Financial Assistance. The Department, in its sole discretion, may also release additional unallocated HOME funds, deobligated funds, Program Income, and funds reallocated from undersubscribed set-asides, as allowable and available, under this NOFA. In accordance with Tex. Gov't Code §2306.111(d), these funds are not subject to the Regional Allocation Formula. The Department, in its sole discretion, also reserves the right to cancel or modify the amount available in this NOFA.

3) Eligible Activities.

a) These funds are made available through the Department's allocation of HOME funds from the U.S. Department of Housing and Urban Development (HUD). The program is designed to create housing options affordable to individuals and families of low income who may otherwise reside in substandard housing. All funds released under this NOFA are to be used for the creation of affordable housing for sale to low-income Texans earning 80% or less of the Area Median Family Income (AMFI).

b) Funds provided under this NOFA may be used for pre-development costs, acquisition, lot development, onsite infrastructure, construction, rehabilitation and down payment assistance to qualified homebuyers. Onsite infrastructure includes costs for individual service lines, approved septic installation, sidewalks, curbs and site improvements. Examples of excluded infrastructure costs are water, sewer, electrical, main or transfer lines, streets and other improvements that serve areas outside the development site. First-lien loans made to homebuyers under this NOFA shall not subordinate if the homebuyer obtains a home equity loan during the term of the loan. Second-lien loans for downpayment assistance and/or closing costs may subordinate in the event of a refinance if the new loan amount is at least \$1,000 more than the amount owed on the second-lien loan.

c) CHDO Applicants must be the owner, developer, and construction loan borrower for the proposed development, and must be in sole charge of construction in accordance with 24 CFR §92.300(a)(6).

d) Specific program guidelines can be found at 10 TAC Chapters 20, Single Family Program Umbrella Rule, and 23, Single Family HOME Program, Subchapter G, Single Family Development Program §§23.70-23.72.

4) Eligible Applicants.

- a) Eligible Applicants are private nonprofit organizations that have submitted the most current application for CHDO Certification to the Department in conjunction with the application for award under this NOFA. Applicants that are determined to meet the definition of a CHDO, and that may be certified as a CHDO by the Department may be eligible for award under this NOFA.
- b) Applicants are encouraged to familiarize themselves with the Department's certification and debarment policies prior to application submission.
- c) All Applicants will be subject to a Previous Participation Review by the Department pursuant to 10 TAC §1.302. Staff will not recommend applications for funding unless the Applicant has successfully completed a previous participation review as outlined in 10 TAC §1.302.
- d) Audit Requirements. An Applicant is not eligible to receive funds or any other assistance from the Department unless a past audit or Audit Certification Form has been submitted in a satisfactory format in accordance with 10 TAC §1.403. This is a threshold requirement outlined in the application, therefore applications that have outstanding past audits will be disqualified.

5) Prohibited Activities.

- a) Prohibited activities include those at 24 CFR §92.214 and in the State HOME Rules.
- b) Funds provided under this NOFA are not eligible for use in a Participating Jurisdiction (PJ).

6) Allocation of HOME Funds.

- a) In accordance with 10 TAC §23.22(a), an application received by the Department in response to an Open Application Cycle will be assigned a "Received Date and Time" and will be prioritized for review based on a first-come, first-served basis.
- b) Applications that do not meet minimum threshold requirements as described in 10 TAC §23.25(a) and 10 TAC §23.70 will not be considered for funding.
- c) Based on the availability of funds, applications proposing to serve any area of the state, excluding Participating Jurisdictions, will be accepted from **Monday, May 13, 2019, 8:00 a.m. Austin local time until Friday, July 12, 2019, 5:00 p.m. Austin local time.**
- d) Funding recommendations for Awards will be presented to the Department's Executive Award and Review Advisory Committee (EARAC), which will in turn make its recommendations to be presented to the Governing Board based on eligibility and previous participation review. Recommendations are limited by the total amount of

funds available under this NOFA and the maximum award amount limitations for each Activity type.

- e) The Department may decline to consider any Application if the proposed activities would not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications that are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process or making awards. The Department reserves the right to request clarification on individual elements of any Application.

7) Administrative Deficiencies. Administrative deficiencies noted during the review of an Application during an Open Application Cycle are subject to the administrative deficiency process outlined in 10 TAC §23.24(c). The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 p.m. Austin local time on the fifth business day following the date of the deficiency notice, the Application shall be terminated. Applicants that have been terminated may reapply during the application acceptance period.

8) Limitations on Funds.

- a) The Department awards HOME funds to eligible recipients for the provision of housing for low, very low and extremely low-income individuals and families, pursuant to 10 TAC §23.71. The maximum amount of Project funds awarded to a contact under an Open Application Cycle is established in the NOFA in accordance with 10 TAC §23.26(a). Award amounts for Project funds in this NOFA are limited to no more than \$1,000,000 per application.
- b) Each CHDO that is awarded Project funds under this NOFA may also be eligible to receive a grant for CHDO Operating Expenses, which are defined in 24 CFR §92.208 as including salaries, wages, and other employee compensation and benefits; employee education, training, and travel; rent; utilities; communication costs; taxes; insurance; and equipment, materials, and supplies. Applicants will be required to submit organizational operating budgets, audits and other financial and non-financial materials detailed in the HOME application. The award amount for CHDO Operating Expenses shall not exceed \$50,000. Funds for CHDO Operating Expenses may be drawn in an amount not to exceed \$25,000 prior to submission of eligible projects in accordance with the performance benchmark requirement defined in 10 TAC 23.26(c). In the event that the CHDO does not comply with the performance benchmark requirements, the remaining funds awarded for CHDO Operating Expenses may be deobligated. The Department reserves the right to limit an Applicant to receive not more than \$50,000 of CHDO Operating Expenses during the same fiscal year from the Department, and to

further limit the award of CHDO Operating Expenses if the CHDO has received CHDO Operating Expenses from other Participating Jurisdictions.

- c) In accordance with 10 TAC §23.26(f), the Administrator may incur and be reimbursed for eligible costs incurred before the effective date of the HOME contract in accordance with 24 CFR §92.212 and at the sole discretion of the Department.

9) Threshold Requirements.

- a) General Threshold and Selection Criteria are established in 10 TAC §23.25 for all Set-Aside types. Additional threshold requirements for Single Family Development are located at 10 TAC §23.70.
- b) Applications submitted in response to an Open Application Cycle which do not meet threshold may be issued a deficiency notice as noted above, and threshold must be satisfied prior to a recommendation for funding.
- c) Pursuant to 10 TAC §23.25(a)(5), if a submitted Application has an entire Volume of the application missing; has excessive omissions of documentation from the Threshold Criteria or uniform Application documentation; or is so unclear, disjointed or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department, will be terminated with notice and rights to appeal, but without being processed as an Administrative Deficiency. To the extent that a review was unable to be performed, specific reasons for the Department's determination of ineligibility will be included in the termination letter to the Applicant.

10) Application Requirements.

- a) Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, cannot be altered or modified, and must be in final form before submitting them to the Department.
- b) All Application materials including manuals, program guidelines, and applicable HOME rules, are available on the Department's website at <http://www.tdhca.state.tx.us/home-division/applications.htm>.
- c) Applications must be submitted in accordance with the 2019 Application Submission Procedures Manual (ASPM) forms and instructions.

11) Public Notifications. The Department will notify all persons and organizations regarding the proposed development as required by §2306.1114, Tex. Gov't Code within 14 Days of Application receipt. In order to meet this requirement, the Applicant must request a list of

Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site from local elected officials as follows:

- a) Not later than 14 days prior to submission of the Application, the Applicant must e-mail, fax or mail with registered receipt a completed "Neighborhood Organization Request" letter as provided in the Application to the local elected official for the city and county where the Development is proposed to be located. If the Development is located in an Area that has district based local elected officials, or both at-large and district based local elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located an Area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or is located in the Extra Territorial Jurisdiction (ETJ) of a city, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request Neighborhood Organizations from that source in the same format;
- b) If no reply letter is received from the local elected officials by seven days prior to the submission of the Application, then the Applicant must certify to that fact in the "Application Notification Certification Form" provided in the Application;
- c) The Applicant must list all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as outlined by the local elected officials, or that the Applicant has knowledge of as of the submission of the Application, in the "Application Notification Certification Form" provided in the Application.

12) Application Submission.

- a) The Department will accept applications for the Open Application Cycle on an ongoing basis. **Applications are to be submitted as an upload to the Department's FTP server in the format requirements detailed in the Open Application Cycle ASPM. The Department will not accept Open Application Cycle applications submitted otherwise.**
- b) Applications for the Open Application Cycle must be received no later than **Friday, July 12, 2019, at 5:00 p.m. Austin local time. Applications received after the deadline for submission will not be considered for an award.**
- c) Applicants must submit a completed Application, required documentation, and associated application materials, as described in this NOFA ASPM. All scanned copies must be scanned in accordance with the guidance provided in the ASPM.
- d) All Application materials including manuals, this NOFA, program guidelines, and applicable HOME rules are available on the Department's website at

<http://www.tdhca.state.tx.us/home-division/applications.htm>. Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, cannot be altered or modified, and must be in final form before submitting them to the Department.

- e) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of \$300 per Application. Payment must be in the form of a check, cashier's check or money order. The Department will not accept cash. Pursuant to Tex. Gov't Code §2306.147(b), the Department will waive Application fees for private nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. Applicants requesting a waiver must submit a signed resolution from the applicant's board requesting the waiver and affirming that expanded services are being provided by the organization. The Application fee is not an allowable or reimbursable cost under the HOME Program.
- f) This NOFA does not include text of the various applicable regulatory provisions that may be important to the HOME Program. For proper completion of the application, the Department strongly encourages potential Applicants to review the State and Federal regulations, and contact the HOME Division for guidance and assistance.

13) Dispute Resolution/Appeal.

- a) In accordance with Tex. Gov't Code §2306.082 and 10 TAC §1.17, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures (ADR) under the Governmental Dispute Resolution Act, Tex. Gov't Code Chapter 2009, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's Rule on ADR at 10 TAC §1.17.
- b) An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

1k

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
FEBRUARY 21, 2019

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application for Vista Bella (HTC #17204)

RECOMMENDED ACTION

WHEREAS, Vista Bella (the Development) received an award of 9% Housing Tax Credits (HTCs) in 2017 and a Multifamily Direct Loan (MDL) in 2018 for the construction 72 new multifamily units in Lago Vista, Travis County;

WHEREAS, KCG Vista Bella, L.P. (the Development Owner or Owner) requests approval for a reduction in the common area from 3,715 to 1,297 square feet, representing a reduction of 65.09% or 2,418 square feet from the original design represented at Application;

WHEREAS, the request also includes a notification of minor revisions to the site design plan represented at Application that affects the exterior building composition, interior flooring, and parking;

WHEREAS, Board approval is required for a reduction of three percent or more in the square footage of the common areas as directed in Tex. Gov't Code §2306.6712(d)(4) and 10 TAC §10.405(a)(4)(D), and the Owner has complied with the amendment requirements therein; and


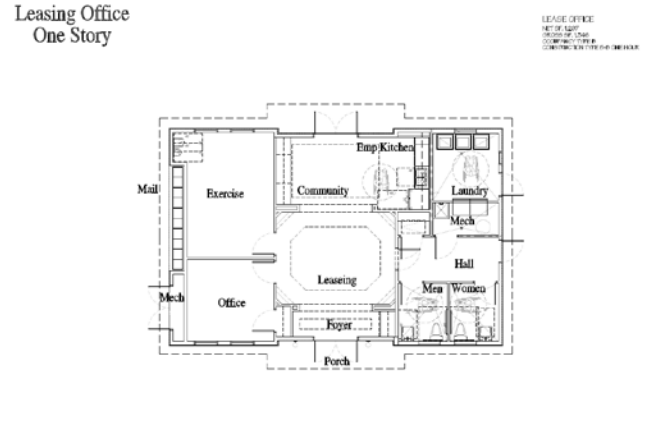
WHEREAS, the requested changes do not negatively affect the Development, impact the viability of the transaction, impact the scoring of the application, or affect the amount of the tax credits awarded;

NOW, therefore, it is hereby

RESOLVED, that the requested amendments for Vista Bella are approved as presented at this meeting, and the Acting Director and his designees are each hereby authorized, directed, and empowered to take all necessary action to effectuate the foregoing.

BACKGROUND

Vista Bella received a 9% HTC award in 2017 and a MDL in the amount of \$1,935,000 in 2018 to construct 72 units in Lago Vista, Travis County, of which 40 units are designated as rent and income restricted. In a letter dated December 4, 2018, Ina Spokas, the representative for the Development Owner, requested approval for a material amendment to the original common area design plan. The request seeks approval for a reduction in the common area from 3,715 to 1,297 square feet, representing a reduction of 65.09% or 2,418 square feet from the original design represented at Application.

Material Alterations as defined in Tex. Gov't Code §2306.6712(d)(4) and 10 TAC §10.405(a)(4)(D)	
Application	Amendment
Common Area: 3,715 square feet	Common Area: 1,297 square feet (2,418 square feet or a 65.09% reduction)
 <p align="center"><i>Vista Bella Apartments</i></p>	

The Owner explained that the cost for quality contractors and materials have been consistently on the rise, and there was no way to foresee what the actual cost of construction would be. In order for the Development to remain feasible, some design modifications and material changes have been proposed.

The Owner explained that the reduced size of the common area will result in cost savings that will help offset increases to material and labor that the project has incurred. In addition, the decision to reduce the size of the common area is also due to difficulty with the site's topography that was made evident after the full civil site plans were created. The Owner states that the revised common area will be of sufficient size to serve the Development and will still include a leasing area and office, furnished community room, warming kitchen, furnished exercise room, laundry facilities, mailbox center and bathrooms. The Owner has also stated that there will be additional Common Amenities provided such as a swimming pool. The cumulative point value of

the site amenities and clubhouse amenities will exceed the Common Amenities point requirements at Application.

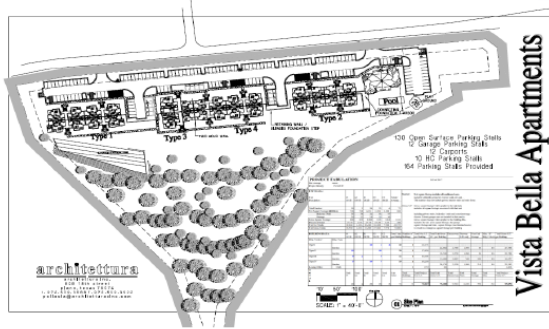
The Owner also submitted a notification of changes made to the site design plan for cost saving purposes. These changes would be considered nonmaterial under 10 TAC §10.405(a)(3)(A) but are included together with the material amendment of the common area. The Owner states there has been a change to the exterior composition of the buildings. Originally, the exterior composition was designed with hardi siding (25%), stone (30%), and face brick (45%). The Owner proposes to replace the exterior stone and face brick with stucco (75%). The Owner states that the need for this change is due to unforeseen increases to the materials and skilled masons to install stone and brick. The Owner also made a minor change to the interior flooring material. Originally, the interior flooring was designed to be carpet/vinyl/resilient flooring (95%) and ceramic tile (5%). The Owner states they have modified the design plans to eliminate the ceramic tile and install only carpet in the bedrooms and resilient flooring in the living rooms, baths, kitchens, and entry ways. The Owner has also identified changes to the parking that was proposed at Application. Originally, the parking was designed with 164 spaces composed of 140 open surface spaces, 12 carports, and 12 garages. With the revised design, the Owner will eliminate the garages and add 85 carports resulting in a total 166 spaces comprising 97 carports and 69 open surface parking spaces. A total of 101 spaces, comprising 69 open surface spaces and 32 carports, will be available to the tenants without a charge. The remaining 65 carports will be available to the tenants for a fee. Since the city requires a total of 97 parking spaces for the Development, the Development will continue to meet the requirement in 10 TAC §10.101(b)(4)(M) of the 2017 Uniform Multifamily Rules, which specifies that adequate parking spaces consistent with local code must be available at no cost to the tenants.

The following table is a comparison of the original and amended site design plans:

Minor Alterations under 10 TAC §10.405(a)(3)(A)					
Application			Amendment		
<u>Exterior Composition:</u>			<u>Exterior Composition:</u>		
Hardi Siding	25%		Hardi Siding	25%	
Stone	30%		Stone	0%	
Face Brick	45%		Face Brick	0%	
			Stucco	75%	
<u>Interior Flooring:</u>			<u>Interior Flooring:</u>		
Carpet/Vinyl/Resilient flooring	95%		Carpet/Vinyl/Resilient flooring	100%	
Ceramic Tile	5%		Ceramic Tile	0%	
<u>Total Parking Spaces:</u> 164			<u>Total Parking Spaces:</u> 166		
	Free	Paid		Free	Paid
Open Surface Parking Stalls	140		Open Surface Parking Stalls	69	
Garage Parking Stalls		12	Garage Parking Stalls	0	0
Carports		<u>12</u>	Carports	<u>32</u>	<u>65</u>
	140	24		101	65

Minor Alterations under 10 TAC §10.405(a)(3)(A)

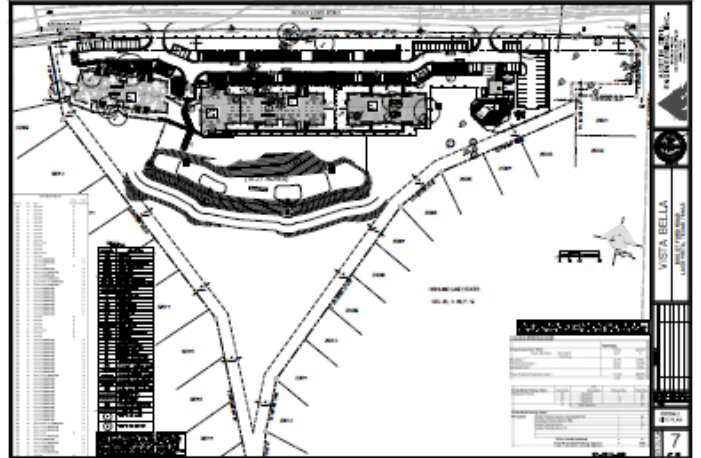
Application



Parking	No Fee		Tenant-Paid		Total	
Open Surface	140	1.9/unit	0	-	140	1.9/unit
Carpool	0	-	12	0.2/unit	12	0.2/unit
Garage	0	-	12	0.2/unit	12	0.2/unit
Total Parking	140	1.9/unit	24	0.3/unit	164	2.3/unit

Comments:
97 parking spaces are required for the development. Applicant is providing 140 free parking spaces (1.9 per unit), along with 12 garages and 12 carpools that will be available to tenants for a fee.

Amendment



The Owner provided a revised Development Cost Schedule that indicates the Off-site and Site Work costs increased by \$262,404 and the Building Costs increased by \$1,144,987 since the original application underwriting analysis completed on July 24, 2017. In order to help mitigate the increased costs, the revisions noted above were made to the site design plan. To further offset the increased costs, the Owner's related party General Contractor has reduced their fees from \$942,718 to \$194,906. Additionally, the Deferred Developer Fee will increase from \$479,604 to \$1,228,184 to cover the increased costs.

Staff has conducted an analysis using the current cost estimates and financing structure and has determined that the proposed changes noted above would not have impacted the scoring of the Application and that the Development remains feasible and supports the tax credit allocation previously awarded.

Staff recommends approval of the amendment request as presented.



Addendum to Underwriting Report

TDHCA Application #: Program(s):

Address/Location:

City: County: Zip:

APPLICATION HISTORY	
Report Date	PURPOSE
02/05/19	Amendment
05/15/18	MDL Closing
07/24/17	Original Underwriting Report

ALLOCATION

TDHCA Program	Previous Allocation				RECOMMENDATION				
	Amount	Rate	Amort	Term	Amount	Rate	Amort	Term	Lien
("MDL")	\$1,935,000	3.25%	30	15	\$1,935,000	3.25%	30	40	2nd
LIHTC (0% Credit)	\$500,000				\$500,000				

* Multifamily Direct Loan Terms:

* Pursuant to 10 TAC §13.8(a), the term of a Multifamily Direct Loan should match the term of any superior loan (within 6 months).

* Lien position after conversion to permanent. The Department's lien position during construction may vary.

CONDITIONS STATUS

- 1 Receipt and acceptance before Direct Loan Closing
 - a: Substantially final construction contract with Schedule of Values.
 - b: Updated term sheets with substantially final terms from all lenders.
 - c: Statement from senior permanent lender indicating market rents they are underwriting.
 - d: Substantially final draft of limited partnership agreement.
 - e: Statement from equity provider indicating market rents they are underwriting.
 - f: Senior loan documents (and/or partnership documents) must contain a provision(s) that any stabilization resizing on the senior debt includes the debt service on the TDHCA MDL at a 1.15 DCR.
 - g: Updated documentation confirming any required matching funds, and confirming that the source(s) are eligible to be counted as matching funds under HUD and TDHCA requirements.

Status: All conditions cleared.

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

ANALYSIS

Overview

As of 12/19/2018, construction was reported to be 19.26% complete with an anticipated full completion date of 9/24/2019. However, materials and construction cost have significantly increased from what was originally estimated at time of application in March 2017, primarily due to the continued boom in the Austin market.

In order to successfully build and remain financially feasible, Applicant has proposed the following design modifications:

1. Building exterior change from 25% hardi siding/75% masonry to 25% hardi siding/75% stucco (still in compliance with City of Lago Vista Code);
2. Parking change from 140 open spaces/12 carports/12 garages to 69 open spaces/32 free carports/ 65 rented carports (total of 101 free spaces still exceeds parking code requirement of 97);
3. Interior flooring change from 95% carpet/vinyl/resilient flooring & 5% ceramic tile to 100% carpet/vinyl/resilient flooring; and
4. Clubhouse footprint change from 3,715 sf to 1,297 sf (elimination of 500 sf media room, 500 sf reduction in office area and a combined 1,418 sf reduction to all other areas).

Applicant's revised budget reflects an increase in Total Development Cost of \$759K (6.36%) over their original estimate at application.

Operating Pro Forma

SUMMARY- AS UNDERWRITTEN (Applicant's Pro Forma)					
NOI:	\$482,673	Avg. Rent:	\$1,037	Expense Ratio:	43.8%
Debt Service:	\$398,043	B/E Rent:	\$931	Controllable Expenses:	\$3,145
Net Cash Flow:	\$84,630	UW Occupancy:	92.5%	Property Taxes/Unit:	\$787
Aggregate DCR:	1.21	B/E Occupancy:	83.4%	Program Rent Year:	2018

All restricted units underwritten at the most recent maximum program rents. On the 32 unrestricted units (44% of total), Applicant reduced originally projected rents by \$125/unit as follows:

<u>Unit Type</u>	<u>Original Assumption</u>	<u>Current Assumption</u>
1BR	\$1,125	\$1,000
2BR	\$1,325	\$1,200
3BR	\$1,525	\$1,400

Market unit rents are now budgeted below 80% AMGI rent limits.

As underwritten, average rent with 1 month concession on 60% and market rate units is \$29 above break-even, indicating leeway to reduce unrestricted rents even lower if necessary. However, the need for concessions is diminished by rents being 10% below the already reduced market rent assumptions.

If previously underwritten market rents are achieved, debt coverage increases to 1.29 with no impact on underwriting.

Analysis based on Applicant's pro forma, including \$37/unit secondary income. If carport income is excluded and secondary income limited to REA standard \$20/unit, development remains feasible with 1.18 debt coverage.

Applicant's revisions have had little impact on projected NOI (\$483K revised vs. \$485K original), while a lower rate on the permanent debt (4.37% actual vs. 6.25% projected) has resulted in lower debt service and a higher DCR.

Breakeven occupancy occurs with 12 units vacant (underwritten at 5).

Higher than average level of controllables complement lower than typical expense ratio.

As underwritten, Pro Forma now exhibits feasibility throughout 40-year term of permanent loan.

Estimated 15 year residual cash flow is \$745K after repayment of deferred developer fee.

Development Cost

SUMMARY- AS UNDERWRITTEN (Applicant's Costs)					
Acquisition	\$84,231/ac	\$11,944/unit	\$860,000	Contractor Fee	\$194,906
Off-site + Site Work		\$21,527/unit	\$1,549,951	Soft Cost + Financing	\$1,589,041
Building Cost	\$90.68/sf	\$87,090/unit	\$6,270,487	Developer Fee	\$1,389,352
Contingency	5.32%	\$5,778/unit	\$416,022	Reserves	\$414,324
Total Development Cost					
	\$176,168/unit	\$12,684,083		Rehabilitation Cost	N/A

The ownership entity, KCG Vista Bella, LP, entered into a construction contract on 6/21/2018 with KCGC Construction, LLC (a related entity to the Applicant/Developer). The most recent copy submitted of the AIA G702 Application and Certificate for Payment (for the period to 11/28/2018) includes an updated schedule of values (including change orders) that is consistent with Applicant's revised Development Cost Schedule.

Applicant's revised cost budget exhibits the following changes over their original application:

Category	Original		Proposed		Variance	% Change
Acquisition	\$860,000		\$860,000		\$0	0.00%
Off-site + Site Work	\$1,287,547		\$1,549,951		\$262,404	20.38%
Building Cost	\$5,125,500		\$6,270,487		\$1,144,987	22.34%
Contingency	\$345,652	5.39%	\$416,022	5.32%	\$70,370	20.36%
Contractor Fee	\$942,718	13.95%	\$194,906	2.37%	(\$747,812)	-79.33%
Soft Cost + Financing	\$1,589,041		\$1,589,041		\$0	0.00%
Developer Fee	\$1,360,711	15.00%	\$1,389,352	14.13%	\$28,641	2.10%
Reserves	\$414,324		\$414,324		\$0	0.00%
Total Development Cost	\$11,925,494		\$12,684,083		\$758,589	6.36%

Increase in Site Work is primarily due to higher rough grading and on-site utility costs encountered with construction underway.

There is no change in the number of units, unit size or total residential square footage, but in spite of proposed design changes (exterior facade, flooring & smaller clubhouse), Applicant's Building Cost has risen significantly due to higher material and sub-contractor costs they have run into during construction. As an offset, the fee for the related entity General Contractor has been greatly reduced, but Total Development Cost still exhibits a prominent increase.

TDHCA's typical methodology using Marshal & Swift's ("M&S") average quality construction values results in a total building cost estimate of \$5.2M (\$72K/unit - \$75/sf), which is \$1.4M (18%) less than Applicant's revised budget. However, by formulating a base cost using M&S's Good Quality construction values, TDHCA's Building Cost estimate matches Applicant's budget at \$6.3M (\$87K/unit - \$91/sf).

In any event, Applicant's Voluntary Eligible Building Cost at the time of application remains unchanged at \$5M (\$70K/unit - \$73/sf).

Applicant kept Developer Fee relatively static at \$1.39M (vs. original \$1.36M) by reducing the percentage to 14%.

Sources of Funds

Originally, Applicant's permanent financing was to be a \$4,550,000 conventional loan from Citibank, NA underwritten at 6.25% with payments based on a 30 year amortization and a 15 year maturity. In addition, a \$1,935,000 Multifamily Direct Loan ("MDL") with a 30 year amortization at 3.25% was approved as part of the proposed capitalization (downsized from Applicant's initial request of \$2,285,000).

In June of 2018, Applicant closed a \$5,125,000 USDA 538 permanent loan from Bellwether Enterprise with a fixed rate of 4.37% along with an annual 50 basis point USDA Guarantee Fee. Payments are based on a full 40 year amortization corresponding to the loan's 40 year term. The bigger loan was obtained in anticipation at that time of a \$472K increase in Total Development Costs. The MDL was closed in the originally approved amount of \$1,935,000 at a rate of 3.25%, but the term was extended to 40 years with payments based on a full 40 year amortization (corresponding to the primary permanent debt).

By the time closing occurred, a reduction in credit price from \$0.90 to \$0.86 reduced the equity contribution from \$4.5M to \$4.3M. Deferred Developer Fee has been increased from \$480K to \$1.2M to help cover the increase in total development cost. At \$1.2M, the deferred fee is projected to be repaid within 11 years.

Conclusion

As presented, the increase in development cost and corresponding revisions to capital structure do not affect the feasibility conclusion. As a result, no change in the awarded credit allocation is being recommended at this time.

Underwriter: Gregg Kazak

Manager of Real Estate Analysis: Thomas Cavanagh

Director of Real Estate Analysis: Brent Stewart

UNIT MIX/RENT SCHEDULE
Vista Bella, Lago Vista, 9% HTC/MDL #17204

LOCATION DATA	
CITY:	Lago Vista
COUNTY:	Travis
Area Median Income	\$86,000
PROGRAM REGION:	7

UNIT DISTRIBUTION						
# Beds	# Units	% Total	Assisted	Income	# Units	% Total
Eff	-	0.0%	0	30%	4	5.6%
1	22	30.6%	0	40%	-	0.0%
2	44	61.1%	0	50%	8	11.1%
3	6	8.3%	0	60%	28	38.9%
4	-	0.0%	0	MR	32	44.4%
TOTAL	72	100.0%	-	TOTAL	72	100.0%

Applicable Programs
9% Housing Tax Credits
Direct Loan

Pro Forma ASSUMPTIONS	
Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjust	130%
Applicable Fraction	55.39%
APP % Acquisition	3.39%
APP % Construction	9.00%
Average Unit Size	960 sf

UNIT MIX / MONTHLY RENT SCHEDULE

HTC		TDHCA Direct Loan Program		UNIT MIX				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS			MARKET RENTS				
Type	Gross Rent	Type	Gross Rent	# Units	# Beds	# Baths	NRA	Gross Rent	Utility Allow	Max Net Program Rent	Delta to Max	Rent psf	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent psf	Delta to Max	Underwritten	Mkt Analyst		
TC 30%	\$483	LH/50%	\$806	2	1	1	748	\$483	\$71	\$412	\$0	\$0.55	\$412	\$824	\$824	\$412	\$0.55	\$0	\$1,000	\$1.34	\$1,135	
TC 50%	\$806	HH/60%	\$1,023	3	1	1	748	\$806	\$71	\$735	\$0	\$0.98	\$735	\$2,205	\$2,205	\$735	\$0.98	\$0	\$1,000	\$1.34	\$1,135	
TC 60%	\$967	HH/60%	\$1,023	8	1	1	748	\$967	\$71	\$896	\$0	\$1.20	\$896	\$7,168	\$7,168	\$896	\$1.20	\$0	\$1,000	\$1.34	\$1,135	
MR				9	1	1	748	\$0	\$71		NA	\$1.34	\$1,000	\$9,000	\$9,000	\$1,000	\$1.34	NA	\$1,000	\$1.34	\$1,135	
TC 30%	\$580	LH/50%	\$967	2	2	2	1,034	\$580	\$88	\$492	\$0	\$0.48	\$492	\$984	\$984	\$492	\$0.48	\$0	\$1,200	\$1.16	\$1,455	
TC 50%	\$967	LH/50%	\$967	4	2	2	1,034	\$967	\$88	\$879	\$0	\$0.85	\$879	\$3,516	\$3,516	\$879	\$0.85	\$0	\$1,200	\$1.16	\$1,455	
TC 60%	\$1,161	HH/60%	\$1,251	17	2	2	1,034	\$1,161	\$88	\$1,073	\$0	\$1.04	\$1,073	\$18,241	\$18,241	\$1,073	\$1.04	\$0	\$1,200	\$1.16	\$1,455	
MR				21	2	2	1,034	\$0	\$88		NA	\$1.16	\$1,200	\$25,200	\$25,200	\$1,200	\$1.16	NA	\$1,200	\$1.16	\$1,455	
TC 50%	\$1,118	LH/50%	\$1,118	1	3	2	1,200	\$1,118	\$105	\$1,013	\$0	\$0.84	\$1,013	\$1,013	\$1,013	\$1,013	\$0.84	\$0	\$1,400	\$1.17	\$1,895	
TC 60%	\$1,341	HH/60%	\$1,481	3	3	2	1,200	\$1,341	\$105	\$1,236	\$0	\$1.03	\$1,236	\$3,708	\$3,708	\$1,236	\$1.03	\$0	\$1,400	\$1.17	\$1,895	
MR				2	3	2	1,200	\$0	\$105		NA	\$1.17	\$1,400	\$2,800	\$2,800	\$1,400	\$1.17	NA	\$1,400	\$1.17	\$1,895	
TOTALS/AVERAGES:				72				69,152				\$0	\$1.08	\$1,037	\$74,659	\$74,659	\$1,037	\$1.08	\$0	\$1,156	\$1.20	\$1,394

ANNUAL POTENTIAL GROSS RENT:	\$895,908	\$895,908
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STABILIZED PRO FORMA

Vista Bella, Lago Vista, 9% HTC/MDL #17204

STABILIZED FIRST YEAR PRO FORMA

	COMPARABLES		APPLICANT				AT MDL CLOSING	ORIGINAL REPORT		AT MDL CLOSING	TDHCA				VARIANCE	
	Database	Expense Comps	% EGI	Per SF	Per Unit	Amount	Applicant	Applicant	TDHCA	TDHCA	Amount	Per Unit	Per SF	% EGI	%	\$
POTENTIAL GROSS RENT				\$1.08	\$1,037	\$895,908	\$901,548	\$892,452	\$897,372	\$901,548	\$895,908	\$1,037	\$1.08		0.0%	\$0
laundry, late fees, pet fees, deposits						\$18.75	\$16,200	\$16,200	\$16,200							
carports/garages						\$18.33	\$15,840	\$14,400	\$15,840							
Total Secondary Income						\$37.08			\$17,280	\$17,280	\$17,280	\$20.00		85.4%	\$14,760	
POTENTIAL GROSS INCOME							\$927,948	\$932,148	\$924,492	\$914,652	\$913,188				1.6%	\$14,760
Vacancy & Collection Loss						7.5% PGI	(69,596)	(69,911)	(69,337)	(68,599)	(68,912)	7.5% PGI			1.6%	(1,107)
Rental Concessions							-	-			-				0.0%	-
EFFECTIVE GROSS INCOME							\$858,352	\$862,237	\$855,155	\$846,053	\$849,916	\$844,699			1.6%	\$13,653

General & Administrative	\$36,940	\$513/Unit	\$29,960	\$416	3.49%	\$0.43	\$416	\$29,950	\$29,950	\$29,950	\$29,960	\$29,960	\$29,960	\$416	\$0.43	3.55%	0.0%	(10)
Management	\$38,562	5.3% EGI	37,576	\$522	5.00%	\$0.62	\$596	\$42,918	\$43,112	\$43,913	\$42,303	\$42,496	\$42,235	\$587	\$0.61	5.00%	1.6%	683
Payroll & Payroll Tax	\$81,274	\$1,129/Unit	80,619	\$1,120	11.83%	\$1.47	\$1,410	\$101,518	\$101,518	\$74,500	\$74,500	\$74,500	\$74,500	\$1,035	\$1.08	8.82%	36.3%	27,018
Repairs & Maintenance	\$63,005	\$875/Unit	52,871	\$734	4.98%	\$0.62	\$594	\$42,740	\$42,740	\$45,740	\$43,200	\$43,200	\$43,200	\$600	\$0.62	5.11%	-1.1%	(460)
Electric/Gas	\$17,215	\$239/Unit	17,177	\$239	1.26%	\$0.16	\$150	\$10,800	\$10,800	\$10,800	\$17,177	\$17,177	\$17,177	\$239	\$0.25	2.03%	-37.1%	(6,377)
Water, Sewer, & Trash	\$55,378	\$769/Unit	43,972	\$611	4.82%	\$0.60	\$575	\$41,400	\$41,400	\$59,760	\$43,972	\$43,972	\$43,972	\$611	\$0.64	5.21%	-5.8%	(2,572)
Property Insurance	\$24,144	\$0.35 /sf	33,731	\$468	2.94%	\$0.36	\$350	\$25,200	\$25,200	\$24,500	\$24,144	\$24,144	\$24,144	\$335	\$0.35	2.86%	4.4%	1,056
Property Tax (@ 100%) 2.5643	\$59,081	\$821/Unit	83,748	\$1,163	6.60%	\$0.82	\$787	\$56,673	\$56,673	\$56,537	\$83,748	\$83,748	\$83,748	\$1,163	\$1.21	9.91%	-32.3%	(27,075)
Reserve for Replacements	\$31,739	\$441/Unit	\$74,000	\$1,028	2.52%	\$0.31	\$300	\$21,600	\$21,600	\$21,600	\$21,600	\$21,600	\$21,600	\$300	\$0.31	2.56%	0.0%	-
TDHCA LIHTC/HOME Compliance Fees			-	\$0	0.34%	\$0.04	\$40	\$2,880	\$2,880	\$2,880	\$2,960	\$2,960	\$2,960	\$41	\$0.04	0.35%	-2.7%	(80)
TOTAL EXPENSES					43.77%	\$5.43	\$5,218	\$ 375,679	\$ 375,873	\$ 370,180	\$ 383,563	\$ 383,756	\$ 383,496	\$5,326	\$5.55	45.40%	-2.0%	\$ (7,817)
NET OPERATING INCOME ("NOI")					56.23%	\$6.98	\$6,704	\$482,673	\$486,364	\$484,975	\$462,490	\$466,160	\$461,203	\$6,406	\$6.67	54.60%	4.7%	\$ 21,470

CONTROLLABLE EXPENSES				\$3,145/Unit			\$3,145/Unit	\$3,066/Unit	\$2,900/Unit	\$2,900/Unit		\$2,900/Unit						
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CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS

Vista Bella, Lago Vista, 9% HTC/MDL #17204

DEBT / GRANT SOURCES																					
APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE										AS UNDERWRITTEN DEBT/GRANT STRUCTURE											
DEBT (Must Pay)	Fee	Cumulative DCR		Pmt	Rate	Amort	Term	Principal	At MDL Closing	Original Underwriting		At MDL Closing	Principal	Term	Amort	Rate	Pmt	Cumulative			
		UW	App							Applicant	TDHCA							DCR	LTC		
Bellwether Enterprise - USDA RD 538	0.50%	1.70	1.78	271,363	4.37%	40	40	\$5,125,000	\$5,125,000	\$4,550,000	\$4,550,000	\$5,125,000	\$5,125,000	40	40	4.37%	\$296,988	1.63	40.4%		
TDHCA		1.24	1.30	\$101,055	3.25%	30	40	\$1,935,000	\$1,935,000	\$2,285,000	\$1,935,000	\$1,935,000	\$1,935,000	40	30	3.25%	\$101,055	1.21	15.3%		
CASH FLOW DEBT / GRANTS																					
Direct Loan Match		1.24	1.30		0.00%	0	0	\$96,750	\$115,000	\$115,000	\$115,000	\$115,000	\$96,750	0	0	0.00%		1.21	0.8%		
City of Lago Vista		1.24	1.30		0.00%	0	0	\$10	\$10	\$10	\$10	\$10	\$10	0	0	0.00%		1.21	0.0%		
				\$372,418					TOTAL DEBT / GRANT SOURCES	\$7,175,010	\$6,950,010	\$6,600,010	\$7,175,010					TOTAL DEBT SERVICE	\$398,043	1.21	56.4%

NET CASH FLOW	\$88,785	\$110,255											APPLICANT NET OPERATING INCOME	\$482,673	\$84,630	NET CASH FLOW
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EQUITY SOURCES															
APPLICANT'S PROPOSED EQUITY STRUCTURE							AS UNDERWRITTEN EQUITY STRUCTURE								
EQUITY / DEFERRED FEES	DESCRIPTION	% Cost	Annual Credit	Credit Price	Amount	At MDL Closing	Original Underwriting		At MDL Closing	Amount	Credit Price	Annual Credit	% Cost	Annual Credits per Unit	Allocation Method
							Applicant	TDHCA							
Alliant Capital, Ltd.	LIHTC Equity	33.9%	\$500,000	0.86	\$4,299,140	\$4,299,140	\$4,499,100	\$4,499,100	\$4,299,040	\$4,299,040	\$0.86	\$500,000	33.9%	\$6,944	Previous Allocation
KCG Development, LLC	Deferred Developer Fees	9.7%	(88% Deferred)		\$1,228,184	\$926,238	\$479,604	\$826,384	\$922,588	\$1,228,283		(88% Deferred)	9.7%		Total Developer Fee: \$1,389,352
Additional (Excess) Funds Req'd		0.0%						\$0	\$0	\$0			0.0%		
TOTAL EQUITY SOURCES		43.6%			\$5,527,324	\$5,225,378	\$4,978,704	\$5,325,484	\$5,221,628	\$5,527,323			43.6%		

TOTAL CAPITALIZATION	\$12,684,084	\$12,400,388	\$11,928,714	\$11,925,494	\$12,396,638	\$12,684,083	15-Yr Cash Flow after Deferred Fee:		\$744,740
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DEVELOPMENT COST / ITEMIZED BASIS															
APPLICANT COST / BASIS ITEMS							TDHCA COST / BASIS ITEMS					COST VARIANCE			
Eligible Basis	Acquisition	New Const. Rehab	Total Costs	At MDL Closing	Original Underwriting		At MDL Closing	Total Costs	Eligible Basis	New Const. Rehab	Acquisition	%	\$		
					Applicant	TDHCA								TDHCA	TDHCA
Land Acquisition			\$11,944 / Unit	\$860,000	\$860,000	\$860,000	\$860,000	\$860,000	\$11,944 / Unit			0.0%	\$0		
Building Acquisition	\$0		\$ / Unit	\$0	\$0	\$0	\$0	\$0	\$ / Unit		\$0	0.0%	\$0		
Off-Sites			\$1,674 / Unit	\$120,530	\$120,530	\$120,530	\$120,530	\$120,530	\$1,674 / Unit			0.0%	\$0		
Site Work		\$1,112,350	\$15,449 / Unit	\$1,112,350	\$907,017	\$907,017	\$907,017	\$907,017	\$15,449 / Unit	\$1,112,350		0.0%	\$0		
Site Amenities		\$317,071	\$4,404 / Unit	\$317,071	\$288,000	\$260,000	\$260,000	\$288,000	\$4,404 / Unit	\$317,071		0.0%	\$0		
Building Cost		\$5,033,574	\$90.68 /sf	\$87,090/Unit	\$6,270,487	\$5,125,500	\$5,125,500	\$4,992,490	\$87,372/Unit	\$90.97 /sf	\$5,033,574	-0.3%	(\$20,325)		
Contingency		\$404,204	6.25%	5.32%	\$416,022	\$347,052	\$345,652	\$347,052	\$416,022	5.31%	6.25%	0.0%	\$0		
Contractor Fees		\$194,906	2.84%	2.37%	\$194,906	\$946,834	\$942,718	\$927,596	\$194,906	2.36%	2.84%	0.0%	\$0		
Soft Costs	0	\$1,118,231	\$15,531 / Unit	\$1,118,231	\$1,335,646	\$1,118,231	\$1,118,231	\$1,335,646	\$15,531 / Unit		\$1,118,231	0.0%	\$0		
Financing	0	\$283,150	\$6,539 / Unit	\$470,810	\$628,924	\$470,810	\$470,810	\$628,924	\$6,539 / Unit	\$283,150		0.0%	\$0		
Developer Fee	\$0	\$1,269,523	15.00%	14.13%	\$1,389,352	\$1,410,987	\$1,363,932	\$1,339,061	\$1,389,352	14.10%	15.00%	0.0%	\$0		
Reserves			\$5,755 / Unit	\$414,324	\$429,898	\$414,324	\$402,581	\$395,243	\$402,547	\$5,591 / Unit		2.9%	\$11,777		
TOTAL HOUSING DEVELOPMENT COST (UNADJUSTED BASIS)		\$0	\$9,733,009	\$176,168 /unit	\$12,684,083	\$12,400,388	\$11,928,714	\$11,743,969	\$12,192,200	\$12,692,631	\$176,287 /unit	\$9,733,009	\$0	-0.1%	(\$8,548)
Acquisition Cost	\$0			\$0	\$0	\$0									
Contingency		\$0		\$0	\$0	\$0									
Contractor's Fee		\$0													
Interim Interest		\$0													
Developer Fee	\$0	(\$0)		\$0	(\$3,750)	(\$3,221)									
Reserves				\$0	\$0	\$0									
ADJUSTED BASIS / COST		\$0	\$9,733,009	\$176,168/unit	\$12,684,083	\$12,396,638	\$11,925,494	\$11,743,969	\$12,192,200	\$12,692,631	\$176,287/unit	\$9,733,009	\$0	-0.1%	(\$8,548)

TOTAL HOUSING DEVELOPMENT COSTS (Applicant's Uses are within 5% of TDHCA Estimate):	\$12,684,083													
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CAPITALIZATION / DEVELOPMENT COST BUDGET / ITEMIZED BASIS ITEMS

Vista Bella, Lago Vista, 9% HTC/MDL #17204

	CREDIT CALCULATION ON QUALIFIED BASIS			
	Applicant		TDHCA	
	Acquisition	Construction Rehabilitation	Acquisition	Construction Rehabilitation
ADJUSTED BASIS	\$0	\$9,733,009	\$0	\$9,733,009
Deduction of Federal Grants	\$0	\$0	\$0	\$0
TOTAL ELIGIBLE BASIS	\$0	\$9,733,009	\$0	\$9,733,009
High Cost Area Adjustment		130%		130%
TOTAL ADJUSTED BASIS	\$0	\$12,652,912	\$0	\$12,652,912
Applicable Fraction	55.39%	55.39%	55.39%	55.39%
TOTAL QUALIFIED BASIS	\$0	\$7,008,943	\$0	\$7,008,943
Applicable Percentage	3.39%	9.00%	3.39%	9.00%
ANNUAL CREDIT ON BASIS	\$0	\$630,805	\$0	\$630,805
CREDITS ON QUALIFIED BASIS	\$630,805		\$630,805	

Method	ANNUAL CREDIT CALCULATION BASED ON APPLICANT BASIS		FINAL ANNUAL LIHTC ALLOCATION		
	Annual Credits	Proceeds	Credit Price	Variance to Request	
			\$0.86	Credits	Proceeds
Eligible Basis	\$630,805	\$5,423,711	----	----	----
Needed to Fill Gap	\$642,855	\$5,527,323	----	----	----
Previous Allocation	\$500,000	\$4,299,040	\$500,000	\$0	\$0

BUILDING COST ESTIMATE				
CATEGORY	FACTOR	UNITS/SF	PER SF	
Base Cost:	Garden/Townhome	69,152 SF	\$87.46	6,047,901
Adjustments				
Exterior Wall Finish	0.00%		0.00	\$0
Elderly	0.00%		0.00	0
9-Ft. Ceilings	3.00%		2.62	181,437
Roof Adjustment(s)			0.00	0
Subfloor			(0.15)	(10,603)
Floor Cover			2.56	177,029
Breezeways	\$27.41	16,200	6.42	443,957
Balconies	\$28.81	4,470	1.86	128,772
Plumbing Fixtures	\$1,020	150	2.21	153,000
Rough-ins	\$500	144	1.04	72,000
Built-In Appliances	\$1,730	72	1.80	124,560
Exterior Stairs	\$2,650	35	1.34	92,750
Heating/Cooling			2.14	147,985
Enclosed Corridors	\$70.11	0	0.00	0
Carports	\$12.25	16,151	2.86	197,844
Garages	\$35.00	0	0.00	0
Comm &/or Aux Bldgs	\$102.37	1,297	1.92	132,775
Elevators		0	0.00	0
Other:			0.00	0
Fire Sprinklers	\$2.59	86,649	3.25	224,420
SUBTOTAL			117.33	8,113,827
Current Cost Multiplier	1.04		4.69	324,553
Local Multiplier	0.87		(15.25)	(1,054,798)
TOTAL BUILDING COSTS			106.77	\$7,383,583
Plans, specs, survey, bldg permits	3.30%		(3.52)	(\$243,658)
Contractor's OH & Profit	11.50%		(12.28)	(849,112)
NET BUILDING COSTS		\$87,372/unit	\$90.97/sf	\$6,290,812

Long-Term Pro Forma

Vista Bella, Lago Vista, 9% HTC/MDL #17204

	Growth Rate	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15	Year 20	Year 30	Year 40
EFFECTIVE GROSS INCOME	2.00%	\$858,352	\$875,519	\$893,029	\$910,890	\$929,108	\$1,025,810	\$1,132,577	\$1,250,457	\$1,524,300	\$1,858,113
TOTAL EXPENSES	3.00%	\$375,679	\$386,520	\$397,678	\$409,162	\$420,981	\$485,469	\$559,960	\$646,022	\$860,389	\$1,155,296
NET OPERATING INCOME ("NOI")		\$482,673	\$488,999	\$495,351	\$501,728	\$508,126	\$540,341	\$572,617	\$604,435	\$663,911	\$702,817
EXPENSE/INCOME RATIO		43.8%	44.1%	44.5%	44.9%	45.3%	47.3%	49.4%	51.7%	56.4%	62.2%
MUST -PAY DEBT SERVICE											
Bellwether Enterprise - USDA RD 538		\$296,988	\$296,746	\$296,494	\$296,230	\$295,954	\$294,380	\$292,423	\$289,989	\$283,196	\$272,688
TDHCA		\$101,055	\$101,055	\$101,055	\$101,055	\$101,055	\$101,055	\$101,055	\$101,055	\$101,055	\$101,055
TOTAL DEBT SERVICE		\$398,043	\$397,801	\$397,548	\$397,285	\$397,009	\$395,435	\$393,478	\$391,044	\$384,251	\$373,743
DEBT COVERAGE RATIO		1.21	1.23	1.25	1.26	1.28	1.37	1.46	1.55	1.73	1.88
ANNUAL CASH FLOW											
		\$84,630	\$91,198	\$97,803	\$104,443	\$111,117	\$144,906	\$179,139	\$213,391	\$279,660	\$329,074
Deferred Developer Fee Balance		\$1,143,653	\$1,052,455	\$954,653	\$850,209	\$739,092	\$82,389	\$0	\$0	\$0	\$0
CUMULATIVE NET CASH FLOW		\$0	\$0	\$0	\$0	\$0	\$0	\$744,740	\$1,743,281	\$4,245,627	\$7,331,053



Lee Ann Chance
Asset Manager (Regions 1, 2, 7, & 8)
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December 4, 2018

RE: 17204 – Vista Bella – Amendment Request Determination

Dear Lee Ann:

Please find below our amendment request for a few items pertaining to this development. As noted in our Initial Construction Status Report, our construction costs have significantly increased from what was originally estimated at time of application (March 2017...19 months ago). The Austin market continues to explode and the cost for quality contractors as well as materials have consistently been on the rise. There was no way to foresee what the actual cost of construction would be. In order to successfully build and remain financially feasible, some design modifications and material changes have been proposed. None of the proposed changes affect any scoring items or amenities that will be offered. Please find below our design modifications and material changes:

1. NOTIFICATION of Change Requested – Exterior composition of buildings
Plans submitted at application: 100% masonry products (25% hardi siding + 30% stone + 45% face brick)

Revised proposed plans: 100% masonry products (25% hardi siding + 75% Portland cement plaster (stucco))

This modification still meets the City of Lago Vista Code of Ordinances per the below section that has been provided for your reference.

6.105 Exterior Appearance Multifamily and Nonresidential Buildings. This section shall apply to all nonresidential and multifamily buildings except those in the C-4, Airport District.

- (a) 75% of the front wall and 75% of each side wall of all commercial buildings shall consist of or be covered with the following acceptable materials:
 - (i) Fired bricks.
 - (ii) Natural or polished stone.
 - (iii) Textured masonry block.
 - (iv) Tilt wall concrete panels with architectural details or imbedded textural materials.
 - (v) Applied stucco.

- (vi) Tile, clay or ceramic.
- (vii) Glass, [.]
- (viii) Split face concrete block [.]

Note: Painted corrugated sheet metal and concrete impregnated siding are not acceptable materials.

For purposes of this calculation, the exterior shall not include the area of roofs or door or window openings.

The reason the change is necessary: Increased costs for both material and skilled masons for stone and brick installation necessitated the change.

The good cause for the change: Reduced costs help insure it is a successful development; stucco allows for slightly quicker construction timeline, which will help bring available units to those who need affordable housing quicker.

Financial Information: Please see attached Development Cost Schedule comparison (Total hard costs have increased by over \$1M)

Foreseeable at time of application: It was impossible to predict the construction cost increases from time of application until now given how much has changed in the market in the last 19 months.

2. NON MATERIAL CHANGE REQUESTED

A. Garages and carports

The original application stated that there would be 140 surface spaces + 12 carports + 12 garages. The total expense to construct the carports and garages was ~\$90,000.

For the same cost by utilizing economies of scale, we propose deleting the garages and adding more carports for a total of 97 carports. This would be in addition to 69 surface spaces for a total of 166 parking spaces.

	Free	Paid	Comment
Open spaces	69	0	
Carport	32	65	Each MR unit includes a carport space
total	101	65	

The good cause for the change: this is a betterment for the community which now provides plenty of additional covered parking available for all tenants.

Financial Information: No financial impact

B. Interior Flooring

The original application stated 95% Carpet/Vinyl/Resilient flooring and 5% ceramic tile. We have modified the plans to 100% Carpet/Vinyl/Resilient flooring and 0% ceramic tile. The bedrooms will be carpeted and living, bath, kitchen and entry will be resilient flooring.

3. MATERIAL CHANGE REQUESTED

Clubhouse – reduced footprint

The significant topography of the site is difficult to develop. Not until the full civil site development plans were created did we realize the benefit of reducing the clubhouse footprint to assist with regards to cut/fill, slopes, parking, setbacks and entry drive.

The proposed new clubhouse footprint is roughly 1,400 sf and is still generously sized for a community of this size and accommodates all of the amenities we agreed to provide. The clubhouse will have the following: leasing area and office, furnished community room, warming kitchen, furnished exercise room, laundry facilities (coin operated), mailbox center, bathrooms, and swimming pool.

There are additional amenities planned for the site which, combined with the clubhouse amenities, will exceed the minimum requirement for this development. Some of the cost savings achieved by reducing the footprint will also allow for some upgrades in finishes as well. This is considered a material change since the clubhouse is being reduced by more than 3%.

Reason change is necessary: Please see attached comparison of costs

Good cause for the change: Allows for better design of site; smaller footprint can be constructed and finished out more quickly, which will allow leasing staff to start sooner.

Financial impact: Stand alone it reduces cost of clubhouse which helps offset the overall cost increases seen in the rest of the project to help maintain its financial feasibility.

Foreseeable at time of application: No

Attachments:

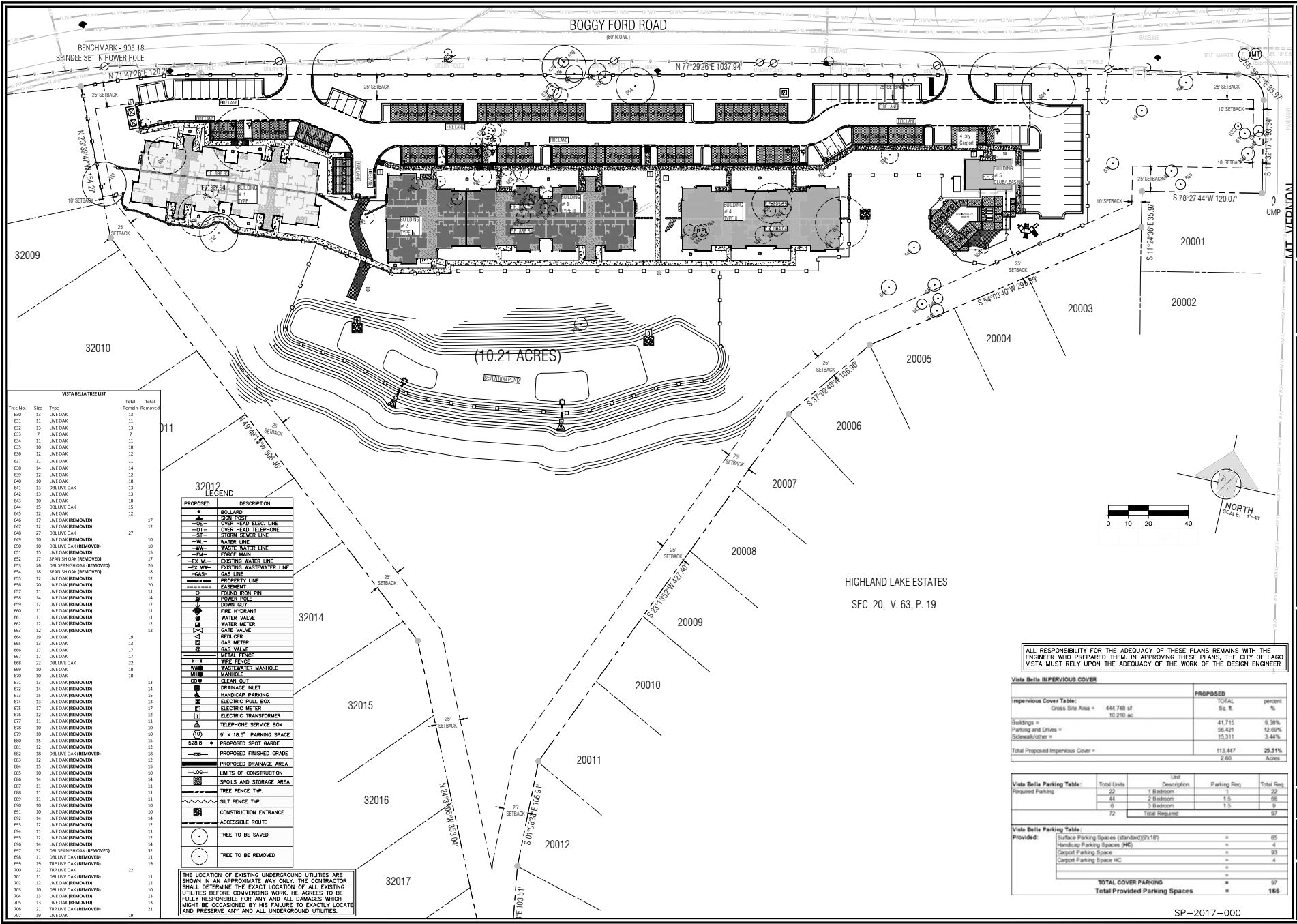
1. Revised Tab 23 – Building Unit Configuration
2. Revised Site Plan
3. Revised Clubhouse plans
4. Development Cost Schedule Comparison

Thank you in advance for your time and consideration. Please let me know if you need any additional information.

Regards,

Ina K. Spokas

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VP Development
512-689-3343
Ina.spokas@kcgcompanies.com



VISTA BELLA TREE LIST

Tree No.	Size	Type	Total	Total
			Remains	Removed
630	13	LIVE OAK	13	
631	11	LIVE OAK	11	
632	13	LIVE OAK	13	
633	7	LIVE OAK	7	
634	11	LIVE OAK	11	
635	10	LIVE OAK	10	
636	12	LIVE OAK	12	
637	11	LIVE OAK	11	
638	14	LIVE OAK	14	
639	12	LIVE OAK	12	
640	10	LIVE OAK	10	
641	13	DE LIVE OAK	13	
642	13	LIVE OAK	13	
643	10	LIVE OAK	10	
645	15	DE LIVE OAK	15	
646	12	LIVE OAK	12	
648	17	LIVE OAK (REMOVED)		17
649	12	LIVE OAK (REMOVED)		12
648	27	DE LIVE OAK		27
649	30	LIVE OAK (REMOVED)		30
650	30	DE LIVE OAK (REMOVED)		30
651	35	LIVE OAK (REMOVED)		35
652	17	SPANISH OAK (REMOVED)		17
653	26	DE SPANISH OAK (REMOVED)		26
654	28	SPANISH OAK (REMOVED)		28
655	12	LIVE OAK (REMOVED)		12
656	20	LIVE OAK (REMOVED)		20
657	11	LIVE OAK (REMOVED)		11
658	14	LIVE OAK (REMOVED)		14
659	17	LIVE OAK (REMOVED)		17
660	11	LIVE OAK (REMOVED)		11
661	11	LIVE OAK (REMOVED)		11
662	12	LIVE OAK (REMOVED)		12
663	12	LIVE OAK (REMOVED)		12
664	19	LIVE OAK	19	
665	13	LIVE OAK	13	
666	17	LIVE OAK	17	
667	17	LIVE OAK	17	
668	22	DE LIVE OAK		22
669	10	LIVE OAK	10	
670	10	LIVE OAK	10	
671	13	LIVE OAK (REMOVED)		13
672	14	LIVE OAK (REMOVED)		14
673	15	LIVE OAK (REMOVED)		15
674	13	LIVE OAK (REMOVED)		13
675	17	LIVE OAK (REMOVED)		17
676	11	LIVE OAK (REMOVED)		11
677	11	LIVE OAK (REMOVED)		11
678	10	LIVE OAK (REMOVED)		10
679	10	LIVE OAK (REMOVED)		10
680	15	LIVE OAK (REMOVED)		15
681	12	LIVE OAK (REMOVED)		12
682	18	DE LIVE OAK (REMOVED)		18
683	12	LIVE OAK (REMOVED)		12
684	15	LIVE OAK (REMOVED)		15
685	10	LIVE OAK (REMOVED)		10
686	14	LIVE OAK (REMOVED)		14
687	11	LIVE OAK (REMOVED)		11
688	11	LIVE OAK (REMOVED)		11
689	11	LIVE OAK (REMOVED)		11
690	10	LIVE OAK (REMOVED)		10
691	10	LIVE OAK (REMOVED)		10
692	14	LIVE OAK (REMOVED)		14
693	12	LIVE OAK (REMOVED)		12
694	11	LIVE OAK (REMOVED)		11
695	12	LIVE OAK (REMOVED)		12
696	14	LIVE OAK (REMOVED)		14
697	32	DE SPANISH OAK (REMOVED)		32
698	11	DE LIVE OAK (REMOVED)		11
699	25	DE LIVE OAK (REMOVED)		25
700	22	DE LIVE OAK		22
701	11	DE LIVE OAK (REMOVED)		11
702	12	LIVE OAK (REMOVED)		12
703	10	DE LIVE OAK (REMOVED)		10
704	11	LIVE OAK (REMOVED)		11
705	13	LIVE OAK (REMOVED)		13
706	21	DE LIVE OAK (REMOVED)		21
707	19	LIVE OAK	19	

32012 LEGEND

PROPOSED	DESCRIPTION
●	BOLLARD
○	SOB POST
—OC—	OVER HEAD ELEC. LINE
—OT—	OVER HEAD TELEPHONE
—ST—	STORM SPOKE LINE
—W—	WATER LINE
—WW—	WASTE WATER LINE
—FM—	FORCE MAIN
—EW—	EXISTING WATER LINE
—EW—	EXISTING WASTEWATER LINE
—GAS—	GAS LINE
—P—	PROPERTY LINE
—E—	EASEMENT
—	EXISTING IRON FRI
○	POWER POLE
○	GROUND IRON FRI
●	FIRE HYDRANT
○	WATER VALVE
○	WATER METER
○	GATE VALVE
○	REGULATOR
○	GAS METER
○	GAS VALVE
○	METAL FENCE
—	WIRE FENCE
—	WASTEWATER MANHOLE
○	MANHOLE
○	CLEAN OUT
○	DRAINAGE INLET
○	HANDICAP PARKING
○	ELECTRIC RENTAL BOX
○	ELECTRIC METER
○	ELECTRIC TRANSFORMER
○	TELEPHONE SERVICE BOX
○	8' X 18" PARKING SPACE
○	528.5' PROPOSED SPOT GARDE
○	PROPOSED FINISHED GRADE
○	PROPOSED DRAINAGE AREA
○	LIMITS OF CONSTRUCTION
○	SPOILS AND STORAGE AREA
○	TREE FENCE TYP.
○	SILT FENCE TYP.
○	CONSTRUCTION ENTRANCE
○	ACCESSIBLE ROUTE
○	TREE TO BE SAVED
○	TREE TO BE REMOVED

THE LOCATION OF EXISTING UNDERGROUND UTILITIES ARE SHOWN IN AN APPROXIMATE WAY ONLY. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ALL EXISTING UTILITIES BEFORE COMMENCING WORK. HE AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH MIGHT BE OCCASIONED BY HIS FAILURE TO EXACTLY LOCATE AND PRESERVE ANY AND ALL UNDERGROUND UTILITIES.

ALL RESPONSIBILITY FOR THE ADEQUACY OF THESE PLANS REMAINS WITH THE ENGINEER WHO PREPARED THEM. IN APPROVING THESE PLANS, THE CITY OF LAGO VISTA MUST RELY UPON THE ADEQUACY OF THE WORK OF THE DESIGN ENGINEER

Vista Bella IMPERVIOUS COVER

Impervious Cover Table:	PROPOSED
Gross Site Area = 444,748 sq ft	
10.210 ac	
Buildings =	41,715 9.58%
Parking and Drives =	56,421 12.69%
Sidewalk/other =	15,311 3.44%
Total Proposed Impervious Cover =	113,447 25.51%
	2.60 Acres

Vista Bella Parking Table:

Total Units	Unit Description	Parking Req.	Total Req.
22	1 Bedroom	1	22
44	2 Bedroom	1.5	66
6	3 Bedroom	1.5	9
72	Total Required		97

Vista Bella Parking Table:

Provided:	Surface Parking Spaces (standard)(9'x18')	=	85
	Handicap Parking Spaces (H.C.)	=	4
	Carport Parking Spaces	=	83
	Carport Parking Spaces H.C.	=	4
	TOTAL COVER PARKING	=	97
	Total Provided Parking Spaces	=	166

AUSTIN CIVIL ENGINEERING, INC.
 1895 FRM # F40108
 9501 B MARQUETTA RD. SUITE 220
 FRI 7520-382-0018

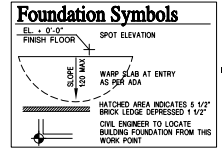
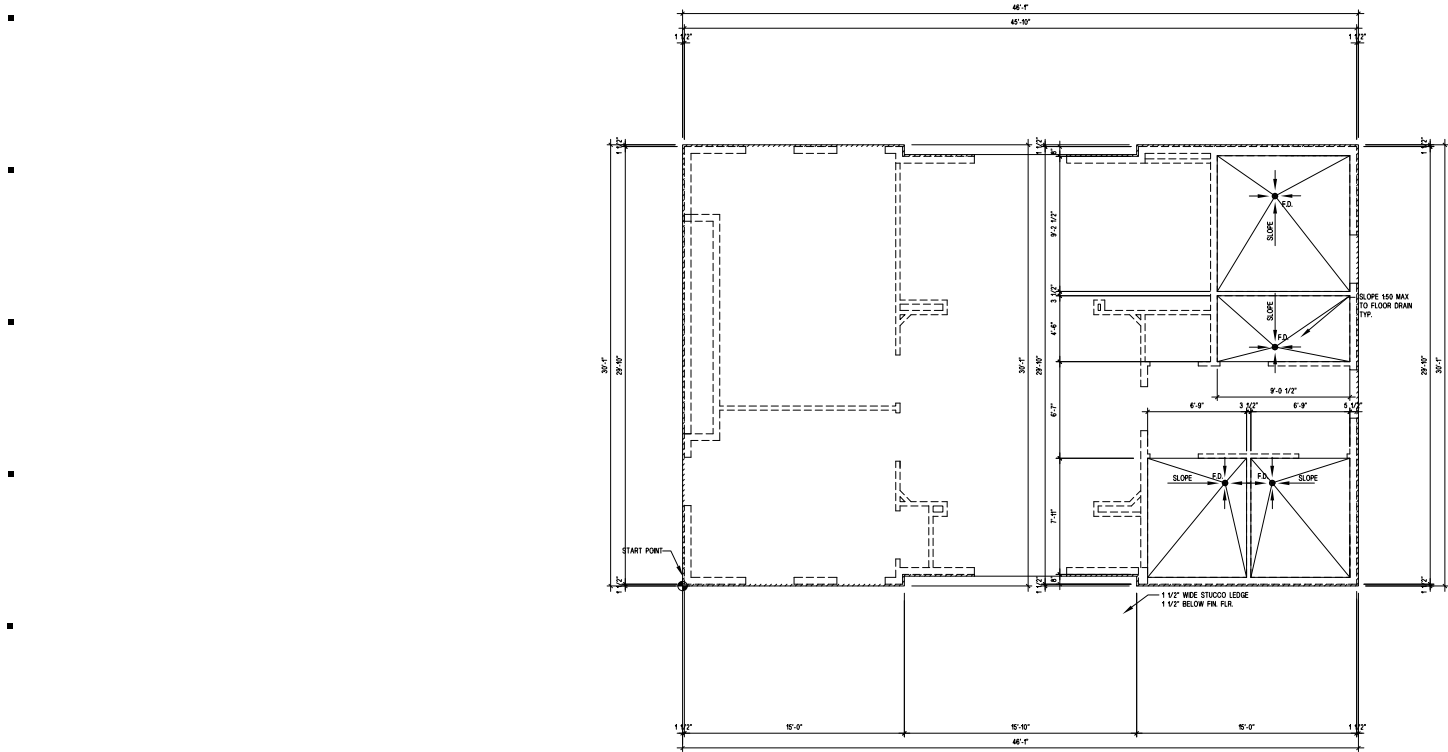


VISTA BELLA
 BOGGY FORD ROAD
 LAGO VISTA, TEXAS 78645

REVISIONS

NO.	DATE	DESCRIPTION

OVERALL SITE PLAN
 7
 of 42



01 Foundation Plan
SCALE: 1/4" = 1'-0"

FL080-0007-0000-A001-001-B-C-02

THIS SET IS NOT TO BE TAKEN APART WHEN GIVE TO SUB CONTRACTORS

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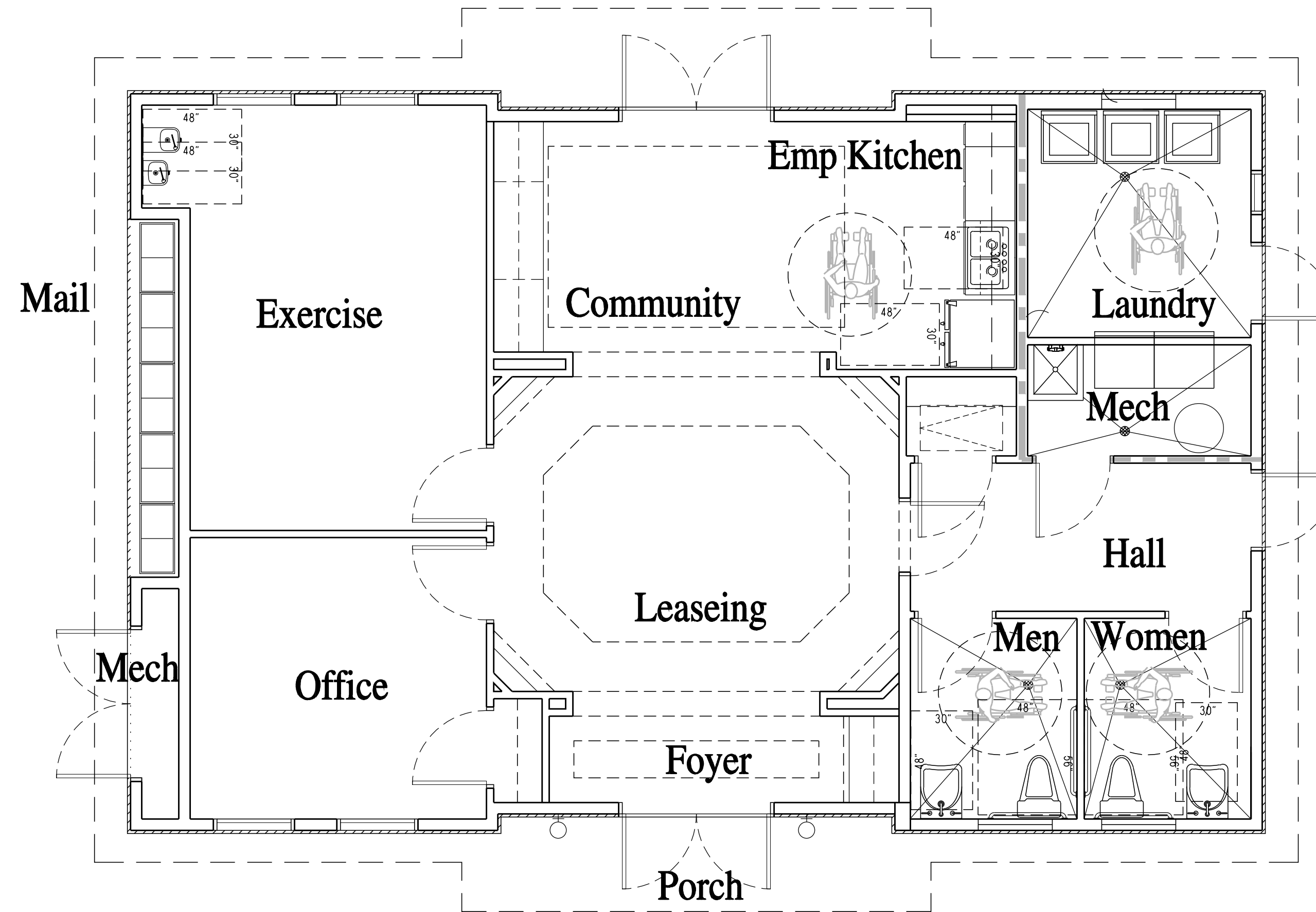
Project No. **1701011**
Issue Drawing Log
18 Dec 2017 Issue for Permit

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Sheet Title: **Office Plan**
Drawing No. **A8.01**

Leasing Office One Story

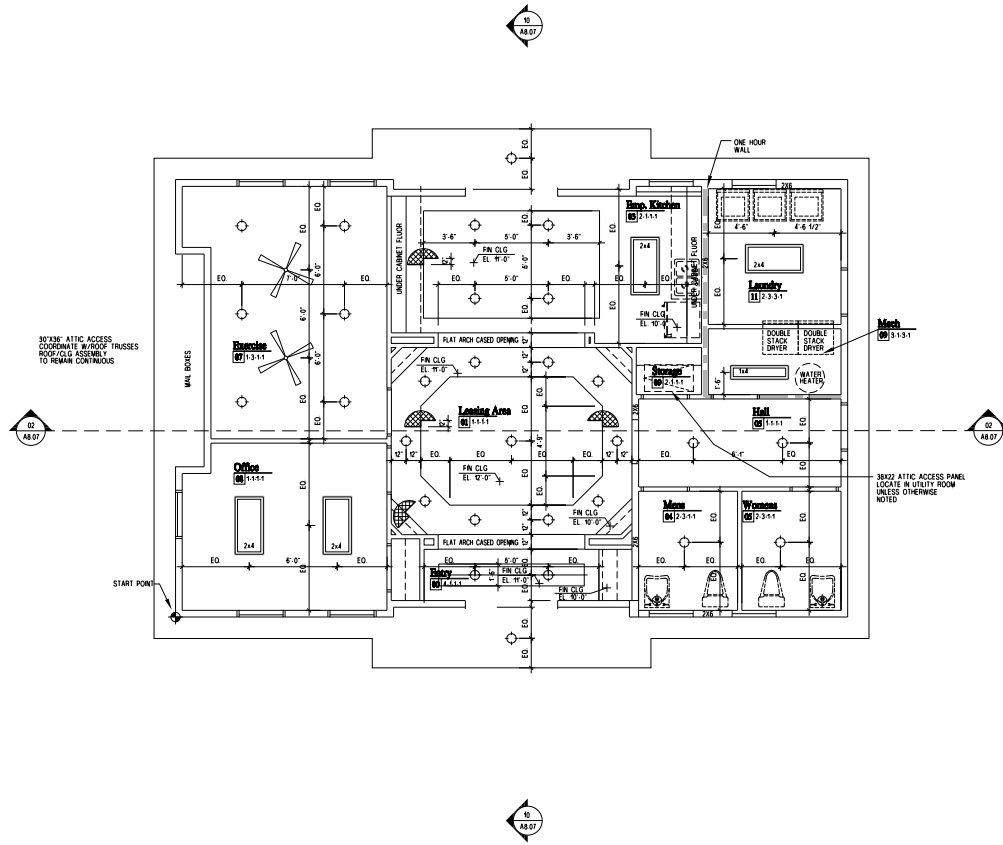
LEASE OFFICE
NET SF. 1,297
GROSS SF. 1,346
OCCUPANCY TYPE B
CONSTRUCTION TYPE 5-B ONE HOUR



architettura

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Vista Bella Apartments



Ceiling Symbols

- 2x4 FLUORESCENT LIGHT FIXTURE SURFACE MOUNTED
- 1x4 FLUORESCENT LIGHT FIXTURE SURFACE MOUNTED
- CEILING MOUNTED INCANDESCENT
- WALL MOUNTED INCANDESCENT
- RECESSED WALL WASHER
- RECESSED CAN
- EXIT LIGHTING
- EMERGENCY LIGHTING
- RECESSED CEILING FAN W/ LIGHT KIT
- 22\"/> ATTIC ACCESS COORDINATE W/ROOF TRUSSES ROOF/CLG ASSEMBLY TO REMAIN CONTINUOUS
- 24\"/> ATTIC ACCESS PANEL LOCATE IN UTILITY ROOM UNLESS OTHERWISE NOTED

01 Ceiling Plan
SCALE: 1/4" = 1'-0"

F:\000\31010100\A8.03.dwg

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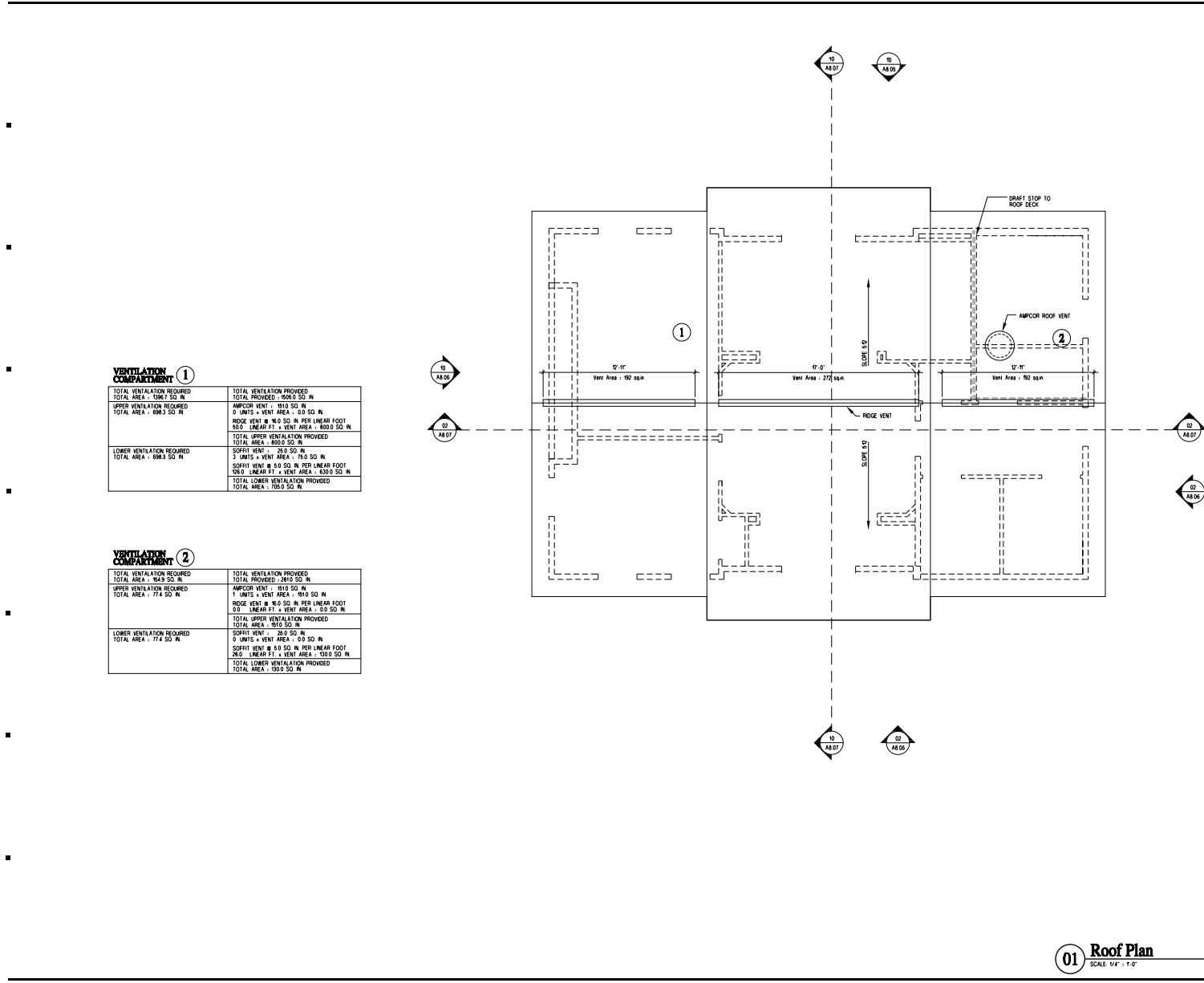


Project No. **170101a**
Issue Drawing Log
18 Dec 2017 Issue for Permit

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Sheet Title: **Office Plan**

Drawing No. **A8.03**



VENTILATION COMPARTMENT 1

TOTAL VENTILATION REQUIRED TOTAL AREA = 1067 SQ. IN.	TOTAL VENTILATION PROVIDED TOTAL PROVIDED = 1067 SQ. IN.
UPPER VENTILATION REQUIRED TOTAL AREA = 6963 SQ. IN.	AMPCOR VENT = 1610 SQ. IN. 0 UNITS x VENT AREA = 0 SQ. IN. RIDGE VENT @ 90 SQ. IN. PER LINEAR FOOT 652' LINEAR FT. x VENT AREA = 6000 SQ. IN.
LOWER VENTILATION REQUIRED TOTAL AREA = 6963 SQ. IN.	TOTAL UPPER VENTILATION PROVIDED TOTAL AREA = 6600 SQ. IN.
	SOFIT VENT = 263 SQ. IN. 3 UNITS x VENT AREA = 790 SQ. IN. SOFIT VENT @ 90 SQ. IN. PER LINEAR FOOT 450' LINEAR FT. x VENT AREA = 6300 SQ. IN.
	TOTAL LOWER VENTILATION PROVIDED TOTAL AREA = 7060 SQ. IN.

VENTILATION COMPARTMENT 2

TOTAL VENTILATION REQUIRED TOTAL AREA = 949 SQ. IN.	TOTAL VENTILATION PROVIDED TOTAL PROVIDED = 949 SQ. IN.
UPPER VENTILATION REQUIRED TOTAL AREA = 774 SQ. IN.	AMPCOR VENT = 1610 SQ. IN. 1 UNITS x VENT AREA = 1610 SQ. IN. RIDGE VENT @ 90 SQ. IN. PER LINEAR FOOT 0.0' LINEAR FT. x VENT AREA = 0 SQ. IN.
LOWER VENTILATION REQUIRED TOTAL AREA = 774 SQ. IN.	TOTAL UPPER VENTILATION PROVIDED TOTAL AREA = 1610 SQ. IN.
	SOFIT VENT = 263 SQ. IN. 0 UNITS x VENT AREA = 0 SQ. IN. SOFIT VENT @ 90 SQ. IN. PER LINEAR FOOT 260' LINEAR FT. x VENT AREA = 1000 SQ. IN.
	TOTAL LOWER VENTILATION PROVIDED TOTAL AREA = 1000 SQ. IN.

Roof Symbols

	AMPCOR ROOF VENT AT 1610 SQ. IN. OF VENTILATION
	M/COR ROOF VENT AT 60 SQ. IN. OF VENTILATION
	ROOF RIDGE VENT AT 90 SQ. IN. OF VENTILATION PER LINEAR FOOT OF VENT
	DRAFTSTOP COMPART AREA
	DRAFT STOP

01 Roof Plan
 SCALE: 1/4" = 1'-0"

1701011-0000-KAR-QUBA-C-0

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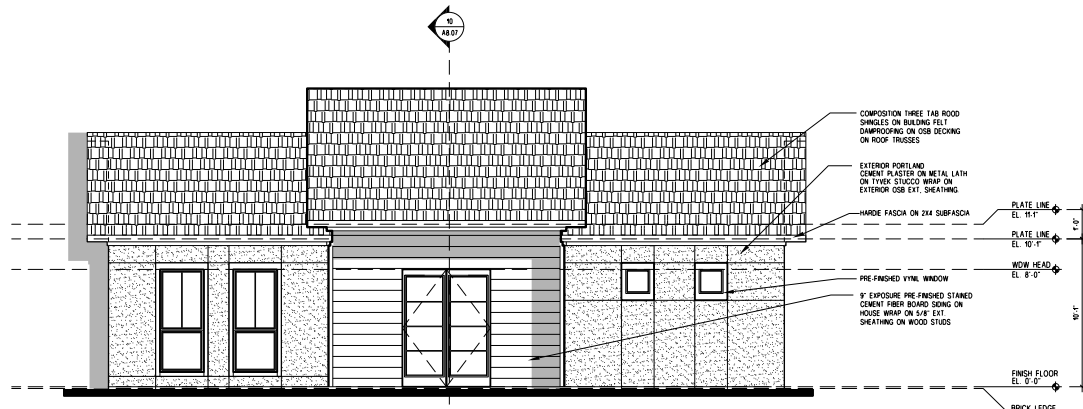
Project No. **1701011**
 Issue Drawing Log
 18 Dec 2017 Issue For Permit

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Sheet Title
Office Roof Plan
 Drawing No.
A8.04



10 Rear Elevation
 SCALE: 1/4" = 1'-0"



02 Front Elevation
 SCALE: 1/4" = 1'-0"

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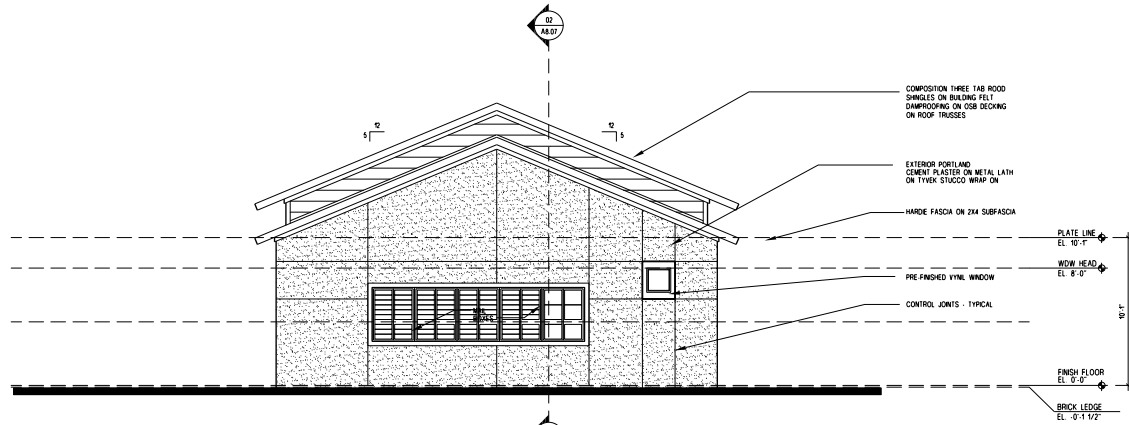
Project No. **1701011**

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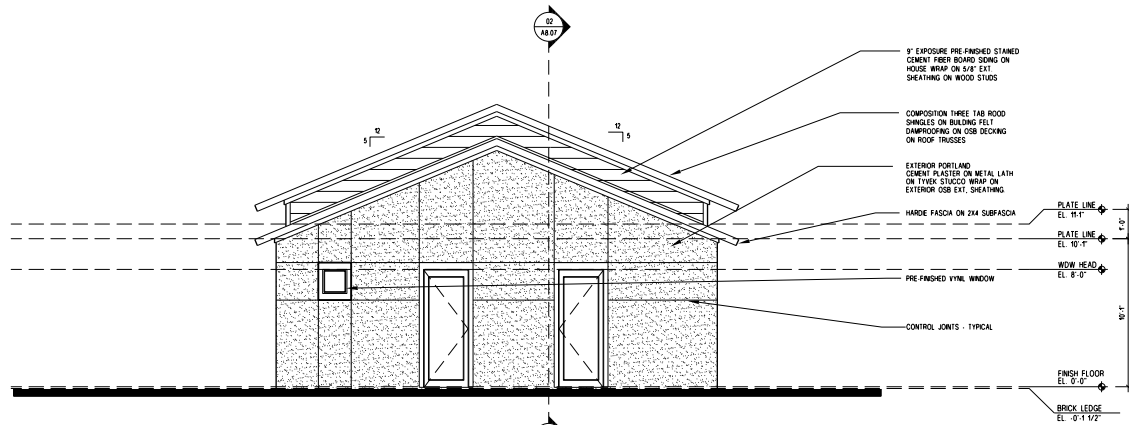
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Sheet Title
Office Elevation

Drawing No.
A8.05



10 Side Elevation
SCALE: 1/4" = 1'-0"



02 Side Elevation
SCALE: 1/4" = 1'-0"

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Project No. **1701011**

Issue Drawing Log

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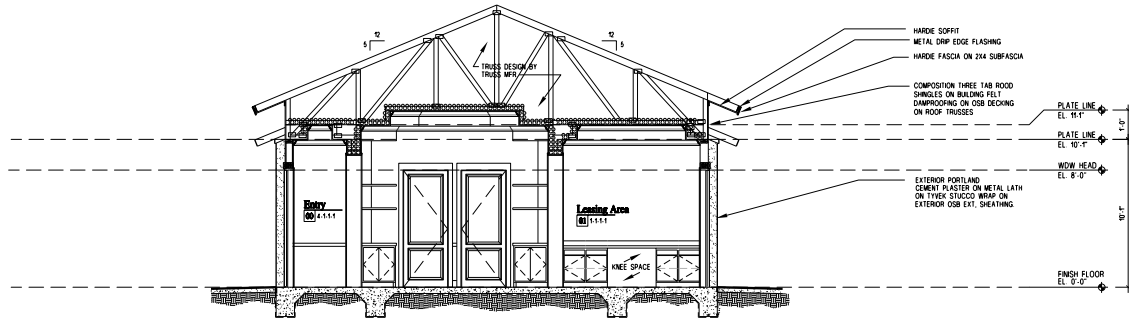
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Sheet Title

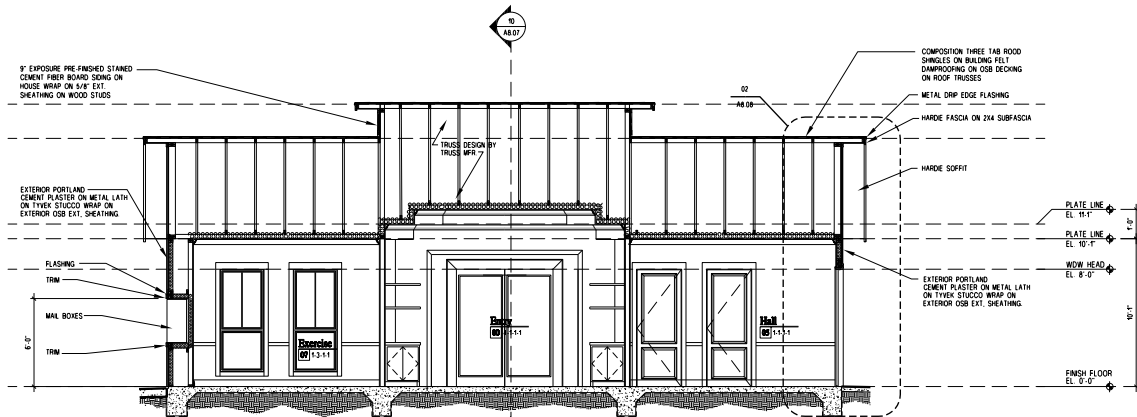
Office Elevation

Drawing No.

A8.06



10 Building Section
SCALE 1/4" = 1'-0"



02 Building Section
SCALE 1/4" = 1'-0"

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Project No. **1701011**

Issue Drawing Log

18 Dec 2017 Issue for Permit

Sheet Title

Office Section

Drawing No.

A8.07

										(272,961)
Detached Community Facilities/Building	132,039		132,039			405,000		405,000		
Carports and/or Garages	115,835					93,000				22,835
Lead-Based Paint Abatement										-
Asbestos Abatement (Rehabilitation Only)										-
Structured Parking										-
Commercial Space Costs										-
										-
Subtotal Building Costs Before 11.9(e)(2)	\$6,270,487	\$0	\$6,270,488			\$5,125,500	\$0	\$5,032,500		1,144,987

ACTUAL BUILDING COSTS HAVE INCREASED BY OVER \$1M

Voluntary Eligible Building Costs (After 11.9(e)(2))	\$72.77 psf	\$5,032,500				\$72.77 psf	\$5,032,500			*Enter score for Building OR Hard Costs at end of form
Enter amount to be used to achieve desired score.										

TOTAL BUILDING COSTS & SITE WORK	\$7,699,909	\$0	\$7,699,909			\$6,292,517	\$0	\$6,199,517		1,407,392
(including site amenities)										

Contingency	5.00%	\$391,022	\$384,995			\$320,652	\$0	\$309,976		70,370
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TOTAL HARD COSTS	\$8,211,461	\$0	\$8,084,904			\$6,733,699	\$0	\$6,509,493		1,477,761
-------------------------	--------------------	------------	--------------------	--	--	--------------------	------------	--------------------	--	------------------

TOTAL HARD COSTS HAVE INCREASED

OTHER CONSTRUCTION COSTS	%THC			%EHC	%THC			%EHC		
General requirements (<6%)	0.75%	61,200	61,200	0.76%	6.00%	\$ 404,022	\$ 390,570	6.00%	(342,822)	
Field supervision (within GR limit)										
Contractor overhead (<2%)	0.47%	38,800	38,800	0.48%	2.00%	\$ 134,674	\$ 130,190	2.00%	(95,874)	
G & A Field (within overhead limit)										
Contractor profit (<6%)	1.16%	94,906	94,906	1.17%	6.00%	\$ 404,022	\$ 390,570	6.00%	(309,116)	
TOTAL CONTRACTOR FEES		\$194,906	\$0	\$194,906		\$942,718	\$0	\$911,330		(747,812)
TOTAL CONSTRUCTION CONTRACT		\$8,406,367	\$0	\$8,279,810		\$7,676,417	\$0	\$7,420,823		729,949

Voluntary Eligible "Hard Costs" (After 11.9(e)(2))	\$0.00 psf					#DIV/0!				*Enter score for Building OR Hard Costs at end of form
Enter amount to be used to achieve desired score.										

SOFT COSTS³										
Architectural - Design fees	110,000		110,000			110,000		110,000		-
Architectural - Supervision fees	10,000		10,000			10,000		10,000		-
Engineering fees	100,000		100,000			100,000		100,000		-
Real estate attorney/other legal fees	50,000		75,000			50,000		75,000		-
Accounting fees	20,000		20,000			20,000		20,000		-
Impact Fees	450,000		450,000			450,000		450,000		-
Building permits & related costs	51,231		51,231			51,231		51,231		-
Appraisal			0					0		-
Market analysis	10,000		10,000			10,000		10,000		-
Environmental assessment	15,000		15,000			15,000		15,000		-
Soils report	15,000		15,000			15,000		15,000		-
Survey	10,000		10,000			10,000		10,000		-
Marketing										-
Hazard & liability insurance	35,000		35,000			35,000		35,000		-
Real property taxes	6,000		6,000			6,000		6,000		-
Personal property taxes										-
Soft Cost contingency	25,000		25,000			25,000		25,000		-
FFE	200,000		200,000			200,000		200,000		-
Parkland Dedication Fee	36,000		36,000			36,000		36,000		-
Subtotal Soft Cost	\$1,143,231	\$0	\$1,168,231			\$1,143,231	\$0	\$1,168,231		-

FINANCING:

CONSTRUCTION LOAN(S)³

Interest	225,000		165,000			225,000		165,000		-
Loan origination fees	43,150		43,150			43,150		43,150		-
Title & recording fees	75,000		75,000			75,000		75,000		-
Closing costs & legal fees										-
Inspection fees										-
Credit Report										-
Discount Points										-
Other (specify) - see footnote 1										-
Other (specify) - see footnote 1										-

PERMANENT LOAN(S)

Loan origination fees	45,500					45,500				-
Title & recording fees										-
Closing costs & legal	25,000					25,000				-

Bond premium									
Credit report									
Discount points									
Credit enhancement fees									
Prepaid MIP									
Other (specify) - see footnote 1									
Other (specify) - see footnote 1									
BRIDGE LOAN(S)									
Interest									
Loan origination fees									
Title & recording fees									
Closing costs & legal fees									
Other (specify) - see footnote 1									
Other (specify) - see footnote 1									
OTHER FINANCING COSTS³									
Tax credit fees	22,160				22160				-
Tax and/or bond counsel									
Payment bonds									
Performance bonds									
Credit enhancement fees									
Mortgage insurance premiums									
Cost of underwriting & issuance									
Syndication organizational cost	35,000				35000				-
Tax opinion									
Other (specify) - see footnote 1									
Other (specify) - see footnote 1									
Subtotal Financing Cost	\$470,810	\$0	\$283,150		\$470,810	\$0	\$283,150		-

DEVELOPER FEES³									
Housing consultant fees ⁴									
General & administrative									
Profit or fee	1,363,932		1,459,679		1,363,932		1,330,830		-
Subtotal Developer Fees	\$1,363,932	\$0	\$1,459,679	15%	\$1,363,932	\$0	\$1,330,830	15.00%	-

RESERVES									
Rent-up	25,000				25000				-
Operating	389,324				389324				-
Replacement									
Escrows									
Subtotal Reserves	\$414,324	\$0	\$0		\$414,324	\$0	\$0		-

TOTAL HOUSING DEVELOPMENT COSTS⁵	\$12,658,664	\$0	\$11,190,870		\$11,928,714	\$0	\$10,203,034		729,949
--	---------------------	------------	---------------------	--	---------------------	------------	---------------------	--	----------------

TOTAL PROJECT COST HAS INCREASED BY THIS AMOUNT

Deduct From Basis:									
Federal grants used to finance costs in Eligible Basis									
Non-qualified non-recourse financing									
Non-qualified portion of higher quality units §42(d)(5)									
Historic Credits (residential portion only)									
Total Eligible Basis		\$0	\$11,190,870			\$0	\$10,203,034		987,836
**High Cost Area Adjustment (100% or 130%)			130%				130%		
Total Adjusted Basis		\$0	\$14,548,131			\$0	\$13,263,944		1,284,187
Applicable Fraction			56%				56%		
Total Qualified Basis	\$8,082,295	\$0	\$8,082,295		\$7,368,858	\$0	\$7,368,858		713,437
Applicable Percentage ⁶			9.00%				9.00%		
Credits Supported by Eligible Basis	\$727,407	\$0	\$727,407		\$663,197	\$0	\$663,197		64,209

(May be greater than actual request)
 *11.9(c)(2) Cost Per Square Foot: DO NOT ROUND! Applicants are advised to ensure that figure is not rounding down to the maximum dollar figure to support the elected points.

Requested Score for 11.9(e)(2)		12			12				
---------------------------------------	--	----	--	--	----	--	--	--	--

Name of contact for Cost Estimate: Ina Spokas
 Phone Number for Contact: 512-689-3343

Footnotes:

¹ An itemized description of all "other" costs must be included at the end of this exhibit.

² All Off-Site costs must be justified by a Third Party engineer in accordance with the Department's format provided in the Offsite Cost Breakdown form.

³ (HTC Only) Site Work expenses, indirect construction costs, developer fees, construction loan financing and other financing costs may or may not be included in Eligible Basis. Site Work costs must be justified by a Third Party engineer in accordance with the Department's format provided in the Site Work Cost Breakdown form.

⁴ (HTC Only) Only fees paid to a consultant for duties which are not ordinarily the responsibility of the developer, can be included in Eligible Basis. Otherwise, consulting fees are included in the calculation of maximum developer fees.

⁵ (HTC Only) Provide all costs & Eligible Basis associated with the Development.

⁶ (HTC Only) Use the appropriate Applicable Percentages as defined in §10.3 of the Uniform Multifamily Rules.



BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
FEBRUARY 21, 2019

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application for Cambrian East Riverside (HTC #18015)

RECOMMENDED ACTION

WHEREAS, Cambrian East Riverside (the Development) received a 9% Housing Tax Credit (HTC) award in 2018 to construct 65 multifamily units in Austin, Travis County;

WHEREAS, the HTC application for the Development received points and/or other preferences for agreeing to include a certified Historically Underutilized Business (HUB) in the ownership structure of the General Partner and materially participating in the development and operation of the Development throughout the Compliance Period;

WHEREAS, the Development Owner requests to amend the Application for the Development for changes to the Development Owner, Developer and Guarantor, person used to meet the experience requirement, and to remove the requirement under 10 TAC §11.9(b)(2)(A) for a HUB in the ownership structure of the General Partner and instead add a nonprofit to meet the requirement under 10 TAC §11.9(b)(2)(B);

WHEREAS, a change in the person(s) used to meet the experience requirement is a non-material amendment under 10 TAC §10.405(a)(3)(B), while changes in Developers or Guarantors with new principals are non-material amendments under 10 TAC §10.405(a)(3)(C);

WHEREAS, under 10 TAC §10.405(b)(1)(A), removal of a HUB participation requirement will only be processed as a non-material LURA amendment after issuance of 8609s, and as the LURA for this Development has not been completed, staff determined this to be a material change requiring Board approval under 10 TAC §10.405(a)(4)(I);

WHEREAS, even with the replacement of the HUB with a nonprofit, this project would have received an award of tax credits in the 2018 competitive cycle; and

WHEREAS, the Owner has complied with the procedural amendment requirements in 10 TAC §10.405(a)(1) to place this request before the Board;

NOW, therefore, it is hereby

RESOLVED, that the application amendment to remove the HUB requirement under 10 TAC §11.9(b)(2)(A) and add a nonprofit requirement under 10 TAC §11.9(b)(2)(B) and the changes to the Development Owner, Developer and Guarantor, and person used to meet the experience requirement for Cambrian East Riverside is approved as presented to this meeting, and the Acting Director and his designees are hereby authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

Cambrian East Riverside received a 9% LIHTC award in 2018 for the new construction of 65 HTC multifamily units in Austin, Travis County. In a letter dated December 21, 2018, Locke Lord (Cynthia L. Bast) on behalf of the Development Owner, Cambrian East Riverside LP, requested approval to amend the HTC Application related to a change in Owner, Developer, and Guarantor.

At application, O-SDA Industries, LLC, owned by Megan Lasch, was identified as a co-Developer and co-Guarantor for the project. In addition, Ms. Lasch's experience certificate was used in the application. According to the letter from Ms. Bast, during the process of obtaining equity bids, it became apparent that the Guarantor structure as proposed in the Application was not sufficient to satisfy the investors. The request letter also states that the equity partner, Hudson Housing Capital, suggested that Neo East Riverside LLC (Neo) partner with Prospera Housing and Community Services (Prospera), a nonprofit organization, as a means of making the project more attractive to the financial partners. According to the letter from Ms. Bast, Prospera's willingness to take this role is conditioned upon it controlling the general partner of the Owner.

The originally proposed Development Owner is Cambrian East Riverside, LP with Cambrian East Riverside GP (0.01%) serving as the General Partner and Neo East Riverside LLC (Calvin Chen), the HUB, as its sole member.

The proposed change would include Neo East Riverside LLC assigning its interest in the General Partner to Housing and Community Services, Inc. dba Prospera Housing Community Services, a nonprofit, and Neo East Riverside LLC becoming a Special Limited Partner (0.005%). Under 10 TAC §10.406(e), an Applicant may request an amendment to its ownership structure to add Principals, but the party(ies) reflected in the Application as having Control must remain in the ownership structure and retain Control, unless approved otherwise by the Executive Director. Given the change of Neo from owner of the General Partner to Special Limited Partner, it does appear that this entity is retaining Control. Staff recommends approval of this transfer.

Prospera would also replace O-SDA Industries, LLC as co-Developer and co-Guarantor. Changes in Developers or Guarantors with the addition of Principals are considered non-material amendments under 10 TAC §10.405(a)(3)(C) subject to Previous Participation requirements. Staff has completed the previous participation review for the transfer of ownership and changes and determined the compliance history for this transaction to be a Category 1, which is deemed acceptable for compliance purposes.

As a result of the change in co-Developer and co-Guarantor, the experience certificate for Ms. Megan Lasch will be substituted with the experience certificate for Mr. Gilbert M. Piette, Prospera's Executive Director. Under 10 TAC §10.405(a)(3)(B), changes in the natural person(s) used to meet the experience requirement in Chapter 11 are also considered non-material amendments.

The change in the ownership structure will impact the Development's total score obtained at application from 157 to 156 due to replacement of Neo, as a HUB, with Housing and Community Services, Inc., as a nonprofit. While the Development would not qualify for two points under 10 TAC §11.9(b)(2)(A), the Development would qualify for one point under 10 TAC §11.9(b)(2)(B), based on Prospera's nonprofit status. Staff has reviewed the request to remove the HUB requirement and determined that, even with a reduction of the total score to 156, the project would have received an award of tax credits in the competitive cycle.

The letter from Ms. Bast explains that Ms. Megan Lasch is an experienced Tax Credit Developer and owner and having her as a team member is an asset, but the development team could not have foreseen the market forces changing during the nine months from application to equity bidding that would require a change in the project team. Additionally, in order to obtain equity pricing at a viable rate, the project must change Guarantors, which necessitates other changes in the development team and ownership structure. According to the request letter, there is no other way forward.

Staff recommends approval of the material Application amendment and also recommends approval of the transfer of ownership in the General Partner and changes in Developer and Guarantor, along with the change in the person used to meet the experience requirement as presented herein. Staff also recommends that the LURA for the Development identify the nonprofit participation requirement related to Development Services or tenant services required under 10 TAC §11.9(b)(2)(B).



600 Congress Avenue, Suite 2200
Austin, Texas 78701
Telephone: 512-305-4700
Fax: 512-305-4800
www.lockelord.com

Cynthia L. Bast
Direct Telephone: 512-305-4707
Direct Fax: 512-391-4707
clbast@lockelord.com

December 21, 2018

Ms. Lee Ann Chance
Asset Manager Region 7
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78701

Re: Cambrian East Riverside, TDHCA #18015, Austin, TX

Dear Ms. Chance:

Please accept this formal request for a change to the Owner, Developer, and Guarantor for project 18015. The proposed change has not yet occurred; therefore, no filing fee is required. We believe this request can be approved by the Executive Director in accordance with 10 TAC §§10.406(e) and 10.405(a)(3).

Changes Requested

At application, O-SDA Industries, LLC ("O-SDA"), owned by Megan Lasch, was identified as a co-Developer and co-Guarantor for the project. We also used Ms. Lasch's experience certificate in the application. For the reasons described below, we would like to eliminate O-SDA from the position of co-Developer and co-Guarantor and insert Prospera Housing and Community Services ("Prospera") as a replacement. Prospera is a non-profit organization that is well-known to TDHCA, and Gilbert M. Piette can substitute for Ms. Lasch by providing the experience certificate.

Prospera's willingness to take this role is conditioned upon it controlling the general partner of the Owner. Thus, Neo East Riverside, LLC ("Neo"), the HUB which was proposed to own the general partner, will move over to a special limited partner position. This change necessitates an application amendment under §11.9(b)(2) of the QAP, as described below.

Reason the Change is Necessary

During the process of getting equity bids, it became apparent that the Guarantor structure as proposed in the application was not sufficient to satisfy the investors. Our Equity partner, Hudson Housing Capital, suggested that Neo, partner with Prospera as a means of making the

project more attractive to our financial partners. After a lengthy exploration and negotiation process, Neo and O-SDA concluded that this was the best path forward for the project.

Implications of the Change

The Applicant requested two points under §11.9(b)(2)(A) of the QAP and had a total score of 157. Substituting Prospera, as a non-profit, for Neo, as a HUB, will not meet the requirements of §11.9(b)(2)(A) because Prospera is not eligible for the Non-Profit Set-Aside for this project because of the composition of its board of directors. However, Prospera can meet the requirements of §11.9(b)(2)(B) for one point. Even with a reduction of the total score to 156, the project would have received an award of tax credits in the competitive cycle.

Documentation for Evaluation

We have provided the following documentation to assist TDHCA in its evaluation of the request:

1. "Before" organizational charts from the tax credit application;
2. "After" organizational charts for the proposed structure;
3. Previous Participation forms for Prospera;
4. A Credit limit certification for Prospera; and
5. An experience certificate for Gilbert Piette.

Explanation of Foreseeable or Preventable Nature

Ms. Lasch is an experienced Tax Credit Developer and owner. By all accounts, having her as a team member is an asset. There is no way she, nor anyone on the development team, could have foreseen the market forces at work 9 months into the future (from application to equity bidding) that would require a change in the project team.

Good Cause for the Change

In order to obtain equity pricing at a viable rate, the project must change Guarantors, which necessitates other changes in the development team and ownership structure. There is no other way forward. I would be happy to provide you with more details upon request.

Please feel free to contact me if you have any additional questions.

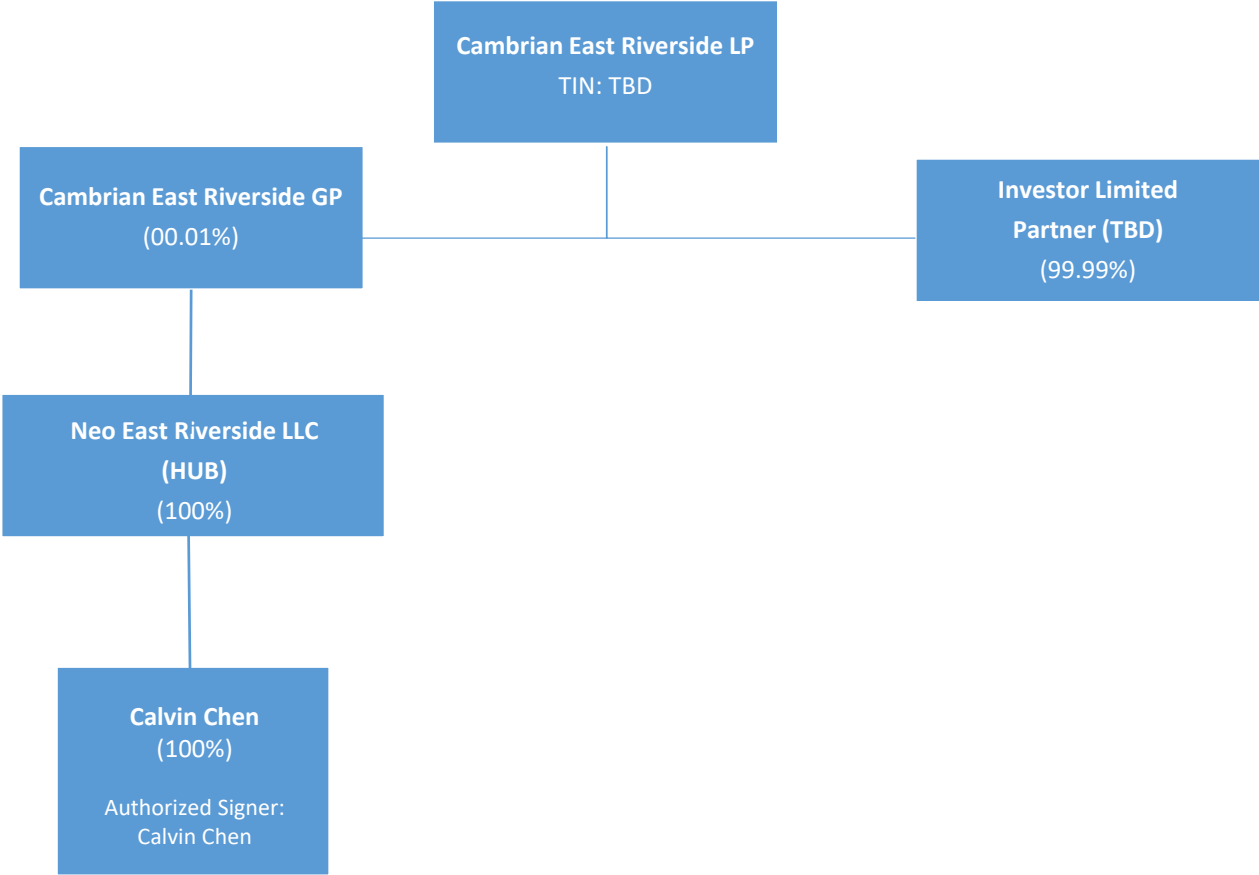
Sincerely,



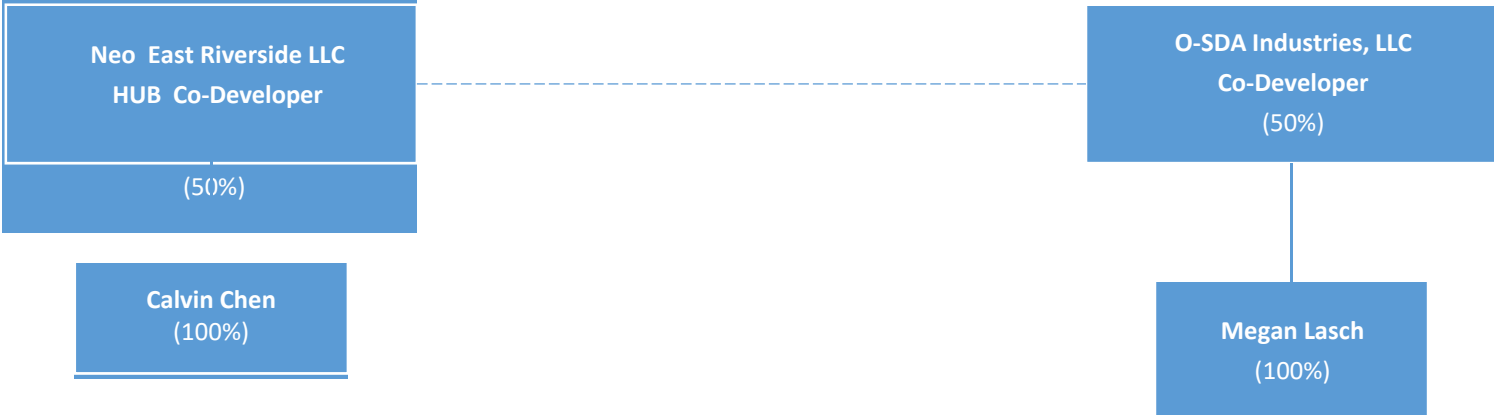
Cynthia L. Bast

Exhibit 1

Cambrian East Riverside Owner Organizational Structure



Cambrian East Riverside Developer Organizational Structure



Cambrian East Riverside Guarantor Organizational Structure

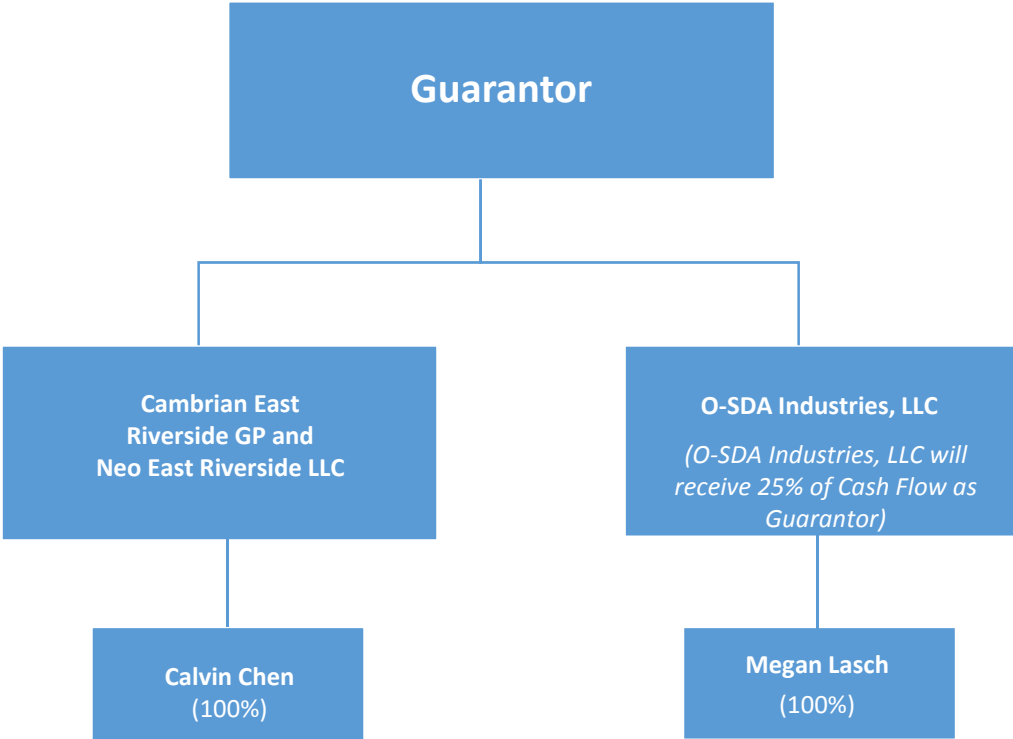


Exhibit 2

**Cambrian East Riverside
Owners Organizational Chart**

Cambrian East Riverside LP
TIN: [REDACTED]

General Partner
Cambrian East Riverside GP
00.005% General Partner
TIN: [REDACTED]

Special Limited
Neo East Riverside LLC
HUB
00.005%

Investor Limited Partner
(TBD)
99.99%

**Housing and Community
Services, Inc.**
d/b/a Prospera Housing
Community Services
100%
TIN: [REDACTED]

Calvin Chen
100%

Gilbert M. Piette,
Executive Director – 0%

Directors – 0%
Darrell Deming, Chair
Angela Salinas, Secretary
Nancy L. Hard, Assistant Secretary
Perry L. Deckard, Treasurer
Carole O. Bufler, Director
Gloria B. Flores, Director
Charles Glenn, Director
Reatha Mae Gooden, Director
Dadiri Jama, Director
Anita M. Remerowski, M.D., Director
Lamont Taylor, Director
Alicia Thomas, Ph.D., Director
Rafael I. Torres, Director

**Cambrian East Riverside
Developer Organizational Chart**

Cambrian East Riverside LP
TIN: [REDACTED]

**Housing and Community
Services, Inc.**
d/b/a Prospera Housing
Community Services
58.50%
TIN: [REDACTED]

Neo East Riverside LLC
HUB Co-developer
41.50%

Gilbert M. Piette,
Executive Director – 0%

Directors – 0%

Darrell Deming, Chair
Angela Salinas, Secretary
Nancy L. Hard, Assistant Secretary
Perry L. Deckard, Treasurer
Carole O. Bufler, Director
Gloria B. Flores, Director
Charles Glenn, Director
Reatha Mae Gooden, Director
Dadiri Jama, Director
Anita M. Remerowski, M.D., Director
Lamont Taylor, Director
Alicia Thomas, Ph.D., Director
Rafael I. Torres, Director

Cambrian East Riverside
Guarantor Organizational Chart

Cambrian East Riverside LP
TIN: [REDACTED]

Housing and Community
Services, Inc.
d/b/a Prospera Housing
Community Services
TIN: [REDACTED]

Neo East Riverside LLC

Calvin Chen

Gilbert M. Piette,
Executive Director – 0%

Directors – 0%

Darrell Deming, Chair
Angela Salinas, Secretary
Nancy L. Hard, Assistant Secretary
Perry L. Deckard, Treasurer
Carole O. Bufler, Director
Gloria B. Flores, Director
Charles Glenn, Director
Reatha Mae Gooden, Director
Dadiri Jama, Director
Anita M. Remerowski, M.D., Director
Lamont Taylor, Director
Alicia Thomas, Ph.D., Director
Rafael I. Torres, Director



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Greg Abbott
GOVERNOR

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Leslie Bingham-Escareño
T. Tolbert Chisum
Tom H. Gann
J.B. Goodwin

February 18, 2016

Writer's direct phone # 512-475-1676
Email: marni.holloway@tdhca.state.tx.us

Mr. Gilbert M. Piette
c/o Roger Canales
8610 North New Braunfels, Suite 500
San Antonio, Texas 78217

RE: REQUEST FOR EXPERIENCE CERTIFICATE UNDER 2016 UNIFORM MULTIFAMILY RULES

Dear Mr. Piette:

We have reviewed your request for an experience certificate, which is provided to individuals that meet the requirements of §10.204(6) of the Uniform Multifamily Rules. In order to meet the experience requirements an individual must establish that they have experience in the development and placement in service of at least 150 residential units. We find that the documentation you have provided is sufficient to establish this required experience. Additionally, you have certified to compliance with the requirements of §10.204(6)(B), including the following requirements:

(ii) Experience may not be established for a Person who at any time within the preceding three years has been involved with affordable housing in another state, in which the Person or Affiliate has been the subject of issued IRS Form 8823 citing non-compliance that has not been or is not being corrected with reasonable due diligence. ...

(iv) Notwithstanding the foregoing, no person may be used to establish such required experience if that Person or an Affiliate of that Person would not be eligible to be an Applicant themselves.

Should you choose to participate as a member of the Development Team or an individual providing experience for any Application submitted for funding, a Previous Participation Review (10 TAC §1.5) may be conducted prior to any award of funds. Additionally, should it be determined at any point in time that the information provided in your request for experience is fraudulent, knowingly falsified, intentionally or negligibly materially misrepresented, or omits relevant information, this certificate of experience is null and void and you may be subject to other sanctions under the Texas Department of Housing and Community Affairs' rules and requirements.



If you have any questions or concerns regarding this certificate or the experience requirements, please contact Marni Holloway at marni.holloway@tdhca.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Marni Holloway', with a long horizontal flourish extending to the right.

Marni Holloway
Director of Multifamily Finance

11

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
FEBRUARY 21, 2019

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement for Northstar Apartments (HTC #01069)

RECOMMENDED ACTION

WHEREAS, Northstar Apartments (the Development) received a 9% Housing Tax Credit (HTC) award in 2001 to construct 72 multifamily units in Raymondville, Willacy County;

WHEREAS, the HTC application for the Development received points and/or other preferences for agreeing to provide a Right of First Refusal (ROFR) to purchase the Development over a two-year ROFR period;

WHEREAS, in Spring 2015, the Texas Legislature amended Tex. Gov't Code §2306.6725 and §2306.6726 to allow, among other things, for a 180-day ROFR period and to permit a Qualified Entity to purchase a property under ROFR, and defined a Qualified Entity to mean an entity described by, or as amended, an entity controlled by an entity described by, §42(i)(7)(A), Internal Revenue Code of 1986;

WHEREAS, Raymondville Northstar Apartments, L.P., the Development Owner, requests to amend the Land Use Restriction Agreement (LURA) for the Development to incorporate changes made to Tex. Gov't Code §2306.6725 and §2306.6726 in 2015; and

WHEREAS, amendment to the ROFR period in the LURA is a material change requiring Board approval under 10 TAC §10.405(b)(2)(E), and the Development Owner has complied with the procedural amendment requirements in 10 TAC §10.405(b) to place this request before the Board, including holding a public hearing;

NOW, therefore, it is hereby

RESOLVED, that the material LURA amendment for Northstar Apartments is approved as presented to this meeting, and the Acting Director and his designees are hereby authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

Northstar Apartments received a 9% HTC award in 2001 for the new construction of 72 multifamily units in Raymondville, Willacy County. In a letter dated December 19, 2018, the Development Owner, Raymondville Northstar Apartments, L.P. (Alfredo Huerta), requested approval to amend the HTC LURA related to the ROFR provision.

In 2001, the Housing Tax Credit application allotted five points to the Owner in exchange for a two-year ROFR period. Upon completion of the Development, the Owner entered into a Declaration of Land Use Restrictive Covenants/Land Use Restriction Agreement for Low-Income Housing Tax Credits dated as of November 24, 2003, and recorded in Willacy County on February 27, 2004.

As approved in 2001, the additional use restrictions in the current HTC LURA would require, among other things, a two-year ROFR to sell the Development based on a set order of priority to a community housing development organization (as defined for purposes of the federal HOME Investment Partnership Program at 24 CFR Part 92), to a qualified nonprofit organization (as defined in Internal Revenue Code §42(h)(5)(C)), or to a tenant organization, if at any time after the 15th year of the Compliance Period the owner decides to sell the property. The property is currently in the 16th year of the 25-year Compliance Period specified in the LURA. However, the Owner desires to exercise its rights under Tex. Gov't Code §2306.6726 to amend the LURA to allow for a 180-day ROFR period.

In 2015, the Texas Legislature passed HB 3576, which amended Tex. Gov't Code §2306.6725 to allow for a 180-day ROFR period and Tex. Gov't Code §2306.6726 to allow for a Qualified Entity to purchase a development under a ROFR provision of the LURA and satisfy the ROFR requirement. Additionally, Tex. Gov't Code §2306.6726, as amended by HB 3576, defines Qualified Entity to mean an entity described by, or an entity controlled by an entity described by, §42(i)(7)(A) of the Internal Revenue Code of 1986. The Department's 2019 Uniform Multifamily Rules, Subchapter E, include administrative procedures to allow a Development Owner to conform to the new ROFR provisions described in the amended statute.

The Development Owner has complied with the amendment and notification requirements under Tex. Gov't Code §2306.6712 and 10 TAC §10.405(b). The Development Owner held a public hearing on the matter on January 23, 2019, at the Development's onsite community clubhouse. No negative public comment was received regarding the requested amendment.

Staff recommends approval of the material LURA amendment as presented herein.

Raymondville Northstar Apartments, L.P.
330 W. Victoria Street
Gardena, CA 90248

December 19, 2018

VIA EMAIL DELIVERY

Kent Bedell
Texas Department of Housing and Community Affairs
221 East 11th Street, Austin, Texas 78701-2410

Re: TDHCA File No. 01069 – Northstar Apartments (the “**Property**”)

Dear Kent:

The undersigned, Raymondville Northstar Apartments, L.P., a Texas limited partnership (the “**Partnership**”), the current owner of the Property, hereby submits this letter as a request for a material LURA amendment in accordance with Section 10.405(b) of the Rules for the reasons set forth below.

Background Information and Request

In 2015, Texas Government Code Section 2306.6725 was amended to allow for a 180-day Right of First Refusal (“**ROFR**”) period. Currently, the LURA for this Property requires a two-year ROFR period. Section 10.405(b)(2)(F) of the Rules allows for a LURA amendment in order to conform a ROFR period to the period described in Section 2306.6725. Therefore the Partnership requests a LURA amendment to eliminate the two-year ROFR period and replace it with the 180-day ROFR period.

LURA Amendment


In accordance with Section 10.405(b) of the Rules, the Partnership is delivering a fee in the amount of \$2,500. In addition, the Partnership commits to hold a public hearing, as required by the Rules, and to notify all residents, investors, lenders, and appropriate elected officials. Drafts of the public hearing notices are attached for your consideration. Upon approval from TDHCA, the Partnership will proceed to set a date and time for the Public Hearing and will provide TDHCA with evidence that the notice has been delivered and the hearing has been conducted. With that, the Partnership requests staff recommendation, in support of this request, to be considered at the February 21, 2019 TDHCA Board Meeting.

Thank you very much for your assistance. Please do not hesitate to contact us if you require any additional information.

Sincerely,

Raymondville Northstar Apartments, L.P.,
a Texas limited partnership

By: Northstar Housing, LLC,
a Texas limited liability company,
its General Partner

By: 
Name: WILLIAM GUERRA
Date: December 19, 2018

Raymondville Northstar Apartments, L.P.
330 W. Victoria Street
Gardena, CA 90248

January 13 _____, 2019

Dear Resident:

Northstar Apartments (the "**Community**") is owned by Raymondville Northstar Apartments, L.P. (the "**Owner**"). In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**") (Phone: 512-475-3800; Website: www.tdhca.state.tx.us).

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, the Owner will offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. To be consistent with a change in Texas law, the Owner is requesting Department approval to change the two-year period to a 180-day period.

In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community's management office/clubhouse on _____ January 23 _____, 2019 at 6:00 pm am/pm. The public hearing is your opportunity to discuss the amendment request and voice your concern regarding the LURA amendment to eliminate the two-year ROFR period and replace it with the 180-day ROFR period. Information obtained from this meeting will be submitted for consideration by the TDHCA Board at their _____ February 21 _____, 2019 meeting.

Please note that this proposal would not affect your current lease agreement, your rent payment, or your security deposit. You would not be required to move out of your home or take any other action because of this change. If the Department approves Owner's request, the Community will not change at all from its current form.

We appreciate that Northstar Apartments is your home and we invite you to attend and give your input on this proposal.

Thank you for choosing Northstar Apartments as your home.

Sincerely,


Raymondville Northstar Apartments, L.P.,
a Texas limited partnership

By: Northstar Housing, LLC,
a Texas limited liability company,
its General Partner

By:

Name:

Date:


Duane D. Hertz

January 13, 2019

Raymondville Northstar Apartments, L.P.
330 W. Victoria Street
Gardena, CA 90248

January 13, 2019

Davis-Penn Mortgage Company
Ms. Cathy Ross
12650 N. Featherwood, Suite 120
Houston, TX 77034

Dear Ms. Cathy Ross:

Raymondville Northstar Apartments, L.P. (the "Owner") is the owner of Northstar Apartments (the "Community") which is located at 13800 Goyo Garcia County Rd., Raymondville, TX 75880. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "Department").

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, the Owner will offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. To be consistent with a change in Texas law, the Owner is requesting Department approval to change the two-year period to a 180-day period.

In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community and its elected representatives. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community's management office/clubhouse on January 23, 2019 at 6:00 PM am/pm.

We invite you or one of your staff to attend and give your input on this proposal.

Sincerely,

Raymondville Northstar Apartments, L.P.,
a Texas limited partnership

By: Northstar Housing, LLC,
a Texas limited liability company,
its General Partner

By:

Name:

Date:


January 13, 2019

Raymondville Northstar Apartments, L.P.
330 W. Victoria Street
Gardena, CA 90248

January 13, 2019

The Honorable Eddie Lucio, Jr.
P.O. Box 12068
Capitol Station
Austin, TX 78711

Dear Senator Lucio:

Raymondville Northstar Apartments, L.P. (the “**Owner**”) is the owner of Northstar Apartments (the “**Community**”) which is located at 13800 Goyo Garcia County Rd., Raymondville, TX 75880. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the “**Department**”).

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, the Owner will offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. To be consistent with a change in Texas law, the Owner is requesting Department approval to change the two-year period to a 180-day period.


In making its decision whether to approve Owner’s request, the Department considers the opinions and views of the members of the Community and its elected representatives. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community’s management office/clubhouse on January 23, 2019 at 6:00 PM am/pm.

We invite you or one of your staff to attend and give your input on this proposal.

Sincerely,

Raymondville Northstar Apartments, L.P.,
a Texas limited partnership

By: Northstar Housing, LLC,
a Texas limited liability company,
its General Partner

By: 
Name: Alejandro Hernandez
Date: January 13, 2019

Raymondville Northstar Apartments, L.P.
330 W. Victoria Street
Gardena, CA 90248

_____, January 13 _____, 2019

City Commissioner Edward Gonzalez
576 W. Main Street, Rm 145
Raymondville, TX 78580

Dear City Commissioner Edward Gonzalez:

Raymondville Northstar Apartments, L.P. (the "**Owner**") is the owner of Northstar Apartments (the "**Community**") which is located at 13800 Goyo Garcia County Rd., Raymondville, TX 75880. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**").

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, the Owner will offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. To be consistent with a change in Texas law, the Owner is requesting Department approval to change the two-year period to a 180-day period.


In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community and its elected representatives. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community's management office/clubhouse on January 23, 2019 at 6:00 PM am/pm.

We invite you or one of your staff to attend and give your input on this proposal.

Sincerely,

Raymondville Northstar Apartments, L.P.,
a Texas limited partnership

By: Northstar Housing, LLC,
a Texas limited liability company,
its General Partner

By: 
Name: Edward Gonzalez
Date: January 13, 2019

Raymondville Northstar Apartments, L.P.

330 W. Victoria Street

Gardena, CA 90248

January 13, 2019

Mayor Gilbert Gonzales
142 S. 7th Street
Raymondville, TX 78580

Dear Mayor Gilbert Gonzales:

Raymondville Northstar Apartments, L.P. (the “**Owner**”) is the owner of Northstar Apartments (the “**Community**”) which is located at 13800 Goyo Garcia County Rd., Raymondville, TX 75880. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the “**Department**”).

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, the Owner will offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. To be consistent with a change in Texas law, the Owner is requesting Department approval to change the two-year period to a 180-day period.


In making its decision whether to approve Owner’s request, the Department considers the opinions and views of the members of the Community and its elected representatives. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community’s management office/clubhouse on January 23, 2019 at 6:00 PM am/pm.

We invite you or one of your staff to attend and give your input on this proposal.

Sincerely,

Raymondville Northstar Apartments, L.P.,
a Texas limited partnership

By: Northstar Housing, LLC,
a Texas limited liability company,
its General Partner

By: 
Name: Alejandro Huentia
Date: January 13, 2019

Raymondville Northstar Apartments, L.P.
330 W. Victoria Street
Gardena, CA 90248

January 13, 2019

Representative Ryan Guillen
P.O. Box 2910
Austin, TX 78768

Dear Representative Ryan Guillen:

Raymondville Northstar Apartments, L.P. (the "**Owner**") is the owner of Northstar Apartments (the "**Community**") which is located at 13800 Goyo Garcia County Rd., Raymondville, TX 75880. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**").

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, the Owner will offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. To be consistent with a change in Texas law, the Owner is requesting Department approval to change the two-year period to a 180-day period.

In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community and its elected representatives. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community's management office/clubhouse on January 23, 2019 at 6:00 PM am/pm.

We invite you or one of your staff to attend and give your input on this proposal.

Sincerely,

Raymondville Northstar Apartments, L.P.,
a Texas limited partnership

By: Northstar Housing, LLC,
a Texas limited liability company,
its General Partner

By: 
Name: Alejandro Guillen
Date: January 13, 2019

NORTHSTAR APARTMENTS
JANUARY 23, 2019
6:00pm
RIGHTS OF FIRST REFUSAL (ROFR)

SIGN IN SHEET

1. ALFREDO HUERTA 518E Hansen
2. Alain Rocha NorthStar Property Mgmt
3. DESIREE POSAS APT 504
4. Dolores Rodriguez #1502
5. _____
6. _____
7. _____
8. _____
10. _____
11. _____
12. _____
13. _____
14. _____
15. _____



NORTHSTAR APARTMENTS
PUBLIC HEARING MINUTES
JANUARY 23, 2019

- Meeting started promptly at 6:00 PM.
- There were two residents at the meeting aside from the development manager and General Partner.
- The ROFR process was fully explained to the attendees present.
- There were no questions asked by the attendees.
- The meeting was adjourned at 6:30 pm.
- Development staff stayed for an additional 30 minutes waiting on any additional residents coming in late.

BOARD ACTION REQUEST
ASSET MANAGEMENT DIVISION
FEBRUARY 21, 2019

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement for Town Park Townhomes (HTC #01162)

RECOMMENDED ACTION

WHEREAS, Town Park Townhomes (the Development) received a 9% Housing Tax Credit (HTC) award in 2001 to construct 120 multifamily units in Houston, Harris County;

WHEREAS, the HTC application for the Development received points and/or other preferences for agreeing to provide a Right of First Refusal (ROFR) to purchase the Development over a two-year ROFR period;

WHEREAS, in Spring 2015, the Texas Legislature amended Tex. Gov't Code §2306.6725 and §2306.6726 to allow, among other things, for a 180-day ROFR period and to permit a Qualified Entity to purchase a property under ROFR, and defined a Qualified Entity to mean an entity described by, or as amended, an entity controlled by an entity described by, §42(i)(7)(A), Internal Revenue Code of 1986;

WHEREAS, Town Park, Ltd., the Development Owner, requests to amend the Land Use Restriction Agreement (LURA) for the Development to incorporate changes made to Tex. Gov't Code §2306.6725 and §2306.6726 in 2015; and

WHEREAS, amendment to the ROFR period in the LURA is a material change requiring Board approval under 10 TAC §10.405(b)(2)(E), and the Development Owner has complied with the procedural amendment requirements in 10 TAC §10.405(b) to place this request before the Board, including holding a public hearing;

NOW, therefore, it is hereby

RESOLVED, that the material LURA amendment for Town Park Townhomes is approved as presented to this meeting, and the Acting Director and his designees are hereby, authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

BACKGROUND

Town Park Townhomes received a 9% HTC award in 2001 for the new construction of 120 multifamily units in Houston, Harris County. In a letter dated December 31, 2018, the Development Owner, Town Park, Ltd. (Joseph J. Lopez), requested approval to amend the HTC LURA related to the ROFR provision.

In 2001, the Housing Tax Credit application allotted five points to the Owner in exchange for a two-year ROFR period. Upon completion of the Development, the Owner entered into a Declaration of Land Use Restrictive Covenants/Land Use Restriction Agreement for Low-Income Housing Tax Credits recorded in Harris County on January 3, 2006, and subsequently amended in a document recorded in Harris County on September 22, 2006.

As approved in 2001, the additional use restrictions in the current HTC LURA would require, among other things, a two-year ROFR to sell the Development based on a set order of priority to a community housing development organization (as defined for purposes of the federal HOME Investment Partnership Program at 24 CFR Part 92), to a qualified nonprofit organization (as defined in Internal Revenue Code §42(h)(5)(C)), or to a tenant organization, if at any time after the 15th year of the Compliance Period the owner decides to sell the property. The property is currently in the 16th year of the 40-year Extended Use Period specified in the LURA. However, the Owner desires to exercise its rights under Tex. Gov't Code §2306.6726 to amend the LURA to allow for a 180-day ROFR period.

In 2015, the Texas Legislature passed HB 3576, which amended Tex. Gov't Code §2306.6725 to allow for a 180-day ROFR period and Tex. Gov't Code §2306.6726 to allow for a Qualified Entity to purchase a development under a ROFR provision of the LURA and satisfy the ROFR requirement. Additionally, Tex. Gov't Code §2306.6726, as amended by HB 3576, defines Qualified Entity to mean an entity described by, or an entity controlled by an entity described by, §42(i)(7)(A) of the Internal Revenue Code of 1986. The Department's 2019 Uniform Multifamily Rules, Subchapter E, include administrative procedures to allow a Development Owner to conform to the new ROFR provisions described in the amended statute.

The Development Owner has complied with the amendment and notification requirements under Tex. Gov't Code §2306.6712 and 10 TAC §10.405(b). The Development Owner held a public hearing on the matter on January 28, 2019, at the Development's onsite community clubhouse. No negative public comment was received regarding the requested amendment.

Staff recommends approval of the material LURA amendment as presented herein.

TOWN PARK, LTD.
9950 Town Park Drive
Houston, Texas 77036

December 31, 2018

Via Email to rosalio.banuelos@tdhca.state.tx.us
Rosalio Banuelos, Director of Multifamily
Asset Management Division
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701-2410

Re: # 01162; Town Park Townhomes, Houston, Harris County, Texas
(the **Property**).

Dear Ms. Banuelos:

Town Park, Ltd., a Colorado limited partnership (the "**Project Owner**") and the current owner of the Property, hereby submits this letter as a request for a material LURA amendment in accordance with §10.405(b)(2)(E) of the 2018 Uniform Multifamily Rules (the "**Rules**"). We hereby request that the Right of First Refusal ("**ROFR**") period be changed as permitted by §2306.6725 of the Tex. Gov't Code.

180-day ROFR Period Requested.

In 2015, Texas Government Code Section 2306.6726 was amended to allow for a 180-day Right of First Refusal ("**ROFR**") period. Currently, the LURA for this Property requires a two-year ROFR period. Section 10.405(b)(2)(vi) of the Rules permits a LURA amendment in order to conform a ROFR to the provisions of Section 2306.6726. The undersigned, acting as general partner on behalf of the Project Owner, hereby requests a LURA amendment to eliminate the two-year ROFR period and replace it with the 180-day ROFR period, and permit the Owner to transfer the Property to certain kinds of entities through the ROFR process.

In accordance with Section 10.405(b) of the Rules, the sole General Partner, acting on behalf of the Owner, is delivering a fee in the amount of \$2,500 and commits to hold a public hearing, as required by the Rules, and to notify all residents, investors, and lenders of the proposed amendment. Drafts of the public hearing notices are attached for your consideration. Upon approval from TDHCA, the Project Owner will proceed to set a date and time for the Public Hearing and will provide TDHCA with evidence that the notice has been delivered and the hearing has been conducted. We request that a Staff recommendation in support of this request be considered at the February 21, 2019 Board meeting.

Thank you very much for your assistance. Please do not hesitate to contact us if you require any additional information.

Sincerely,



Joseph J. Lopez, President
Alix Capital Investments, Inc.
General Partner

Enclosures

TOWN PARK, LTD.
9950 Town Park Drive
Houston, Texas 77036
(713) 271-9300

December 31, 2018

Dear Resident:

Town Park Townhomes (the "**Community**") is owned by Town Park, Ltd. (the "**Owner**"). Some years ago, in order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**") (Phone: 512-475-3800; Website: www.tdhca.state.tx.us).

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, a right of first refusal requires the Owner to offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. Recent changes in Texas law allow for changes to the right of first refusal requirement, including reducing the two-year period to a 180-day period and permitting the Owner to transfer the Community to certain kinds of entities in the right of first refusal process. The Owner is asking TDHCA to modify its contract so that these changes permitted by Texas law will apply.

In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community's management office/clubhouse at 9950 Town Park Drive, Houston, Harris County, Texas on Monday, January 28, 2019 at 3:00 p.m.

Please note that this proposal would not affect your current lease agreement, your rent payment, or your security deposit. You would *not* be required to move out of your home or take any other action because of this change. If the Department approves Owner's request, the Community will not change at all from its current form.

If you are unable to attend the public hearing and would like to submit your concerns in writing to the Department, please send your comments via email to asset.managment@tdhca.state.tx.us or you may mail them to:

Texas Department of Housing and Community Affairs
Asset Management Division
P.O. Box 13941
Austin, TX 78711-3941

We appreciate that Town Park Townhomes is your home and we invite you to attend and give your input on this proposal.

Sincerely,

TOWN PARK, LTD.

By: Alix Capital Investments, Inc.,
General Partner

By: 
Joseph J. Lopez, President

TOWN PARK, LTD.
9950 Town Park Drive
Houston, Texas 77036
(713) 271-9300

Berkadia Commercial Mortgage, LLC
323 Norristown Rd #300
Ambler PA 19002
Attn: Gloria Stewart
Client Relations Manager

Dear Gloria:

Town Park, Ltd. (the "**Owner**") is the owner of Town Park Townhomes (the "**Community**") which is located at 9950 Town Park Drive, Houston, Harris County, Texas 77036. Some years ago, in order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**TDHCA**").

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, a right of first refusal requires the Owner to offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. Recent changes in Texas law allow for changes to the right of first refusal requirement, including reducing the two-year period to a 180-day period and permitting the Owner to transfer the Community to certain kinds of entities in the right of first refusal process. The Owner is asking TDHCA to modify its contract so that these changes permitted by Texas law will apply.

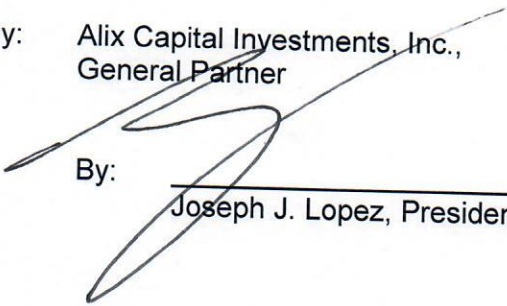
In making its decision whether to approve Owner's request, the TDHCA considers the opinions and views of the members of the Community and requires a notice of this request be provided to its lender(s) and investor(s). Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community's management office/clubhouse at the Community's management office/clubhouse at 9950 Town Park Drive, Houston, Harris County, Texas on Monday, January 28, 2019 at 3:00 p.m.

We invite you or one of your staff to attend and give your input on this proposal.

Sincerely,

TOWN PARK, LTD.

By: Alix Capital Investments, Inc.,
General Partner

By: 
Joseph J. Lopez, President

Sign In Sheet

Town Park Townhomes

TDHCA

1/28/2019

	Print Name	Apartment Number	Phone Number
1	IRIS MELBA OROSCO-BURMAN	#1404	
2	JOHN TREVINO	2006	
3	ALLEN DENKINS	806	
4	MONIQUE SIMPSON	1804	
5	Shawnette Deering	1105	
6	QUE THI TRAN	#2001	
7	Rita Ballesteros	1303	
8	MAJESTER BUTLER	#105	
9	LE HAO THI	#2005	
10	Mouy Jones	#104	
11	William TRAN	505	
12	Angie Huanh	302	
13	Jayne Menduck	407	
14	Sandra Noss	802	
15	Helen Moton	902	
16	KATH LOVE	901	
17	FIZ	1603	
18	Lisa Pham	1603	
19	PATRICIA SIMS	2002	
20	Guilford Leroy Jr.	301	
21	JEANETTE GILLIS-DAILEY	1903	
22	Emily Calhoun	707	
23			
24			
25			
26			
27			
28			
29			
30			

A meeting was held at the Town Park Townhomes (the "Community") owned by Town Park, Ltd. (the "Owner") at the Community's management office/clubhouse at 9950 Town Park Drive, Houston, Harris County, Texas on Monday, January 28, 2019. The meeting opened at 3:00 p.m.

The meeting was attended by residents of the community and employees of Chamberlin and Associates, the management agent of Town Park, Ltd.

Management employees in attendance were:

Rochelle Goodwin, Chamberlin and Associates Area Manager and temporary manager Lisa Butler

Residence in attendance were recorded on the meeting sign in sheet attached.

Comments and responses were as follows:

At 3:24 p.m. Rochelle Goodwin announced the meeting was to answer any questions related to the letter to residents to inform them some years ago, in order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (TDHCA)

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, a right of first refusal requires the Owner to offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. Recent changes in Texas law allow for changes to the right of first refusal requirement, including reducing the two-year period to a 180-day period and permitting the Owner to transfer the Community to certain kinds of entities in the right of first refusal process. The Owner is asking TDHCA to modify its contract so that these changes permitted by Texas law will apply.

In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community. Accordingly, this public meeting is being held to discuss this matter.

Comments and questions were as follows:

Mr. Allen Denkins, resident of unit #806 asked if the property is currently up for sale and if the rent would be going up. Rochelle Goodwin responded the property is not currently up for sale and rents will continue to follow TDHCA guidelines with no increases expected at this time.

Ms. Jeanette Sills -Bailey, resident of #1903 asked if the property would remain a tax credit property. Rochelle responded the property would continue to remain a tax credit property while restricted by the LURA

Mr. William Tran, resident of unit # 505 asked who is buying the property and where he could find this information. Rochelle responded that no buyers were currently purchasing the property.

The meeting ended at 3:34

1m

BOARD ACTION REQUEST

EXECUTIVE DIVISION

FEBRUARY 21, 2019

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §5.801, Project Access Initiative; and an order adopting new 10 TAC §5.801, Project Access Initiative, and directing their publication for adoption in the Texas Register

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the Department) is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, 10 TAC §5.801, Project Access Initiative, requires edits to bring it up to date, to streamline the language, and to make clear how recently awarded Mainstream Voucher Program vouchers are handled within the Project Access program; and

WHEREAS, at the Board meeting of November 8, 2018, the Board approved the draft of this rule for public comment, and no public comment has been received, however minor technical revisions have been made to the proposed rule;

NOW, therefore, it is hereby

RESOLVED, that the order adopting the repeal of 10 TAC §5.801, Project Access Initiative, and order adopting new 10 TAC §5.801, Project Access Initiative, with changes, are approved for adoption and publication in the Texas Register; and

FURTHER RESOLVED, that the Acting Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the adopted repeal of 10 TAC §5.801, Project Access Initiative, and adopted new 10 TAC §5.801, Project Access Initiative, in the form presented to this meeting, to be published in the Texas Register and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles and any requested changes to the preambles.

BACKGROUND

Tex. Gov't Code §2306.053 authorizes the Department to adopt rules governing the administration of the Department and its programs. The Project Access Program, which is a program included within the Department's Section 8 Housing Choice Voucher Program, is approved by HUD through its PHA Plan. The Pilot Program addressed in the rule has also been specifically authorized by HUD. While Tex. Gov't Code §2306.053 does not explicitly require that the Department have rules for this subject area, the statute does allow for that ability. Further, this rule provides participants in the Department's programs, and service providers/housing

referral agents, with the expectations and rights relating to participating in the Project Access program.

The adoption of this rule allows the Department to continue to provide clear guidance on the Project Access program, while updating the rule to make changes that bring the rule up to date, streamline language, provide for one definition of disability for consistency and equity in handling client eligibility, and to specify the unique federal criteria required of two funding sources within the program: Mainstream Voucher Program vouchers and Non-Elderly Disabled Vouchers.

The Department applied for and was recently awarded Mainstream Voucher Program (MVP) funds that allow for the issuance of approximately 50 vouchers. These vouchers were applied for with the specific intent of serving Project Access clients, allowing the Department to try to reduce the size of the Project Access waiting list. This rule makes clear how the MVP vouchers are considered as it relates to the Project Access Program.

Behind the preamble the rule is provided in blackline form reflecting the changes being recommended since the time of publication for public comment.

Attachment 1: Preamble, including required analysis, for the adoption of the repeal of 10 TAC §5.801, Project Access Initiative

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 5, Section 8 Housing Choice Voucher Program, §5.801, Project Access Initiative. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. David Cervantes, Acting Director, has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption making changes to the rule governing the Project Access Program.

2. The repeal does not require a change in work that will require the creation of new employee positions, nor will the repeal reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to the existing procedures for the Project Access program.

7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Cervantes has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will be no economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC COMMENT AND REASONED RESPONSE. The public comment period was held from November 23, 2018, to December 27, 2018, to receive input on the repealed section. No public comment was received on the repeal.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repealed sections affect no other code, article, or statute.

10 TAC §5.801, Project Access Initiative

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Attachment 2: Preamble, including required analysis, for adopting new 10 TAC §5.801, Project Access Initiative

The Texas Department of Housing and Community Affairs (the Department) adopts, with changes, 10 TAC Chapter 5, Section 8 Housing Choice Voucher Program, §5.801, Project Access Initiative. The purpose of the new section is to make changes that bring the rule up to date, streamline language, provide for one definition of disability for consistency and equity in handling client eligibility, and to specify the unique federal criteria required of two funding sources within the program - Mainstream Voucher Program vouchers and Non-Elderly Disabled Vouchers.

Tex. Gov't Code §2001.0045(b) does apply to the rule being adopted because no exceptions apply, however, it should be noted that no costs are associated with this action that would prompt a need to be offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

David Cervantes, Acting Director, has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to the rule that governs the Project Access program.
2. The new rule does not require a change in work that would require the creation of new employee positions, nor will it reduce work load to a degree that eliminates any existing employee positions.
3. The new rule changes do not require additional future legislative appropriations.
4. The new rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The rule will not limit, expand or repeal an existing regulation but merely revises a rule.
7. The new rule does not increase nor decrease the number of individuals to whom this rule applies.
8. The new rule will not negatively nor positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

1. The Department has evaluated this rule and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.
2. This rule relates to the procedures in place for the Project Access Program which provides Section 8 Housing Choice Vouchers for persons with disabilities exiting institutions so that they can live in community-based settings. The Program assists individuals directly, therefore no small or micro-businesses are subject to the rule.

3. The Department has determined that because this rule relates only to a revision to a program rule that applies only to the recipients of the voucher, and the rule changes primarily make minor edits and add consideration for how the Mainstream Voucher Program will incorporate into the Project Access program, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates only to individuals who may receive a voucher; therefore, no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." The Project Access program is authorized to issue vouchers anywhere in the state, and where a tenant will elect to locate is unknown during rule-making, so there are no identifiable "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Cervantes has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new rule will be a clearer rule for recipients and assurance of the program having compliant regulations that reflect how the Mainstream Voucher Program is addressed within the Project Access program. There will be no economic cost to any individuals required to comply with the new rule because the activities described by the rule has already been in existence.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments as this rule relates only to a process that already exists and is not being significantly revised.

PUBLIC COMMENT AND REASONED RESPONSE. The public comment period was held from November 23, 2018, through December 27, 2018, to receive input on the proposed rule. No public comment was received. However, minor grammatical and syntactical revisions to the rule have been made.

STATUTORY AUTHORITY. The new section is adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new section affects no other code, article, or statute.

§5.801. Project Access Initiative – Blackline reflects changes recommended since the time of publication for public comment

(a) Purpose. The Project Access Program (“PA Program”) is a program that utilizes federal Section 8 Housing Choice Vouchers, Non Elderly Disabled Vouchers, and Mainstream Vouchers administered by the Texas Department of Housing and Community Affairs (the “Department”) to assist low-income persons with disabilities in transitioning from institutions into the community by providing access to affordable housing. This rule provides the parameters and eligibility standards for this program.

(b) Definitions.

(1) At-Risk Applicant--A household that applies to the Department’s Section 8 program that was a prior resident of an Institution.

(2) HUD--The U.S. Department of Housing and Urban Development.

(3) Institution--Congregate settings populated exclusively or primarily with individuals with disabilities; congregate settings characterized by regimentation in daily activities, lack of privacy or autonomy, policies limiting visitors, or limits on individuals’ ability to engage freely in community activities and to manage their own activities of daily living; or settings that provide for daytime activities primarily with other individuals with disabilities. This definition includes but is not limited to a nursing facility, state psychiatric hospital, intermediate care facility, or board and care facility as defined by HUD. The definition for Institution is further limited for vouchers funded with NED as further provided for in subsection (e)(2)(C) of this section. This definition does not include a prison, jail, halfway house, or other setting that persons reside in as part of a criminal proceeding.

(4) Mainstream Vouchers (“MVP”) --HUD’s Mainstream Voucher Program.

(5) Non Elderly Disabled (“NED”)--HUD’s Non Elderly Disabled Program.

(6) Section 8--HUD’s Section 8 Housing Choice Voucher Program administered by the Department.

(c) Regulations Governing Program. All Section 8 Program rules and regulations, including but not limited to, criterion at 24 CFR Part 982 apply to the program.

(d) Project Access in the Department’s PHA Plan. Project Access households have a preference in the Department's Section 8 Program, as designated in the Department's Annual PHA Plan. The total number of Project Access Vouchers will be determined each year in the Department's PHA Plan.

(e) Eligibility for the Project Access Program.

(1) A household that participates in the Project Access Program must meet all Section 8 eligibility criteria, and one member of the household must meet all of the eligibility criteria in subparagraphs (A) and (B) of this paragraph.

(A) Must have a disability as defined in 24 CFR §5.403; and

(B) Must meet one of the criteria in clauses (i) or (ii) of this subparagraph:

(i) an At-Risk Applicant that meets the criteria of subclause (I) or (II) of this clause:

(I) A A current recipient of Tenant-Based Rental Assistance (“TBRA”) from a HOME Investment Partnership Program and within six months prior to expiration of that TBRA assistance; or

(II) A A household with a household member who meets the criteria of an At-Risk Applicant and has lost their TBRA from a HOME Investment Partnership Program due to lack of available funding.

(ii) be a resident of an Institution at the time of voucher issuance.

(2) NED and Mainstream Vouchers have these additional eligibility criteria which are:

(A) ~~T~~he household member with the disability as defined in 24 CFR §5.403, must be 18 but under 62 years of age at the time of voucher issuance;

(B) ~~F~~or NED only, the head of household, spouse, co-head, or sole member, must be a person with a disability; and

(C) ~~F~~or NED only, the qualifying household member must not be an At-Risk Applicant as described in this subsection, must be residing in a nursing facility, Texas state psychiatric hospital, or intermediate care facility immediately prior to voucher issuance, and must also be referred by the applicable Health and Human Services Commission (“HHSC”) funded agency.

(f) Waiting List and Allocation of Vouchers.

(1) Unless no longer authorized as a set-aside by HUD, no more than 10 percent of the vouchers used in the Project Access Program will be reserved for households with a household member eligible for a pilot program in partnership with the HHSC for Texas state psychiatric hospitals who otherwise meets the criteria of the Project Access Program at the time of voucher issuance.

(2) The Department’s Waiting List for PA vouchers will be kept “open” and the Department will accept an application for the PA Program at any time. An applicant for the PA Program is placed on a Waiting List until a voucher becomes available. An applicant who qualifies for the Project Access HHSC Pilot Program in subsection (f)(1) of this section is placed on a Waiting List for Project Access HHSC Pilot Program, and also for the general PA Program Waiting List.

(3) The Department will select applicants off the Waiting List for the Project Access HHSC Pilot Program, and for the general PA Program waitlist to ensure that the Department is utilizing all NED and Mainstream Vouchers before issuing other Section 8 Vouchers.

(4) Maintaining Status on the Project Access Waiting List. A household on the Project Access waiting list may maintain their order and eligibility for a Project Access voucher if the household:

(A) ~~A~~ppplied for the PA Program and was placed on the waiting list prior to transition out of the institution; and

(B) ~~R~~eceived continuous Tenant Based Rental Assistance from a HOME Investment Partnership Program or other Department funding for rental assistance from the time of exit from the institution until the issuance of the Project Access voucher.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.

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BOARD ACTION REQUEST

EXECUTIVE DIVISION

FEBRUARY 21, 2019

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 1, Administration, Subchapter B, Accessibility and Reasonable Accommodations; and an order adopting new 10 TAC Chapter 1, Subchapter B, Accessibility and Reasonable Accommodations, and directing their publication for adoption in the Texas Register

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the Department) is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, 10 TAC Chapter 1, Subchapter B, Accessibility and Reasonable Accommodations, requires changes to bring it up to date, to remove outdated examples, and to streamline the requirements;

WHEREAS, Department staff met with the Disability Advisory Workgroup on October 10, 2018, to garner feedback on these rules, such feedback having been taken into consideration in the draft proposed rule; and

WHEREAS, at the Board meeting of November 8, 2018, the Board approved the draft of this rule for public comment, comment has been received, and the Department has taken into consideration the comment and provided a reasoned response in the rule now being presented for adoption;

NOW, therefore, it is hereby

RESOLVED, that the order adopting the repeal of 10 TAC Chapter 1, Subchapter B, Accessibility and Reasonable Accommodations, and the order adopting new 10 TAC Chapter 1, Subchapter B, Accessibility and Reasonable Accommodations, are approved for adoption and publication in the Texas Register; and

FURTHER RESOLVED, that the Acting Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the adopted repeal of 10 TAC Chapter 1, Subchapter B, Accessibility and Reasonable Accommodations, and the adopted new 10 TAC Chapter 1, Subchapter B, Accessibility and Reasonable Accommodations, in the form presented to this meeting, to be published in the Texas Register and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the

foregoing, including the preparation of the subchapter specific preambles and any requested changes to the preambles.

BACKGROUND

Authority: Tex. Gov't Code §2306.053, authorizes the Department to adopt rules governing the administration of the Department and its programs. The authority for this rule is also provided by Tex. Gov't Code §2306.066(e), which requires the Executive Director to prepare a written plan to provide persons with disabilities an opportunity to participate in the Department's programs. This rule also provides for compliance with the Fair Housing Act and other federal and state civil rights laws. One type of disability discrimination is the refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations are necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling or program/activity. This rule provides for how Subrecipients and Development Owners of properties in the Department's portfolio should handle requests from individuals who are seeking reasonable accommodations. It also identifies the Construction Standards that Developments must use for accessible units and common areas and amenities.

Department Policy: While Tex. Gov't Code §2306.053 does not explicitly require that the Department have rules for this subject area, the statute does allow for such rules. Further, this rule provides participants in the Department's programs, Subrecipients, and Development Owners with the expectations and rights relating to development of accessible units and for how a reasonable accommodation request should be handled.

Though it is not a change in the scope of the previous rule, the Department notes that in 10 TAC §1.207(c) the application of this uniform rule regarding rehabilitation will, in some circumstances, exceed federal requirements. The Department is continuing to require that all rehabilitation developments funded after January 1, 2014, are to be treated as Substantial Alteration, maintaining consistency with the Uniform Multifamily Rule, which requires those properties, even if a rehabilitation of existing residential units, must have a minimum of 5% of Units that are accessible to persons with mobility impairments, and a minimum of 2% of the Units must be accessible to persons with visual and hearing impairments (in addition, common areas and amenities must be accessible). While it is not federally required to treat all such rehabilitation projects as Substantial Alterations, the federal alternative to this option could be onerous and complicated. If a rehabilitation project were not subject to this rule-based requirement as proposed, then the result could be a patchwork of accessible items within inaccessible units (e.g., an accessible shower in a bathroom with an inaccessible door width to access that shower). The rule requirements, which have been in place since 2014, will continue to result in additional fully accessible units. The Department received no comment on this portion of the rule.

The adoption of this rule allows the Department to continue to ensure compliance with the applicable state and federal requirements and provide guidance to Subrecipients/Development Owners on what is expected in the handling of an applicant/program participant/tenant wanting to make a reasonable accommodation request.

Behind the preamble the rule is provided in blackline form reflecting the changes being recommended since the time of publication for public comment.

Attachment 1: Preamble, including required analysis, for the adoption of the repeal of 10 TAC Chapter 1, Subchapter B, Accessibility and Reasonable Accommodations

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 1, Administration, Subchapter B, §§1.201 – 1.207, 1.209, 1.210, and 1.212, concerning Accessibility and Reasonable Accommodations. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. David Cervantes, Acting Director, has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption making changes to the rule governing Accessibility and Reasonable Accommodations.

2. The repeal does not require a change in work that will require the creation of new employee positions, nor will the repeal reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to the existing procedures for accessibility and accommodation activity.

7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Cervantes has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will be no economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC COMMENT AND REASONED RESPONSE. The public comment period was held from November 23, 2018, to December 27, 2018, to receive input on the repealed section. No public comment was received on the repeal.

STATUTORY AUTHORITY. The repeal is proposed pursuant to TEX. GOV'T CODE, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repealed sections affect no other code, article, or statute.

§1.201. Purpose.

§1.202. Definitions.

§1.203. General Certifications and Effect of Non Compliance.

§1.204. Reasonable Accommodations.

§1.205. Compliance with the Fair Housing Act.

§1.206. Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1973.

§1.207. General Requirements for Multifamily Housing Developments.

§1.209. Substantial Alteration of Multifamily Housing Developments.

§1.210. Renovations of Elements for Multifamily Housing Developments.

§1.212. Resources.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Attachment B: Preamble, including required analysis, for adopting new 10 TAC Chapter 1, Subchapter B, Accessibility and Reasonable Accommodations

The Texas Department of Housing and Community Affairs (the Department) adopts, with changes, new 10 TAC Chapter 1, Administration, Subchapter B, §§1.201 – 1.207, Accessibility and Reasonable Accommodations. The purpose of the proposed new sections is to make changes that revise citations and references, add the Ending Homelessness Fund to covered programs, provide the statutory authority and purpose of the rule, add a section clarifying applicability of the rule, add a new section providing initial general direction in the handling of reasonable accommodations to assist property management staff, remove specific examples and create a new section that provides a list of possible non-exhaustive examples, delete §1.209(a) because there are no longer any Developments in the construction or Development process that require the exceptions that had been provided by this clause, move §1.209(b) to §1.207(c) and bring that into compliance with the Uniform Multifamily Rule, and delete 10 TAC §1.210, Renovation of Elements for Multifamily Housing Developments, to provide consistency with changes in the Uniform Multifamily Rules which now require that all developments awarded by the Department – even if for rehabilitation – will be considered Substantial Alterations, and by association removes the definition for Replacement Cost.

Tex. Gov't Code §2001.0045(b) does not apply to the rule being adopted under items (4) and (9) of that section. The rule ensures Department compliance with the Fair Housing Act and other federal civil rights laws. In spite of these exceptions, it should be noted that no costs are associated with this action that would have prompted a need to be offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

David Cervantes, Acting Director, has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to the rules that govern accessibility and reasonable accommodations.
2. The new rule does not require a change in work that would require the creation of new employee positions, nor will it reduce work load to a degree that eliminates any existing employee positions.
3. The new rule changes do not require additional future legislative appropriations.
4. The new rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The rule will not limit, expand or repeal an existing regulation but merely revises a rule.
7. The new rule does not increase nor decrease the number of individuals to whom this rule applies; and
8. The new rule will not negatively nor positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

1. The Department has evaluated this rule and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule relates to the procedures in place for properties and subrecipients that have been funded by the Department. Other than in the case of a small or micro-business that participate in such programs, no small or micro-businesses are subject to the rule. If a small or micro-business does participate in the program, the rule provides a clear set of regulations for the handling of reasonable accommodations and accessibility.

3. The Department has determined that because this rule relates only to a revision to a rule subrecipients/owners and tenants of an existing program, and the rule changes primarily make minor edits and remove examples, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates only to the processes used in existing multifamily properties and other portfolio subrecipients; therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rule relates only to the continuation of the rules in place there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Cervantes has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the proposed new rule will be a clearer rule for Recipients and assurance of the program having transparent compliant regulations. There will be no economic cost to any individuals required to comply with the proposed new rule because the activities described by the rule has already been in existence.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments as this rule relates only to a process that already exists and is not being significantly revised.

PUBLIC COMMENT AND REASONED RESPONSE. The public comment period was held from November 23, 2018, through December 27, 2018, to receive input on the proposed rule. Public comment and reasoned response are provided below. Public comment was received from five commenters: Central Texas Housing Consortium (#1), Housing Authority of the City of Austin (#2), Texas Affiliation of Affordable Housing Providers (#3), Fountainhead Management, Inc. (#4), and Rural Rental Housing Association of Texas (#5).

1. General Comment One – (Commenter (4))

COMMENT SUMMARY: The commenter notes that they find it interesting that such a significant revision to this rule would be deemed to have no economic effect, and commented that they feel “the Department believes that it has carte blanche to adopt any rule it desires since it believes it has unfettered ability to enact mandates with prospective and retroactive effect.”

STAFF RESPONSE: Staff disagrees with this comment. The Department goes through a rigorous rule-making process, pursuing significant public comment and input; furthermore the Department obtains review by the Office of the Governor for all rule publications prior to submission to the Board. In the case of this particular rule, the Department reflected in its preamble that only the incremental difference of what the rule revisions were putting in place would not in fact have costs. While taking the rule as a whole, may in fact be considered to have costs, the evaluation of whether there is a cost considers only those parts of the rule being revised. No suggested changes are recommended.

2. General Comment Two – (Commenter (4))

COMMENT SUMMARY: The commenter notes that “as a global comment, the rule as a whole has the feel that the burden of proof is upon of owner or program participant to prove beyond a doubt that it has complied with the nebulous area of what is a “reasonable accommodation” and what is a “covered disability.” The commenter then gives section specific examples and questions. Those issues are addressed in section specific comments below. The commenter also concludes with: “Would it not be in the best interest of TDHCA and all of the program participants if it merely referred the covered programs and then leave compliance up to the Texas Workforce Commission which has the legislative authority over Fair Housing. I believe most owners are willing to provide reasonable accommodations when there is a documented need for the accommodation.” The commenter voiced concern that drafting rules on the presumption that all owners are “bad actors” will prompt properties to leave the program.

STAFF RESPONSE: As noted above the instances in which specific comments or questions are made are addressed separately from this global comment. Furthermore, the Department is subject to other rules other than the Fair Housing Act. The Department does not believe that its rules are crafted on a presumption that owners are “bad actors,” however, the rules do exist to not only ensure federal and state laws and requirements are met, but also to protect tenants. Generating rules with that purpose does not mean the Department presumes any particular behavior of properties. No revisions are recommended.

3. §1.204(b)(1)(B) – Considerations in Monitoring (Commenter (4))

COMMENT SUMMARY: The commenter states that:

“§1.204(b)(1)(B) is not clear and will create uncertainty. That section states: the program participant... “took into consideration how action on the request would impact the person making the request and worked to avoid responding in a manner that was prejudicial to the requestor in a way that could have been avoided...” What does that even mean. Isn’t the test whether the accommodation is made a disabled person and is necessary for the person with the disability to have equal opportunity to use and enjoy a dwelling.”

The commenter expands on this issue and also asks how will the clause relating to “working to avoid responding in a manner that was prejudicial...” be monitored.

STAFF RESPONSE: Staff agrees that the second part of subparagraph (B), as proposed, is overly subjective, and may present challenges in adherence and in monitoring. Staff suggests revisions as reflected below.

“(1) When the Department monitors a property or activity for how reasonable accommodation requests have been handled, it will consider such things as whether the person working on behalf of the program or property which the Department is monitoring:
(A) timely received the request and recorded it;
(B) took into consideration how action on the request would impact the person making the request ~~and worked to avoid responding in a manner that was prejudicial to the requestor in a way that could have been avoided;~~ and”

4. §1.204(b)(3) and (d) – Reasonable Accommodation Response Time (Commenters (1), (2), (3), (4), and (5))

COMMENT SUMMARY: The commenters (1, 2, 3, 4, and 5) indicated their strong opposition to changing the response time within which a property must respond to a reasonable accommodation request from 14 days to three days.

Commenter 1 said that they have processed more than 800 reasonable accommodation requests, their average processing time is 10 to 14 days, and a 3 day turnaround response time is not achievable. When a response from a medical professional is needed or a property visit is needed to develop a plan or budget to address the request, three days is insufficient. Further Commenter 1 believes that changing the requirement will create additional administrative work for the property.

Commenter 2 emphasizes their commitment to affirmatively furthering fair housing and discussed some of the actions they have taken that indicate such. Commenter 2 indicates that it addresses an average of 140 reasonable accommodation requests per year, many of which include multiple modifications and/or accommodations to assess. They think that the 3 day response time should be reconsidered because many accommodations can be complicated to assess particularly when considering the nexus between the disability, reasonableness, financial costs, and policy; the increasing volume of accommodation requests would make such a short turn around an undue burden (they estimate that it

would require their agency to hire an additional full time employee); and that the dialogue that occurs through a longer period can result in a better result than if the property is rushing to meet a deadline. Commenter 2 requested the response time be revised to no less than 12 business days for complicated requests and no less than 7 business days for routine requests.

Commenters 3 and 5 echoed that the revision from 14 days to 3 days is unreasonable and impractical and is more restrictive than federal 504 code requirements. Commenter 3 noted that when this change was made, the Board materials for the draft rule did not indicate why 3 days had been selected, and felt that such a significant change should have had more extensive dialogue and a round table. This commenter is requesting that the rule either revert back to the 14-day response period or that the public comment period on the rule be extended so that a round table can be hosted.

Commenter 4 agreed that the timeline having been reduced by 78.57% is unworkable.

Commenter 5 noted that while some requests can be made quickly, simple requests are an exception to the standard and that the proposed standard seeks to penalize in a manner that incentivizes stakeholders to make quick judgments and may increase the likelihood of mistakes.

STAFF RESPONSE: Staff agrees that the change was not well-vetted prior to publication and that a period significantly shorter than 14 days is not practicable. Staff does not suggest distinguishing between complicated and routine requests, as that can be subjective and only adds to the challenge for the monitor in making such a determination. Staff recommends reverting to the original 14 calendar day response time, but also reverting to the current rule that is taken from federal guidance documents and case law that provide illustrative examples when a 14 day period would not be reasonable.

“(3) Unless there is a clear documented need for a lengthier process or there is a controlling federal statute or regulation specifying a different deadline, when a person requests an accommodation they should be given a response as soon as possible but not later than 14 three business calendar days.”

“(d) Responses to Reasonable Accommodation requests must be provided within a reasonable amount of time, not to exceed 14 three business calendar days. The response must either be to grant the request, deny the request, offer alternatives to the request, or request additional information to clarify the Reasonable Accommodation request. Examples when it would not be reasonable to wait 14 calendar days to provide a response include but are not limited to: moving the due date for rent to coincide with the date the requestor receives their social security disability check; allowing a service animal in an emergency shelter in spite of a no pets policy; or assisting an applicant with a Disability that prevents them from writing legibly when they request help filling out an program or project application. Should additional information be required and an interactive process be necessary, this process must also be completed within a reasonable amount of time. An undue delay in responding to a Reasonable Accommodation request may be deemed by the Department to be a failure to provide a Reasonable Accommodation.”

5. §1.204(g) – Reasonable Accommodations (Commenter (3))

COMMENT SUMMARY: The commenter recommended minor revisions to clause (g) to make it clearer. They are concerned that it may be possible to interpret the new rule to mean that a reasonable accommodation must first provide full compliance with an applicable accessible code, and after providing as such is only then, not limited, in providing something that is more accessible or restrictive in its requirements. Specifically, persons who have attended numerous TDHCA Final Construction Inspections feel that this will result in findings that are due to residents who have been provided with reasonable accommodations, but those accommodations don't fully comply with a particular code, but that do serve their unique needs. The suggested edits from the commenter would remedy this issue.

STAFF RESPONSE: Staff finds the suggested revisions reasonable and the rule change is proposed below, reflective of what was proposed by the commenter. The Department has added an addition sentence to clarify that the Recipient must still follow its Contract or LURA requirements, if those require accessible code specifications.

“(g) A Reasonable Accommodation request of an individual with a Disability that amounts to an Alteration should be made to meet the needs of the individual with a Disability, rather than being limited by to compliance with a ~~any~~ particular accessible code specification.”
However, the Recipient must still follow accessible code specifications as identified in its Contract or LURA.”

6. §1.204(g)(3)(B) – Reasonable Accommodations (Commenter (3))

COMMENT SUMMARY: The commenter (5) suggested deleting two words “normally” in clause (ii) and “some” in clause (iii) because elimination of these two words provides a more concrete and fair basis for the rule. If greater clarification is desired, the Department should be specific.

STAFF RESPONSE: Staff agrees that this language could be improved upon. However, this language is taken from a federal guidance document regarding reasonable accommodation requests, HUD Handbook 4350.3, §2-43. HUD has not provided a bright line test to be used, but instead that requests must be examined on a case by case basis. Staff does recommend edits as shown below to more clearly track the federal guidance.

“(B) In considering whether an expense would constitute an undue burden the Department may, as applicable, consider the following items (though it may consider factors not on this list):

(i) payment for Alteration from operating funds, residual receipts accounts, or reserve replacement accounts must be sought using appropriate approval procedures.

(ii) the approved amount must generally ~~normally~~ be able to be replenished through property rental income within one year without a corresponding raise in rental rates.

(iii) a projected inability to replenish an operating fund account or the reserve for replacement account within one year for funds spent in providing A alterations under this ~~subchapter-subsection~~ is some ~~some~~ evidence that the Alteration would be an undue financial and administrative burden.

7. §1.207(c) – General Requirements for Multifamily Housing Developments (Commenter (3))

COMMENT SUMMARY: The commenter recommended that since program staff evaluates unit distribution at the time of application, this section of the rule should add language to allow an owner to rely on staff review at application, and not be forced to convert to a different distribution after a compliance inspection at the property after it is constructed. Sample language suggested was: “If through the application process the manner in which the units are distributed is deemed acceptable, and there is no change from the representations in the application to what is represented in a final construction inspection, the compliance will consider compliant under this section.”

STAFF RESPONSE: Staff does not agree with this recommendation. While staff is performing a review on unit distribution at the time of application, as noted, it is doing so based on only the documentation submitted at that time; in many cases site and unit plans and designs continue to change significantly, or the information presented in the application may not include physical factors that are then evident at the final construction inspection.

Except as described herein the new section affects no other code, article, or statute.

10 TAC Chapter 1, Subchapter B, Accessibility and Reasonable Accommodations – Blackline reflects changes recommended since the time of publication for public comment

§1.201. Purpose.

(a) The purpose of this subchapter is to establish a framework for informing compliance with the requirements of Tex. Gov’t Code §§2306.6722, 2306.6725, and 2306.6730, and the requirements of the Americans with Disabilities Act, Section 504 of the 1973 Rehabilitation Act (Section 504) and the Fair Housing Act for Recipients of awards from the Texas Department of Housing and Community Affairs (the “Department”) including but not limited to:

- (1) Community Services Block Grant;
- (2) Low Income Home Energy Assistance Program (LIHEAP) (including the two (2) programs utilizing this funding source: the LIHEAP Weatherization Assistance Program and the Comprehensive Energy Assistance Program);
- (3) Emergency Solutions Grant (“ESG”);
- (4) State Housing Trust Fund;
- (5) Low Income Housing Tax Credit;
- (6) Multifamily Bond Programs (“Bond”);
- (7) National Housing Trust Fund;
- (8) Neighborhood Stabilization Program (“NSP”);
- (9) HOME;
- (10) TCAP;
- (11) TCAP- Returned Funds;
- (12) Section 8;
- (13) Department of Energy Weatherization Assistance Program;
- (14) Homeless Housing and Services Program (“HHSP”); and
- (15) Ending Homelessness Fund (“EH”).

(b) Unless otherwise indicated in the applicable notice of funding availability or required by contract, this subchapter does not apply to contracts for the procurement of goods or services by the Department.

§1.202. Definitions.

Capitalized words in this Subchapter have the meaning assigned in the specific chapter and rules of the title that govern the program associated with matter or assigned by federal or state law. In addition, the following terms are used for the purposes of this Subchapter:

(1) 2010 ADA Standards--The term 2010 ADA Standards refers to the 2010 ADA Standards for Accessible Design implementing Title II of the Americans with Disabilities Act of 1990, including the ADA Amendments of 2008, found at 28 CFR Part 35. This term includes both the Title II (28 CFR §35.151) and 2004 ADAAG (36 CFR Part 1991). If there is a conflict between 2004 ADAAG and Title II the requirements of Title II prevail.

(2) Accessible Route--A continuous unobstructed path connecting accessible elements and spaces in a facility or building that complies with the space and reach requirements of the applicable accessibility standard.

(3) Alteration--Any physical change in a facility or its permanent fixtures or equipment. It includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangements in structural parts and extraordinary repairs. It does not include normal maintenance or repairs, reroofing, interior decoration, or changes to mechanical systems.

(4) Disability--A physical or mental impairment that substantially limits one or more major life activities; or having a record of such an impairment; or being regarded as having such an impairment. Nothing in this definition requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. Included in this meaning is the term handicap as defined in the Fair Housing Act, and the term disability as defined in the Americans with Disabilities Act.

(5) Multifamily Housing Development--A project that includes five or more dwelling units. A project may consist of five single family homes, a single building with five or more units, or five or more units in multiple buildings each with one or more units. A project includes the whole of one or more residential structures and appurtenant structures, equipment, roads, walks, and parking lots which are covered by a single contract or application, or which are treated as a whole for processing purposes, whether or not located on a common site.

(6) Reasonable Accommodation--An accommodation and/or modification that is an alteration, change, exception, or adjustment to a program, policy, service, building, or dwelling unit, that will allow a qualified person with a Disability to:

- (A) participate fully in a program;
- (B) take advantage of a service;
- (C) live in a dwelling; or
- (D) use and enjoy a dwelling.

(7) Recipient--Includes a Subrecipient or Administrator and means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to whom assistance or an award is extended for any program or activity directly or through another Recipient, including any successor, assignee, or transferee of a Recipient, but excluding the ultimate beneficiary of the assistance. Recipients include private entities in partnership with Recipients to own or operate a program or service. This term includes Development Owner.

§1.203. General Requirements and Effect of Non Compliance.

(a) No individual with a Disability shall, by reason of their Disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any Department awarded program or activity.

(b) There are additional requirements for compliance with Section 504 of the 1973 Rehabilitation Act; Title VI of the Civil Rights Act of 1964; the Fair Housing Act; the Americans with Disabilities Act; and other civil rights laws, regulations and Executive Orders by Recipients of Department program or activities. This subchapter addresses only the requirements relating to physical accessibility, and reasonable accommodations under Section 504, the American with Disabilities Act, and the Fair Housing Act. Other disability-related requirements include but are not limited to:

(1) operating housing that is not segregated based upon disability or type of disability, unless authorized by federal statute or executive order;

(2) providing auxiliary aids and services necessary for effective communication with persons with disabilities; and

(3) operating programs in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(c) Compliance with accessibility requirements, as applicable, including compliance with the Fair Housing Act, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973, other civil rights laws, regulations and Executive Orders; and Chapters 2105 and 2306 of the Texas Government Code is the sole responsibility of the Recipient. By providing guidance and monitoring for compliance, the Department in no way assumes any liability whatsoever for any action or failure to act by the Recipient.

(d) Failure to comply with the provisions of this subchapter may result in the assessment of administrative penalties and/or debarment, as further outlined in this title.

§1.204. Reasonable Accommodations.

(a) Applicability. This policy relates to a request for Reasonable Accommodations made by an applicant or participant of a Department program to a Recipient, or made by an applicant or occupant to a property funded by the Department to the property. The policy regarding a request for Reasonable Accommodation by the Department is found at 10 TAC §1.1 of this Chapter.

(b) General Considerations in Handling of Reasonable Accommodations. An applicant, participant, or occupant who has a disability may request an accommodation and, depending on the program funding the property or activity and whether the accommodation requested is a reasonable accommodation, their request must be timely addressed.

(1) When the Department monitors a property or activity for how reasonable accommodation requests have been handled, it will consider such things as whether the person working on behalf of the program or property which the Department is monitoring:

(A) timely received the request and recorded it;

(B) took into consideration how action on the request would impact the person making the request and worked to avoid responding in a manner that was prejudicial to the requestor in a way that could have been avoided; and

(C) engaged in communication with the requestor to understand the nature of their request and whether there was a reasonable way to make an accommodation.

(2) If the person responsible for responding to a request for an accommodation needs assistance or clarification as to how the requirement may apply to their program or property they should contact the Compliance Division immediately to discuss the matter. The Compliance Division cannot provide legal

advice or direct the person to respond in any specific manner, but they can, in some instances, point to appropriate federal guidance or other resources such as the Texas Workforce Commission Civil Rights Division. A person who contacts the Compliance Division or anyone else for such reasons should document such contact in their files because the process of obtaining guidance may impact the timeliness of their response.

(3) Unless there is a clear documented need for a lengthier process or there is a controlling federal statute or regulation specifying a different deadline, when a person requests an accommodation they should be given a response as soon as possible but not later than 14 three business calendar days.

(c) To show that a requested Reasonable Accommodation may be necessary, there must be an identifiable relationship between the requested accommodation and the individual's Disability.

(d) Responses to Reasonable Accommodation requests must be provided within a reasonable amount of time, not to exceed 14 three business calendar days. The response must either be to grant the request, deny the request, offer alternatives to the request, or request additional information to clarify the Reasonable Accommodation request. Examples when it would not be reasonable to wait 14 calendar days to provide a response include but are not limited to: moving the due date for rent to coincide with the date the requestor receives their social security disability check; allowing a service animal in an emergency shelter in spite of a no pets policy; or assisting an applicant with a Disability that prevents them from writing legibly when they request help filling out an program or project application. Should additional information be required and an interactive process be necessary, this process must also be completed within a reasonable amount of time. An undue delay in responding to a Reasonable Accommodation request may be deemed by the Department to be a failure to provide a Reasonable Accommodation.

(e) When a participant, applicant, or occupant requires an accessible unit, feature, space or element, or a policy modification, or other Reasonable Accommodation to accommodate a Disability, the Recipient must provide and pay for the requested accommodation, unless doing so would result in a fundamental alteration in the nature of the program or an undue financial and administrative burden. A fundamental alteration is an accommodation that is so significant that it alters the essential nature of the Recipient's operations. A Recipient that owns a tax credit or Multifamily Bond Development with no federal or state funds awarded before September 1, 2001, must allow but may not need to pay for the Reasonable Accommodation, except if the accommodation requested should have been made as part of the original design and construction requirements under the Fair Housing Act, or is a Reasonable Accommodation identified by the U.S. Department of Justice or the U.S. Department of Housing and Urban Development with a de minimis cost (e.g., assigned existing parking spot and no deposit for service/assistance animals).

(f) A Recipient may not charge a fee or place conditions on a participant, occupant, or applicant in exchange for making the accommodation.

(g) A Reasonable Accommodation request of an individual with a Disability that amounts to an Alteration should be made to meet the needs of the individual with a Disability, rather than being limited to compliance with a by any particular accessible code specification. However, the Recipient must still follow accessible code specifications, as identified in its Contract or LURA.

(1) Recipients are not required to make structural changes where other methods, which may not cost as much, are effective in making programs or activities readily accessible to and usable by persons with Disabilities.

(2) In choosing among available methods for meeting the requirements of this section, the Recipient must give priority to those methods that offer programs and activities to qualified individuals with Disabilities in the most integrated setting appropriate.

(3) Undue burden.

(A) The determination of undue financial and administrative burden will be made by the Department on a case-by-case basis, involving various factors, such as the cost of the Reasonable Accommodation, the financial resources of the Development, the benefits the accommodation would provide to the requester, and the availability of alternative accommodations that would adequately meet the requester's Disability-related needs.

(B) In considering whether an expense would constitute an undue burden the Department may, as applicable, consider the following items (though it may consider factors not on this list):

(i) payment for Alteration from operating funds, residual receipts accounts, or reserve replacement accounts must be sought using appropriate approval procedures.

(ii) the approved amount must generally ~~normally~~ be able to be replenished through property rental income within one year without a corresponding raise in rental rates.

(iii) a projected inability to replenish an operating fund account or the reserve for replacement account within one year for funds spent in providing ~~alterations~~ Alterations under this ~~subchapter~~ subsection is some ~~some~~ evidence that the Alteration would be an undue financial and administrative burden.

(C) If providing accessibility would result in an undue financial and administrative burden, the Recipient must still take other reasonable steps to achieve accessibility.

(D) If a structural change would constitute an undue financial and administrative burden, and the tenant/requestor still wants that particular change to be made, the tenant/requestor must be allowed to make and pay for the accommodation.

(4) Recipients are not required to install an elevator solely for the purpose of making units accessible as a Reasonable Accommodation.

(5) Recipients do not have to make mechanical rooms and similar spaces accessible when, because of their intended use, they do not require accessibility by the public, by tenants, or by employees with physical disabilities.

(6) Recipients are not required to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member, as a Reasonable Accommodation.

(h) If a Recipient refuses to provide a requested accommodation because it is either an undue financial and administrative burden or would result in a fundamental alteration to the nature of the program, the Recipient must make a reasonable attempt to engage in an interactive dialogue with the requester to determine if there is an alternative accommodation that would adequately address the requester's Disability-related needs. If an alternative accommodation would meet the individual's needs and is reasonable, the Recipient must provide it.

(i) Examples of reasonable accommodations, while not exhaustive, include moving the due date for rent to coincide with the date the requestor receives their social security disability check; providing a designated accessible parking space from existing parking spaces; creating an accessible parking space to accommodate a wheelchair-equipped van; allowing a service animal in spite of a no pets policy; modifying door knobs to levers; providing assistance in filling out a program application for the activity or unit; in the case of a service provider providing computer lab classes with laptops, providing a loan of the laptop computer with the training software; in the case of a weatherization provider serving a family with a child with asthma, seeing if an alternative sealant could be used when the sealant typically used may trigger an asthma attack; installing grab bars; providing an accessible entrance to a resident's current unit, unless it would be an undue financial and administrative hardship or a fundamental alteration of the program to do so; and providing a ramp in excess of usual specifications for such

alternations to accommodate a scooter type wheelchair, unless it would be an undue financial and administrative hardship or a fundamental alteration of the program to do so.

(j) Recipients must follow federal and state regulations regarding service/assistance animals. A housing provider may not require an applicant, participant, or occupant to pay a pet deposit if the animal is a service/assistance animal.

§1.205. Compliance with the Fair Housing Act.

(a) Generally, housing designed and constructed for first occupancy after March 13, 1991, must comply with the Fair Housing Act. This includes Units, common areas, and amenities added to existing buildings, or on land under common ownership and contiguous with housing otherwise exempt from the Fair Housing Act.

(b) Compliance with the Fair Housing Act makes it unlawful to discriminate based on a person's disability, race, color, religion, sex, familial status, or national origin unless there is an exception in federal law.

(c) The Department requires compliance with HUD's Fair Housing Act Design Manual, including the ability to claim exemptions or exceptions provided for therein.

§1.206. Applicability of the Construction Standards for Compliance with §504 of the Rehabilitation Act of 1973.

(a) The following types of Multifamily Housing Developments must comply with the construction standards of §504 of the Rehabilitation Act of 1973, as further defined through the Uniform Federal Accessibility Standards (UFAS):

(1) new construction and reconstruction HOME and NSP Multifamily Housing Developments that began construction before March 12, 2012;

(2) rehabilitation HOME and NSP Multifamily Housing Developments that submitted a full application for funding before January 1, 2014; and

(3) all Housing Tax Credit and Tax Exempt Bond Developments that were awarded after September 1, 2001, and submitted a full application before January 1, 2014.

(b) The following types of Multifamily Housing Developments must comply with the construction requirements of 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 Federal Register 29671 and not otherwise modified in this subchapter:

(1) new construction and reconstruction HOME and NSP Multifamily Housing Developments that began construction after March 12, 2012; and

(2) all Multifamily Housing Developments that submit a full application for funding after January 1, 2014.

(d) Recipients of ESG, EH, and HHSP funds must comply with the 2010 ADA Standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 Federal Register 29671 and not otherwise modified in this subchapter.

(d) Effect on LURAs. These rules do not serve to amend contractual undertakings memorialized in a recorded LURA but may, by operation of law, place requirements on a property owner beyond those contained in the LURA.

§1.207. General Requirements for Multifamily Housing Developments.

(a) All Units that are accessible to persons with mobility impairments must be on an Accessible Route.

(b) Recipients must give priority to methods that offer housing in the most integrated setting possible (i.e., a setting that enables qualified persons with Disabilities and persons without Disabilities to interact to the fullest extent possible). This means the distribution will provide individuals requiring accessible units with a choice of location, layout, and price that is substantially equivalent to the choice available to others. Distribution of accessible units may be further described in federal law, regulation, or governing Rules in this Title. To the maximum extent feasible and subject to reasonable health and safety requirements, accessible units must be:

(1) distributed throughout the Development and site; and

(2) made available in a sufficient range of sizes and amenities so that the choice of living arrangements of qualified persons with Disabilities is, as a whole, comparable to that of other persons eligible for housing assistance under the same program.

(c) All Multifamily Housing Developments that submit full applications after January 1, 2014, must have a minimum of 5 percent of Units that are accessible to persons with mobility impairments, and a minimum of 2 percent of the Units must be accessible to persons with visual and hearing impairments. In addition, common areas and amenities must also be accessible as identified in the 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 Federal Register 29671.

10

BOARD ACTION REQUEST

EXECUTIVE DIVISION

FEBRUARY 21, 2019

Presentation, discussion, and possible action on an order adopting new 10 TAC §1.410, Determination of Alien Status for Program Beneficiaries, and directing publication for adoption in the Texas Register

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the Department) is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, Section 401(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1986 (PRWORA) provides that an alien who is not a qualified alien is not eligible for any federal public benefit, and Department of Justice (DOJ) guidance provides that each federal agency is required to identify which of their programs are considered federal public benefits for this purpose;

WHEREAS, the U.S. Department of Health and Human Services (USHHS) has determined that the Low Income Home Energy Assistance Program (LIHEAP) is a federal public benefit and is subject to PRWORA, and the Department of Energy (DOE) has directed states that as it relates to Qualified Aliens Eligibility for Benefits, they should review guidance provided by HHS under the LIHEAP;

WHEREAS, the Department needs to clearly provide in rule how PRWORA will be adhered to by Department subrecipients administering programs that have been determined by the cognizant federal agency to be federal public benefits that trigger the PRWORA requirements and how those subrecipients, if private nonprofits, will handle verification of eligible status for any clients served under applicable programs, and therefore staff drafted a rule for public comment; and

WHEREAS, at the Board meeting of November 8, 2018, the Board approved the draft of this rule for public comment, comment has been received, and the Department has taken into consideration the comment and provided a reasoned response in the rule now being presented for adoption;

NOW, therefore, it is hereby

RESOLVED, that the order adopting new 10 TAC §1.410 Determination of Alien Status for Program Beneficiaries, with changes, is approved for adoption and publication in the Texas Register; and

FURTHER RESOLVED, that the Acting Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the adopted new 10 TAC §1.410, Determination of Alien Status for Program Beneficiaries, in the form presented to this meeting, to be published in the Texas Register and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles and any requested changes to the preambles.

BACKGROUND

Section 401(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1986 (PRWORA), provides that an alien who is not a qualified alien is not eligible for any federal public benefit. The Department of Justice (DOJ) provided guidance that each federal agency is required to identify which of their programs are considered federal public benefits for this purpose. That determination is not in the purview of the State of Texas. For the federal programs for which such guidance has been given, the Department needs to provide a rule that gives clear indication to subrecipients of how the requirement to verify eligible status will be complied with. It is noted that not all cognizant federal agencies have made their determinations as provided for in the DOJ guidance, and as a result the PRWORA requirements have not been triggered for those programs for which such determinations have not been made. Should such agencies determine that other programs constitute federal public benefits, thereby triggering the PRWORA requirements, such programs will be subject to these rules.

The U.S. Department of Health and Human Services (USHHS) determined that most eligible activities under the Low Income Home Energy Assistance Program (LIHEAP) are a federal public benefit, and subject to PRWORA. Following that path the Department of Energy (DOE) indicated in directions to state Grantees in December 2017 that Weatherization Assistance Program (DOE-WAP) subrecipients should adhere to the same guidance as that provided by HHS, if running its eligibility determinations using the same methodology as used in the LIHEAP Program (which the Department has elected to do in its DOE-WAP plan).

Of the 37 providers of utility assistance with LIHEAP funds, 10 are units of local government and 27 are private nonprofit organizations; of the 22 providers of weatherization assistance, five are units of local government and 17 are private nonprofit organizations. The units of local government in both cases already comply with the federal requirement by determining eligible status of applicants and household members via the Systematic Alien Verification for Entitlements (SAVE) system.

This intersection of the requirement to verify status while the majority of the program networks are private nonprofits has become a challenge for the Department. As noted above approximately 72% of the current LIHEAP providers and 77% of the Weatherization providers (funded by both LIHEAP and DOE WAP) are private nonprofits. Section 432(d) of PRWORA, as amended, provides that, "a nonprofit charitable organization, in providing any Federal public benefit...or any State or local public benefit...is not required under this chapter to determine, verify, or otherwise require proof of eligibility of any applicant for such benefits." (8 USC 1642(d)). Moreover, the State may not require non-profit organizations determining eligibility in the

program to verify citizenship and immigration status. This exception creates a significant problem when HHS expects the Department to assure that a determination of eligible status for most activities is occurring. After considering all factors, the Department had identified several possible options:

- To have the Department provide the verification, directly or through a third party contractor, which would require the Subrecipient to gather and transmit – but not verify - the appropriate client level information and documentation; or
- To have the private nonprofit voluntarily agree to participate in using the SAVE system, which is the option that creates the least delay in time for the clients; or
- To allow the private nonprofit subrecipients to voluntarily procure a separate party to perform such verification services on their behalf.

Unfortunately, if a current private nonprofit Subrecipient is not willing to agree to perform under one of these options, the Department will have no other way to ensure eligible status as required by HHS. Because HHS has affirmed that the Department (and the Subrecipient) take on financial liability for any potential disallowed costs associated with serving an ineligible household, the Department cannot allow Subrecipients to opt out of all options and have no verifications performed. The Department would therefore be compelled to identify an alternate subrecipient that can ensure such verification. This would require rebidding those portions of the network that do not elect one of these options or find an alternate provider.

Staff would note several considerations. While willing to do so in the short to mid-term to bring the network into compliance, staff believes that the first option, to have the Department or a third-party provider perform verifications, would be an inefficient approach in the long term. Since this item was originally presented to the Board, a Request for Proposals was released to identify whether such a third party provider might exist and no responses were received. Therefore, if this option is selected, it will entail the Department staff performing such verification. This will not only significantly slow down the approval process for clients, but will require additional FTEs.

The first option also would require that the nonprofits “gather and transmit” the client information for verification by TDHCA or a third party. However HHS has not confirmed that this method is in fact a compliant option. If determined by HHS to not be a compliant option, this would likely narrow the options to the remaining two. The rule as currently reflected for public comment will retain that option until information is received to the contrary from HHS. As of the writing of this item, no response had been received by HHS.

As of the writing of this item, all of the nonprofit LIHEAP subrecipients for both WAP and CEAP – had notified the Department that they would voluntarily agree to participate in using the SAVE system. At this time the Department is awaiting confirmation from, and possibly a revision to the Department’s Memorandum of Agreement with, the Department of Homeland Security that our private nonprofit Subrecipients under these programs can access the SAVE system under the Department’s authorized access.

Behind the preamble the rule is provided in blackline form reflecting the changes being recommended since the time of publication for public comment.

Attachment 1: Preamble for adopting new 10 TAC §1.410 Determination of Alien Status for Program Beneficiaries.

The Texas Department of Housing and Community Affairs (the Department) adopts, with changes, new 10 TAC Chapter 1, Administration, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.410 Determination of Alien Status for Program Beneficiaries. The purpose of the new section is to address concerns identified by the U.S. Department of Health and Human Services (HHS) in a recent monitoring of the Department for the Low Income Home Energy Assistance Program (LIHEAP) and to provide clear guidance to any private nonprofit subrecipients doing business with the Department that receive funds from the Department for a federal program for which the federal oversight agency has indicated that legal status is required to receive a benefit as further provided for in Personal Responsibility and Work Opportunity Reconciliation Act of 1986 (PRWORA).

Tex. Gov't Code §2001.0045(b) does not apply to the new rule because it is exempt under §2001.0045(c)(4), which exempts rule changes necessary to receive a source of federal funds or to comply with federal law. Compliance with the new rule is intended to ensure adherence to federal law, Tex. Gov't Code Chapter 2306, Subchapter E, and provide for the implementation of this activity.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. David Cervantes, Acting Director, has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but provides interpretation and guidance for how the Department, and its subrecipients of certain federal funds, will comply with PRWORA.
2. The new rule does not reduce work load such that any existing employee positions can be eliminated. The new rule may create a change in work that could require the temporary or permanent creation of new employee positions. The rule as drafted provides options for how the Department will ensure verification of legal status is occurring, if required by the federal oversight agency, when the Department's subrecipient organization is a private nonprofit, who is exempt under PRWORA from having to perform such verification. One of the options provided for how a private nonprofit subrecipient might elect to ensure compliance is occurring with the households they serve would be for the nonprofit to gather and transmit client information to the Department so that verification can occur. The Department may have to perform the verifications which could require staffing. It is estimated that this option could require from two to four FTEs.
3. The new rule does not require additional future legislative appropriations. If employee positions are needed as noted above, resources to cover the costs of those positions would come from federal LIHEAP administrative funds, not additional appropriations.
4. The new rule does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new rule is creating a new regulation, but only to the extent that it formalizes the methods by which a federal program requirement is implemented. The requirement prompting the rule is a condition of receiving federal LIHEAP and DOE funds.
 6. The new rule will not expand or repeal an existing regulation, but formalizes the methods by which a federal program requirement is implemented. The federal program requirement could be considered to “limit” this activity because the new rule will require verification of legal status of household members applying for assistance from certain programs. Those programs are federally limited to be provided only to those applicants who are United States Citizens, United States Nationals, or Qualified Aliens. Applicants not able to provide proper documentation of United States legal status (i.e., Unqualified Aliens) will not receive assistance and households containing Unqualified Aliens may receive a lesser amount of assistance, or be denied assistance altogether depending on the income level of the household. This potentially limiting action of verification is necessary to ensure compliance with §2605(b)(2) of the Low Income Home Energy Assistance Act (42 U.S.C. § 8624(b)(2)) which was identified by HHS in a recent monitoring of the Department.
 7. The new rule will potentially decrease the number of individuals subject to the rule as described in 6 above.
 8. The new rule will not negatively nor positively affect this state’s economy. While some households currently eligible for the program may no longer qualify for assistance, there are other qualified households who will be eligible, so no reduction in actual program funding expended in communities is expected.
- b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV’T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov’t Code Chapter 2306, Subchapter E.
1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov’t Code §2006.002(b) are applicable.
 2. There are no small or micro-businesses subject to the rule for which the economic impact of the rule is projected to impact. There are no rural communities subject to the rule for which the economic impact of the rule is projected to impact.
 3. The Department has determined that because this rule is only applicable to nonprofits and local governments that are designated as community action agencies there will be no economic effect on small or micro-business or rural communities.
- c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV’T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.
- d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV’T CODE §2001.024(a)(6). The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that this rule merely provides guidance on how existing subrecipients of the Department will handle a particular step in verification of household eligibility, and that the rule is applied statewide, the rule does not change issues affecting employment, there are no "probable" effects of the new rule on particular geographic regions.

- e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Cervantes has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be changes needed to address concerns identified by the U.S. Department of Health and Human Services ("HHS") in a recent monitoring and to ensure compliance with federal PRWORA requirements that ensure that no federal benefits are provided to Unqualified Aliens.

There may be a possible small economic cost to participating network organizations if they opt to bring their operations and processes into compliance with §2605(b)(2) of the Low Income Home Energy Assistance Act (42 U.S.C. § 8624(b)(2)) which was identified by HHS in a recent monitoring of the Department. If a current nonprofit Subrecipient is unable to agree to perform under one of the options provided by the rule, the Department will have no other way to ensure verification is occurring as required by HHS. Because HHS has affirmed that the Department (and the Subrecipient) take on financial liability for any potential disallowed costs associated with serving an ineligible household, the Department cannot allow Subrecipients to opt out of all options and have no verifications performed as this increases the potential liability for the state. The Department would therefore be compelled to identify an alternate Subrecipient that can ensure such verification. This would require rebidding those portions of the network that do not elect one of these options. If such a rebidding occurred, some costs would be involved as the new replacement provider is trained, and clients transitioned; however, such costs would be eligible federal program expenses covered by program administrative funds.

- f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments because any such costs related to this rule discussed above will be paid for with federal funds.

PUBLIC COMMENT AND REASONED RESPONSE. The public comment period was held from November 23, 2018, to December 27, 2018, to receive input on the proposed section. Public comment and reasoned response are provided below. Public comment was received from five commenters: Executive Committee of the Texas Association of Community Action Agencies (#1), Project Bravo (#2), Community Action Committee of Victoria, Texas (#3), Hill Country Community Action (#4), and Greater East Texas Community Action Program (#5).

1. §1.410 – General Comment Regarding Conflict Between Rules (Commenter (1), (2), (3), (4), and (5))

COMMENT SUMMARY: Commenters 1 and 3 note that this rule conflicts with recently adopted 10 TAC Chapter 6, Subchapter C (§6.303) and Subchapter D (§6.406) which requires only public organizations to verify Alien Status. The commenters state that PRWORA is clear that nonprofit organizations are exempt from verifying legal status. Commenters 1 and 3 request that the Department clarify in writing if the PRWORA exemption of nonprofit organizations is acceptable to the Department. Commenters 2, 4, and 5 echoed their support for the comments made by Commenter 1.

STAFF RESPONSE: Staff disagrees that such a conflict exists. 10 TAC §6.303(f) and 10 TAC §6.406(e) both state that: “A Public Organization must verify U.S. Citizen, U.S. National, or Qualified Alien status of all household members using SAVE.” The rule does not state that “only” public organizations will do such verification, but is silent on whether and how those entities that are not public organizations would go about making sure that CEAP funds are not spent on unqualified Aliens. The new rule proposed herein at §1.410 provides added specificity to that silence. While the commenter accurately states that PRWORA does allow nonprofit organizations to be exempt from verifying legal status, neither PRWORA nor HHS have provided how to reconcile this exemption within the LIHEAP program. It should be noted that the Department’s rule does not require that nonprofit organizations do such verifications, but provides nonprofits that operate the LIHEAP program with a mechanism by which they can continue to operate the program if they so choose. A nonprofit that does not want to perform such verifications can choose not to do so, in which case the Department will be obligated by its contract with HHS to identify an alternate provider. As requested by the Commenters, in asking the Department to clarify in writing if the PRWORA exemption of nonprofit organizations is acceptable to the Department, the Department again notes that this rule at §1.410 does not require a nonprofit to perform the verifications, but provides for several options. If a nonprofit that operates a LIHEAP activity chooses to continue to operate the program, they must allow for the ability for the required verifications to occur. No change to the rule is recommended.

2. §1.410(c)(2) – Applicability of Federal Funds (Commenter (1), (2), (3), (4), and (5))

COMMENT SUMMARY: Commenters 1 and 3 note that this section is confusing and seems to conflict with itself by saying that the requirements of this section are applicable to subrecipients of federal funds even if certain exemptions under PRWORA may exist. Commenters 2, 4, and 5 echoed their support for the comments made by Commenter 1.

STAFF RESPONSE: Staff agrees that this has been worded in a confusing way. Staff suggests the revisions below.

“(2) The requirements of this section are applicable to Subrecipients of federal funds passed through the Department for which the federal program has made a determination that the activity performed by the Subrecipient requires compliance with PRWORA. However, even if certain exemptions under PRWORA may exist on a case specific, or activity specific basis -as further provided- described in this rule.”

3. §1.410(e) – No Applicable Exemptions Under PRWORA (Commenter (1), (2), (3), (4), and (5))

COMMENT SUMMARY: Commenters 1 and 3 note that this section is confusing and in conflict as it states that if no exemptions under PRWORA are applicable then the Subrecipient must verify legal status using SAVE. Commenters 2, 4, and 5 echoed their support for the comments made by Commenter 1.

STAFF RESPONSE: Staff addresses this issue in both Comment 1 and 2 above. No change to the rule is recommended.

4. §1.410(f)(1) – Exemptions Under PRWORA (Commenter (1), (2), (3), (4), and (5))

COMMENT SUMMARY: Commenters 1 and 3 note that this section is confusing and in conflict as it states that a Subrecipient that is a Nonprofit Charitable Organization is not required to verify legal status. Commenters 2, 4, and 5 echoed their support for the comments made by Commenter 1.

STAFF RESPONSE: Staff addresses this issue in Comment 1 above. As noted, the rule does not require such verification, but provides a mechanism by which Nonprofit Charitable Organizations have an option to perform or provide for such verifications if they would like to continue to operate the LIHEAP and WAP programs. No change to the rule is recommended.

5. §1.410(f)(2)(A) – Verification Election (Commenter (1), (2), (3), (4), and (5))

COMMENT SUMMARY: Commenters 1 and 3 note that this clause of the rule indicates that it is subject to affirmation by HHS, and suggest that the rules should not be adopted until such affirmation is received. Commenters 2, 4, and 5 echoed their support for the comments made by Commenter 1.

STAFF RESPONSE: Staff disagrees with the comment. Subparagraph (A) is one of three options that a Subrecipient may select. At this time the Department has not received a response from HHS, and it is quite possible that it will not. To address this comment, staff could recommend the removal of option (A) from the rule entirely since no response has been received from HHS. However, removal of the option may preclude an acceptable option being available to Subrecipients should HHS ever make such a determination. If this subparagraph is removed and HHS were to make such a determination, the ability for any Subrecipient to use this option would not be able to occur until a new rulemaking process was implemented. By leaving this section as drafted, it keeps the most options open to Subrecipients. No change to the rule is recommended.

6. §1.410(f)(2)(A)(i) – Method of Transmittal and Secure Safekeeping (Commenter (1), (2), (3), (4), and (5))

COMMENT SUMMARY: Commenters 1 and 3 asked that the Department clarify what it means to “provide and maintain a sufficient method of electronic transmittal system.” Commenters 2, 4, and 5 echoed their support for the comments made by Commenter 1.

STAFF RESPONSE: This section relates to if a Subrecipient has opted to gather information from households and transmit that information to the Department, or a third party of the Department,

for verification. The requirement to “provide and maintain a sufficient method of electronic transmittal system” merely means that the Subrecipient must have some method by which they can send that documentation securely. This may be as encrypted emails, a document transfer site/protocol, or other means that comply with all applicable federal and state statutes and rules. The Department is not intending to limit the means by which a subrecipient may choose to implement this as long as it is compliant with federal and state statutes and rules. No change to the rule is recommended.

7. §1.410(f)(2)(B) – Voluntary Election to Perform Verifications (Commenter (1), (2), (3), (4), and (5))

COMMENT SUMMARY: Commenters 1 and 3 request that the Department expedite its release of password authorization to the nonprofit subrecipients who are electing to use SAVE. Commenter 2 also indicated that the SAVE manuals provided by Homeland Security clearly state that there are severe penalties for errors that can occur if staff mishandles sensitive documents; the commenter feels that the Department is putting agencies at risk by insisting on the implementation of the new rules without adequate training or access to resources. Commenter 5 indicated their full readiness to perform SAVE verifications and that their staff has completed training. However they did ask that if access to SAVE is not granted, that the Department hire temporary staff to assist with the process; they felt that this would ensure customer assistance is uninterrupted as a short-term solution.

Commenters 1 and 3 request that the Department more clearly indicate when the requirement to verify legal status becomes effective (January 1, 2019 or January 1, 2020). Commenter 2 wanted to emphasize the importance that they place on having knowledge of when the new rules will become effective. Commenters 1 and 3 also asked that in the absence of a SAVE password, nonprofit organizations be authorized to allow clients to self-declare legal status which is an allowable activity under the current LIHEAP Plan. Lastly, Commenters 1 and 3 ask that the Department inform Subrecipients of the effective date that the Compliance Division will monitor for SAVE requirements. Commenter 2 specifically asks that compliance with this rule have a specific effective date that occurs after SAVE passwords have been made available or after subrecipients receive adequate training on how to verify legal status manually. Commenters 2, 4, and 5 echoed their support for the comments made by Commenter 1.

STAFF RESPONSE: The Department has requested a revised Memorandum of Agreement (MOA) with the Department of Homeland Security (DHS) to authorize subrecipients to be set up in SAVE and passwords issued. As soon as that MOA is executed, passwords will be made available. Extensive resources relating to SAVE and verifying eligibility exist on the DHS website. The Department’s website also provides information and links on this information. If in fact, the Department does not receive a revised MOA or DHS denies such an MOA revision, the Department is prepared to hire staff temporarily to assist with the process on a short-term basis.

Because the requirement to verify legal status is a federal requirement, made applicable by HHS’ interpretation of PRWORA, the Department does not have the authority to state that the requirement to verify legal status is not yet effective. However, as it relates to the Department’s rulemaking and the applicability of the state options and their implementation, this rule will take effect in practice only for those Private Nonprofit Organizations contracts executed or amended

after the rule is formally adopted. 2019 contracts have already been executed for LIHEAP contracts and, this rule was not in effect at that time, therefore, this means that if a 2019 LIHEAP contract was already signed, and is not amended, this portion of the rule will become effective for a Subrecipient's 2020 LIHEAP contracts, effective January 1, 2020. Password availability and/or adequate training as requested, will take place prior to that effective date. However, for a Subrecipient who has not yet signed a LIHEAP or WAP contract, if a contract for LIHEAP or WAP is signed after the effective date of the rule, the rule will be in effect at that time. Use of the SAVE system was already a contractual requirement for Public Organizations as part of the 2019 (and earlier) contracts. No change to the rule is recommended.

As it relates to the comment regarding self-declaration by clients as to their legal status, HHS has indicated to the Department, and the Department has relayed to Subrecipients, that this is not an acceptable form of verification and that if self-declaration is used, and a household is later identified as being ineligible, those costs would be disallowed and its repayment would be a fiscal responsibility of the Subrecipient (and the Department). The Department does not authorize self-declaration. On January 9, 2019, the Department submitted a plan amendment to HHS to clarify the incorrectly selected checkbox in the LIHEAP State Plan that indicated self-declaration was acceptable.

As it relates to notifying Subrecipients of the effective date that the Compliance Division will monitor for SAVE requirements for Private Nonprofit Organizations, the Compliance Division will monitor based on each contract, and elections that may have been made under this rule. If a Subrecipient that is a Private Nonprofit Organization had already signed its 2019 contract prior to the rule effective date, and has not had a Contract Amendment that adds additional funds or extending the Contract Term for purposes of fund expenditure, their first Contract having this requirement would be the 2020 contract; therefore, in that circumstance monitoring for this issue may occur any time after the effective date of that 2020 contract. As stated above Public Organizations, were already required to use the SAVE system in 2019 (and earlier contracts).

STATUTORY AUTHORITY. The new section is adopted pursuant to TEX. GOV'T CODE, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new sections affect no other code, article, or statute.

§1.410. Determination of Alien Status for Program Beneficiaries.

(a) Purpose. The purpose of this section is to provide uniform Department guidance on Section 401(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1986 ("PRWORA"), which provides that an alien who is not a Qualified Alien is not eligible for any federal or state public benefit.

(b) Definitions. The words and terms in this chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise. Capitalized words used herein have the meaning assigned in the specific Chapters and Rules of this Title that govern the program under which program eligibility is seeking to be determined, or assigned by federal or state law.

(1) Nonprofit Charitable Organization--An entity that is organized and operated for purposes other than making gains or profits for the organization, its members or its shareholders, and is

precluded from distributing any gains or profits to its members or shareholders; and is organized and operated for charitable purposes.

(2) Public Organization--An entity that is a Unit of Government or an organization established by a Unit of Government.

(3) Qualified Alien--A person that is not a U.S. Citizen or a U.S. National and is described at 8 U.S.C. §1641(b).

(4) State--The State of Texas or the Department, as indicated by context.

(5) Subrecipient--An entity that receives federal or state funds passed through the Department.

(6) Systematic Alien Verification for Entitlements ("SAVE")--Automated intergovernmental database that allows authorized users to verify the immigration status of program applicants.

(c) Applicability for Federal Funds.

(1) Applicability. The determination of whether a federal program, or activity type under a federal program, is a federal public benefit for purposes of PRWORA is made by the federal agency with administration of a program or activity, not by the Department. Only in cases in which the federal agency has given clear interpretation that it requires PRWORA to be applicable to a program or activity will this rule be applied by the Department.

(2) The requirements of this section are applicable to Subrecipients of federal funds passed through the Department for which the federal program has made a determination that the activity performed by the Subrecipient requires compliance with PRWORA. However, even if certain exemptions under PRWORA may exist on a case specific, or activity specific basis as further provided described in this rule.

(d) Applicability for State Funds.

-The Department has determined that State Housing Trust Funds that are provided to a Subrecipient that is a Public Organization to be distributed directly to individuals, are a state public benefit.

(e) No Applicable Exemptions under PRWORA. If no exemptions under PRWORA are applicable to the Subrecipient or to the activity type, as further detailed in this section, then the Subrecipient must verify U.S. Citizen, U.S. National, or Qualified Alien status ("legal status") using SAVE and evaluate eligibility using the rules for the applicable program under this Title.

(f) Exemptions Under PRWORA.

(1) In accordance with 8 U.S.C. §1642(d), a Subrecipient that is a Nonprofit Charitable Organization receiving funds from the Department for which the federal program or activity requirement is that a household be verified for eligibility status, is not required to verify that an individual is a U.S. Citizen, U.S. National, or Qualified Alien.

(2) For activities in the Low Income Housing Energy Assistance Program and the Department of Energy Weatherization Program performed by a Nonprofit Charitable Organization (identified as a Private Nonprofit Organization in the Subrecipient's Contract with the Department), where the Department must ensure that an individual is a U.S. Citizen, U.S. National, or Qualified Alien, a Subrecipient must ensure compliance with the verification requirement through electing to proceed under subparagraph (A), (B), or (C) of this paragraph. Subrecipients will submit in writing to the Director of Community Affairs or his/her designee no later than six months prior to the beginning of a Contract Term its election under one of the subparagraphs in this subsection. If no such election is made by the deadline, Subrecipient will no longer be eligible to perform as a

Subrecipient in the program as further provided for in paragraph (3) of this subsection. Failure by Subrecipient to select an option by the deadline is good cause for nonrenewal of a Contract.

(A) Subject to affirmation by U.S. Health and Human Services, the Subrecipient may voluntarily elect to request from the household and transmit to the Department, or a party contracted by the Department, sufficient information or documentation so that the Department is able to ensure an individual is a U.S. Citizen, U.S. National, or Qualified Alien.

(i) The Nonprofit Charitable Organization must provide and maintain a sufficient method of electronic transmittal system that allows for such information to be provided to the Department or its contractor, and ensures the secure safekeeping of such paper and/or electronic files, and receipt of subsequent response back from the Department or its contracted party.

(ii) Upon receipt of the results of the verification performed by the Department, or its contracted party, the Nonprofit Charitable Organization must utilize those results in determining household eligibility, benefits, income, or other programmatic designations as required by applicable federal program guidance or as determined by other program rules under this Title.

(B) The Subrecipient may voluntarily elect to perform verifications through the SAVE system, as authorized through the Department's access to such system.

(C) The Subrecipient may voluntarily elect to procure an eligible qualified organization to perform such verifications on their behalf, subject to Department approval.

(i) The Nonprofit Charitable Organization and/or its procured provider must maintain sufficient evidence and documentation that verification has taken place so that such verification can be confirmed by the Department, and must ensure the secure safekeeping of such paper and/or electronic files.

(ii) Upon receipt of the results of the verification performed by the procured provider, the Nonprofit Charitable Organization must utilize those results in determining household eligibility, benefits, income, or other programmatic designations as required by applicable federal program guidance or as determined by other program rules under this Title.

(D) If no election is made by the deadline in paragraph (2) of this subsection, the Subrecipient will be provided notification under Tex. Gov't Code Chapter 2105 that the Department does not intend to renew the Contract with Subrecipient at the end of the current Contract Term. The Subrecipient may have a right to request a hearing under Tex. Gov't Code Chapter 2105.

(3) Other activities that do not require verification by Public Organizations or Nonprofit Charitable Organizations are described in the August 5, 2016, HUD, HHS, and DOJ Joint Letter Regarding Immigrant Access to Housing and Services.

(g) The Department may further describe Subrecipient's responsibilities under PRWORA, including but not limited to use of the SAVE system, in its Contract with Subrecipient. Nothing in this rule shall be construed to be a waiver, ratification, or acceptance of noncompliant administration of a program prior to the rule becoming effective.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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BOARD ACTION REQUEST

EXECUTIVE DIVISION

FEBRUARY 21, 2019

Presentation, discussion, and possible action on an order adopting new 10 TAC §1.411, Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code, and directing publication for adoption in the Texas Register

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the Department) is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, Tex. Gov't Code Chapter 2105 specifically identifies the Department as being subject to its requirements as it relates to the administration of Block Grants;

WHEREAS, the programs administered by the Department that are subject to Tex. Gov't Code Chapter 2105 are the Community Services Block Grant (CSBG) program, the Low Income Home Energy Assistance Program (LIHEAP) and the Community Development Block Grant (CDBG) Program, which funds the Colonia Self-Help Centers, and the Department is proposing to provide clear rule-based guidance for Subrecipients and Administrators relating to the provisions of the chapter; and

WHEREAS, at the Board meeting of November 8, 2018, the Board approved the draft of this rule for public comment, comment has been received, and the Department has taken into consideration the comment and provided a reasoned response in the rule now being presented for adoption;

NOW, therefore, it is hereby

RESOLVED, that the order adopting new 10 TAC §1.411 Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code, with changes, is approved for adoption and publication in the Texas Register; and

FURTHER RESOLVED, that the Acting Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the adopted new 10 TAC §1.411 Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code, in the form presented to this meeting, to be published in the Texas Register and in connection therewith, make such non-substantive technical corrections as they may deem necessary to

effectuate the foregoing, including the preparation of the subchapter specific preambles and any requested changes to the preambles.

BACKGROUND

Tex. Gov't Code Chapter 2105 (Chapter 2105) governs the administration of federal block grants and specifically names the Department (among others) as an agency to which this rule applies. A block grant program, as defined in Tex. Gov't Code §2015.001(2), is: "a program resulting from the consolidation or transfer of separate federal grant programs, including federal categorical programs, so that the state determines the amounts to be allocated or the method of allocating the amounts to various agencies or programs from the combined amounts, including a program consolidated or transferred under the Omnibus Budget Reconciliation Act of 1981 (Pub. L. No. 97-35)." For the Department the programs that meet that definition include the Community Services Block Grant (CSBG) program, the Low Income Home Energy Assistance Program (LIHEAP) and the Community Development Block Grant (CDBG) Program, which funds the Colonia Self-Help Centers.

While the Department has interspersed certain facets or requirements of Chapter 2105 into some program rules, practices and policies, the Department has not provided one uniform rule that provides Subrecipients and Administrators under CDBG, LIHEAP, and CSBG with the clear rule-based guidance relating to Chapter 2105. With this action the Department is doing so.

The majority of the attached proposed rule reflects a compilation of those aspects of Chapter 2105 that are applicable to the Administrators or Subrecipients and the Department does not exceed the state law, but merely provides the information to Subrecipients and Administrators in one streamlined location. In two instances the Department provides further specificity:

- Tex. Gov't Code §2105.202 specifically requires that the Department adopt rules that define good cause for nonrenewal of a Subrecipient or Administrator's contract or reduction of funding. In proposed 10 TAC §1.411(f)(1), the Department defines those good cause reasons which include the six reasons provided for in Chapter 2105, as well as several other reasons that the Department believes are applicable.
- As provided for in Tex. Gov't Code §2105.201(b) the notification and hearing requirements provided for in Chapter 2105 for reduction of funding or nonrenewal do not apply if a Subrecipient or Administrator's block grant funding becomes subject to the Department's competitive bidding rules. The Department specifies in 10 TAC §1.411(f)(4) that this type of competitive bidding for awarding block grant funding to Administrators or Subrecipients includes the competitive release of Notices of Funding Availability and competitive Requests for Providers.

Behind the preamble the rule is provided in blackline form reflecting the changes being recommended since the time of publication for public comment.

Attachment 1: Preamble for adopting new 10 TAC §1.411 Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code.

The Texas Department of Housing and Community Affairs (the Department) adopts, with changes, new 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.411 Administration of Block Grants under Chapter 2105 of the Tex. Gov't Code. The purpose of the new section is to provide compliance with Tex. Gov't Code Chapter 2105, which governs the administration of federal block grants, and provide one uniform rule that provides Subrecipients and Administrators under the Community Services Block Grant (CSBG) program, the Low Income Home Energy Assistance Program (LIHEAP) and the Community Development Block Grant (CDBG) Program, which funds the Colonia Self-Help Centers, with clear rule-based guidance relating to Chapter 2105.

Tex. Gov't Code §2001.0045(b) does not apply to the rule being adopted under item (9) of that section: ensuring Department compliance with legislation. It should be noted, however, that no costs are associated with this action that would have prompted a need to be offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. David Cervantes, Acting Director, has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but provides guidance for how the Department and its subrecipients of certain federal funds, will comply with Tex. Gov't Code, Chapter 2105, regarding Administration of Block Grants.
2. The new rule does not reduce work load such that any existing employee positions can be eliminated nor does it create work that require new employee positions.
3. The new rule does not require additional future legislative appropriations.
4. The new rule does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new rule is creating a new regulation, but only to the extent that it provides clear guidance to Subrecipient on adherence to Tex. Gov't Code, Chapter 2105, regarding Administration of Block Grants.
6. The new rule will not expand or repeal an existing regulation.
7. The new rule will neither increase nor decrease the number of individuals subject to the rule, as Administrators and Subrecipients are already subject to the provisions of Tex. Gov't Code, Chapter 2105, regarding Administration of Block Grants.
8. The new rule will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code Chapter 2306, Subchapter E.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.
 2. There are no small or micro-businesses subject to the rule for which the economic impact of the rule is projected to impact. There are no rural communities subject to the rule for which the economic impact of the rule is projected to impact.
 3. The Department has determined that because this rule is only applicable to nonprofits and local governments that are already subject to Tex. Gov't Code, Chapter 2105, regarding Administration of Block Grants, there will be no economic effect on small or micro-business or rural communities.
- c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.
- d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6). The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that this rule merely provides guidance on how subrecipients and administrators will be subject to Tex. Gov't Code, Chapter 2105, regarding Administration of Block Grants, and that the rule is applied statewide, the rule does not change issues affecting employment, and there are no "probable" effects of the new rule on particular geographic regions.

- e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Cervantes, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be clear guidance provided to Subrecipients and Administrators on compliance with Tex. Gov't Code, Chapter 2105, regarding Administration of Block Grants.
- f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC COMMENT AND REASONED RESPONSE. The public comment period was held from November 23, 2018, to December 27, 2018, to receive input on the proposed section. Public comment and reasoned response are provided below. Public comment was received from five commenters: Executive Committee of the Texas Association of Community Action Agencies (#1), Project Bravo (#2), Community Action Committee of Victoria, Texas (#3), Hill Country Community Action (#4), and Greater East Texas Community Action Program (#5).

1. §1.411(d) – Complaints (Commenter (1), (2), (3), (4), and (5))

COMMENT SUMMARY: Commenters 1 and 3 ask that complaints received concerning a Subrecipient needs to be defined including the methodology used for classifying or categorizing a complaint. More specifically, they asked whether the rule will apply to any complaint whether substantiated or not? If a complaint turns out to be simply a disgruntled client but evidence proves the Subrecipient did the right thing will it still count against the Subrecipient? Finally they commented that there used to be a TAC rule in which if the denial of a client was based on income eligibility at the time of application and it was verified by another staff person at the local agency the appeals process was denied, and asked whether that rule still existed? Commenters 2, 4, and 5 echoed their support for the comments made by Commenter 1.

STAFF RESPONSE: This section of the proposed rule addresses two statements. The first states that: “The Department will notify a Subrecipient of any complaint received concerning the Subrecipient services.” This mirrors a direct requirement from Tex. Gov’t Code §2105.103(a) that states: “An agency shall inform a provider of any complaint received concerning the provider’s services.” Therefore, Subrecipients will be notified of all complaints, whether substantiated or not.

The second clause of the proposed rule states: “As authorized by Tex. Gov’t Code §2105.104, the Department shall consider the history of complaints regarding a Subrecipient in determining whether to award, increase, or renew a Contract with a Subrecipient.” Neither this language, nor its supporting statute at §2105.104, indicate that all complaints must be the basis for making such determinations. Staff agrees that clarifying this issue in the rule can provide assurance to Subrecipients that certain types of complaints will not negatively affect their contract determinations.

The Commenters asked that the methodology used for classifying and categorizing complaints be provided. Neither the rule, nor the statute, contemplate further classifying or categorizing complaints; staff does not feel that such further specificity is needed in maintaining and providing complaints to Subrecipients. If it is contemplated that a history of complaints would become a basis for adjusting a contract under this rule, the Subrecipient will be so notified. However, in order to provide further clarity, and to provide consistency with 10 TAC §1.302, the Department has specified in this rule that complaints will be looked at for the preceding three year period.

As it relates to the last comment asking whether a rule still exists relating to client denials for the purpose of income determination, the answer for CSBG and LIHEAP (the programs administered by the commenters) is that a rule still exists. In 10 TAC §6.8(b)(8), the Department rules states: “(8) If the denial is solely based on income eligibility, the provisions described in paragraphs (2) - (7) of this subsection do not apply, and the applicant may request a recertification of income eligibility based on initial documentation provided at the time of the original application. The recertification will be an analysis of the initial calculation based on the documentation received with the initial application for services and will be performed by an individual other than the person who performed the initial determination. If the recertification upholds the denial based on income eligibility documents provided at the initial application, the applicant is notified in writing.” That rule does not directly affect or alter the rule proposed at 10 TAC §1.411(d).

Suggested language revision is provided:

“As authorized by Tex. Gov’t Code §2105.104, the Department shall consider the history of complaints, for the preceding three years, regarding a Subrecipient in determining whether to award, increase, or renew a Contract with a Subrecipient. The Department will not consider complaints in determining whether to award, increase, or renew a Contract with a Subrecipient that the Department has determined in accordance with 10 TAC §1.2 (relating to Department Complaint System to the Department) it has no authority to resolve, or that are not corroborated.”

STATUTORY AUTHORITY. The new section is adopted pursuant to TEX. GOV’T CODE, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new sections affect no other code, article, or statute.

§1.411. Administration of Block Grants under Chapter 2105 of the Tex. Gov’t Code.

(a) Purpose. The purpose of this rule is to inform compliance with Tex. Gov’t Code Ch. 2105, Administration of Block Grants.

(b) Applicability. This rule applies to all funds administered by the Department that are subject to Tex. Gov’t Code Ch. 2105. The activities administered by the Department that are currently subject to Tex. Gov’t Code Chapter 2105 are those funded by the Community Services Block Grant (“CSBG”) funds that are required to be distributed to Eligible Entities, the Low Income Home Energy Assistance Program (“LIHEAP”) funds that are distributed to Subrecipients, and the funds that the Department administers and distributes to Subrecipients from the annual allocation from the Community Development Block Grant (“CDBG”) Program. If additional block grant funds that would be subject to Tex. Gov’t Code Ch. 2105 by its terms are assigned to the Department, they too would be subject to this rule. Capitalized terms used in this section are defined in the applicable Rules or chapters of this title or as assigned by federal or state law.

(c) Hearings required to be held by Subrecipients. Consistent with Tex. Gov’t Code §2105.058, Subrecipients that receive more than \$5,000 from one or more of the programs noted in subsection (b) of this section must annually submit evidence to the Department that a public meeting or hearing was held solely to seek public comment on the needs or uses of block grant funds received by the Subrecipient. This meeting or hearing may be held in conjunction with another meeting or hearing if the meeting or hearing is clearly noted as being for the consideration of the applicable block grant funds under this subsection.

(d) Complaints. The Department will notify a Subrecipient of any complaint received concerning the Subrecipient services. As authorized by Tex. Gov’t Code §2105.104, the Department shall consider the history of complaints, for the preceding three year period, regarding a Subrecipient in determining whether to award, increase, or renew a Contract with a Subrecipient. The Department will not consider complaints in determining whether to award, increase, or renew a Contract with a Subrecipient that the Department has determined in accordance with 10 TAC

§1.2 (relating to Department Complaint System to the Department) it has no authority to resolve, or that are not corroborated.

(e) Right to Request a Hearing on Denial of Services or Benefits. As provided for in Tex. Gov't Code §2105.151 and §2105.154, an affected person who alleges that a Subrecipient has denied all or part of a service or benefit funded by funds under a program that is subject to this subchapter in a manner that is unjust, discriminatory, or without reasonable basis in law or fact may request and have a timely hearing provided by the Department in the Service Area of the Subrecipient, and the requested hearing will be an administrative hearing under Tex. Gov't Code Ch. 2001.

(f) Nonrenewal or Reduction of Block Grant Funds to a Specific Subrecipient.

(1) As required by Tex. Gov't Code §2105.202(a), this section defines "good cause" for nonrenewal of a Subrecipient contract or a reduction of funding. Good cause may include any one or more of the following:

(A) Consistent and repeated corroborated complaints about a Subrecipient's failure to follow substantive program requirements, as provided for in subsection (d) of this section;

(B) Lack of compliance with 10 TAC §1.403 (relating to Single Audit Requirements);

(C) Statute, rule, or contract violations that have not been timely corrected and have prompted the Department to initiate proceedings under 10 TAC Chapter 2, (relating to Enforcement), and have resulted in a final order confirming such violation(s);

(D) Disallowed costs in excess of \$10,000 that have not been timely repaid;

(E) Failure by Subrecipient to select an option as provided for in §1.410 of this title (relating to Determination of Alien Status for Program Beneficiaries) by the deadline;

(F) The ineffective rendition of services to clients, which may include a Subrecipient's failure to perform on a Contract, and which may include materially failing to expend funds;

(G) A failure to address an identified material lack of cost efficiency of programs;

(H) A material failure of the services of the Subrecipient to meet the needs of groups or classes of individuals who are poor or underprivileged or have a disability;

(I) Providing services that are adequately addressed by other programs in that area;

(J) The extent to which clients and program recipients are involved in the Subrecipient's decision making;

(K) Providing services in a manner that unlawfully discriminates on the basis of protected class status; or

(L) Providing services outside of the designated geographic scope of the Subrecipient.

(2) Notification of Reduction, Termination, or Nonrenewal of a Contract and Opportunity for a Hearing. As required by Tex. Gov't Code §2105.203 and §2105.301, the Department will send a Subrecipient –a written statement specifying the reason for the reduction, termination, or nonrenewal of funds no later than the 30th day before the date on which block grant funds are to be reduced, terminated, or not renewed, unless excepted for by paragraph (4) of this subsection. After receipt of such notice for reduction or nonrenewal, a Subrecipient may request an administrative hearing under Tex. Gov't Code Ch. 2001 if the Subrecipient is alleging that the reduction is not based on good cause as identified in subsection (f)(1) of this section or is without reasonable basis in fact or law. If a Subrecipient requests a hearing, the Department may, at its election, enter into an interim contract with either the Subrecipient or another provider for the

services formerly provided by the provider while administrative or judicial proceedings are pending.

(3) Notification of Reduction of Block Grant funds for a Geographical Area. If required by Tex. Gov't Code §2105.251 and §2105.252, the Department will send a Subrecipient a written statement specifying the reason for the reduction of funds no later than the 30th day before the date on which block grant funds are to be reduced.

(4) Exceptions. As authorized by Tex. Gov't Code §2105.201(b), the notification and hearing requirements for reduction or nonrenewal of funding provided for in paragraphs (2) and (3) of this subsection do not apply if a Subrecipient's block grant funding becomes subject to the Department's competitive bidding rules. The Department will require such competitive bidding for awarding block grant funding subject to Tex. Gov't Code Ch. 2105 for Subrecipients and in the Department's procuring of Subrecipients or contractors to administer or assist in administering such block grant funds, which includes the competitive release of Notices of Funding Availability and competitive Requests for Subrecipients or Providers. The criteria for evaluation of competitive responses shall be set forth in the applicable notices of funds availability, requests, or other procurement invitation document.

(5) Nothing in this section supersedes or is intended to conflict with the rights and responsibilities outlined in §2.203 of this title (relating to Termination and Reduction of Funding for CSBG Eligible Entities).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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BOARD ACTION REQUEST

EXECUTIVE DIVISION

FEBRUARY 21, 2019

Presentation, discussion, and possible action on an order proposing an amendment to 10 TAC §1.405, Bonding Requirements, and directing publication for public comment in the Texas Register

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the Department) is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, Subchapter D of Chapter 1 provides specific requirements that are applicable for Department recipients of federal and state funds;

WHEREAS, 10 TAC §1.405, Bonding Requirements, does not identify the Homeless Housing and Services Program (HHSP) or Ending Homelessness Fund (EH Fund) as having applicability under this section, however HHSP and EH Fund are in fact subject to this rule based on the State of Texas Uniform Grant Management Standards as reflected in 10 TAC §1.204(a), and this rule amendment will add HHSP and EH Fund to the list of applicable programs; and

WHEREAS, upon Board approval, the proposed rule will be submitted to the Texas Register to be released for public comment which will be accepted from March 8, 2019, through April 8, 2019;

NOW, therefore, it is hereby

RESOLVED, that the proposed amendment to 10 TAC §1.405, Bonding Requirements, is hereby approved; and

FURTHER RESOLVED, that the Executive or Acting Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the amendment to 10 TAC §1.405, Bonding Requirements, in the form presented to this meeting, to be published in the Texas Register and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles and any requested revisions to the preambles.

BACKGROUND

10 TAC Chapter 1, Subchapter D, provides specific requirements that are applicable for Department recipients of federal and state funds. Specifically §1.405, addresses Bonding Requirements. When this rule was last amended in December 2016, it did not identify that the Homeless Housing and Services Program (HHSP) was obligated to perform under this section. However, in accordance with the State of Texas Uniform Grant Management Standards, which govern state funds, HHSP, which is funded with

state general revenue, is required to adhere to the bonding requirements of this section. Since that time, the EH fund has been established. This rule amendment will add HHSP and the EH Fund to the list of applicable programs. Behind the preamble for the proposed amendment the rule is shown reflecting the proposed correction. The rule will also update several statutory citations.

Attachment 1: Preamble, including required analysis, for proposed amendment to 10 TAC §1.405, Bonding Requirements

The Texas Department of Housing and Community Affairs (the Department) proposes an amendment to 10 TAC Chapter 1, Administration, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.405, Bonding Requirements. The purpose of the revision is to add the Homeless Housing and Services Program (HHSP) and Ending Homelessness Fund (EH Fund) to the list of programs which are subject to the requirements of this section. HHSP and EH Fund are not currently listed under this section. However, in accordance with the State of Texas Uniform Grant Management Standards, which govern state fund awards to local governments, HHSP which is funded with state general revenue, and EH Fund are required to adhere to the bonding requirements of this section. This rule amendment will add HHSP and EH Fund to the list of applicable programs, as well as make several revisions to statutory citations.

Tex. Gov't Code §2001.0045(b) does not apply to the rule amendment under exception item (9) because it is necessary to implement state legislation, specifically making sure that state funds are appropriately identified as being subject to the Uniform Grant Management Standards. However, even though excepted, there is no cost to this rule action because HHSP subrecipients have already had bonding requirements in place contractually. The correction is only administrative in nature. Because no costs are associated with this proposed rule action, no costs or impacts warrant a need to be offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX GOV'T CODE §2001.0221.

Mr. Cervantes has determined that, for the first five years the proposed amendment will be in effect:

1. The amended rule does not create or eliminate a government program, but relates to the activity of the Department to ensure that Developments appropriately follow applicable regulations regarding bonding.
2. The amended rule does not require a change in work that will require the creation of new employee positions, nor is the amendment significant enough to reduce work load to a degree that any existing employee positions are eliminated.
3. The amended rule does not require additional future legislative appropriations.
4. The amended rule does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department
5. The amended rule is not creating a new regulation, it is merely administratively adding a program to which this section of rule will be applicable. Those program subrecipients are already subject to this requirement contractually.
6. The amended rule makes as noted in number 5 above.

7. The amended rule will increase the number of entities subject to the rule's applicability by adding the HHSP subrecipients; however, those subrecipients are contractually already obligated to such requirements. Therefore, while new in rule, it is not in fact a new requirement for those entities.

8. The amended rule will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.111(g).

1. The Department has evaluated this proposed action and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule relates to the Department ensuring that Developments already participating in Department programs adhere to appropriate bonding requirements and only adds the nine subrecipients that are eligible under the HHSP. As none of those subrecipients would classify as small or micro-businesses, no small or micro-businesses are subject to the rule.

3. The Department has determined that because HHSP subrecipients are not small or micro-businesses, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The amended rule does not contemplate nor authorize a taking by the Department; therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX GOV'T CODE §2001.024(a)(6).

The Department has evaluated the proposed rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the amended rule has no economic effect on local employment because the rule relates only to formalizing a requirement that was already in contract.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that this rule is already effectively in practice contractually, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). David Cervantes, Acting Director, has determined that, for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of the amended section will be assurance that programs subject to bonding requirements are reflected as such in rule. There will not be any economic cost to any individuals subject to the amended rule as the processes described by the rule have already been in existence.

f. FISCAL NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the amended section is in effect, enforcing or administering the amended section does not have any foreseeable implications related to costs or revenues of the state or local governments.

g. REQUEST FOR PUBLIC COMMENT. The public comment period will be held March 8, 2019 to April 8, 2019, to receive input on the proposed amended section. Written comments may be submitted to the

Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time April 8, 2019.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute.

§1.405, Bonding Requirements

(a) The requirements described in this subsection relate only to construction or facility improvements for DOE WAP, HOME, CDBG, NSP, HHSP, EH Fund, and ESG Subrecipients.

(1) For construction contracts exceeding \$100,000, the Subrecipient must request and receive Department approval of the bonding policy and requirements of the Subrecipient to ensure that the Department is adequately protected.

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

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

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

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

(b) A unit of government must comply with the bond requirements contained in ~~of~~ Texas Civil Statutes, Articles 2252, 2253, and 5160, and including Tex. Gov't Code ch. 2253 and Tex. Local Government Gov't Code, §252.044 and §262.032, as applicable.

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BOARD ACTION REQUEST

EXECUTIVE DIVISION

FEBRUARY 21, 2019

Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC §5.802, Local Operators for the Section 8 Housing Choice Voucher Program, and directing its publication for public comment in the Texas Register

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the Department) is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, 10 TAC Chapter 5, Section 8 Housing Choice Voucher Program, §5.802, Local Operators for the Section 8 Housing Choice Voucher Program, is no longer necessary as it governs a practice no longer in use, which is the use of Local Operators in the administration of the Section 8 Housing Choice Voucher Program (HCVP); and

WHEREAS, upon Board approval, the proposed repeal will be submitted to the Texas Register to be released for public comment which will be accepted from March 8, 2019, through April 8, 2019;

NOW, therefore, it is hereby

RESOLVED, that the proposed repeal of 10 TAC Chapter 5, Section 8 Housing Choice Voucher Program, §5.802, Local Operators for the Section 8 Housing Choice Voucher Program, is approved for publication in the Texas Register for public comment; and

FURTHER RESOLVED, that the Acting Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the proposed repeal of 10 TAC Chapter 5, Section 8 Housing Choice Voucher Program, §5.802, Local Operators for the Section 8 Housing Choice Voucher Program, in the form presented to this meeting, to be published in the Texas Register and in connection therewith, and make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles and any requested revisions to the preambles.

BACKGROUND

This section of the Department's rules is related to a process which is no longer in use. The HCVP had used local administrators, called Local Operators, to perform certain local functions in the administration of the program. More than five years ago the Department gradually stopped using these local administrators and now performs the work itself. The last contract with a Local Operator formally ended in November 2018. The Department has no intent to outsource the program activities in the future; however, if it were to do so, it would

promulgate new rules to do so using a model other than the Local Operator model. There is no longer a purpose for the rule as written.

Attachment 1: Preamble for proposing the repeal, including required analysis, of 10 TAC Chapter 5, Section 8 Housing Choice Voucher Program, §5.802, Local Operators for the Section 8 Housing Choice Voucher Program

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 5, Section 8 Housing Choice Voucher Program, §5.802, Local Operators for the Section 8 Housing Choice Voucher Program. The purpose of the repeal is to eliminate a rule that provided for a process no longer in use by the Department.

The Department has analyzed this rulemaking action and the analysis is described below for each category of analysis performed.

Tex. Gov't Code §2001.0045(b) does apply to the rule being adopted and no exceptions are applicable. However, the rule action is a repeal removing an unused process from rule. There are no costs associated with this proposed rule action, therefore no costs or impacts warrant a need to be offset.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. David Cervantes, Acting Director, has determined that, for the first five years the proposed repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal of a process used in the past in the administration of the Section 8 Housing Choice Voucher Program (HCVP). That process is no longer in use by the Department and therefore, there is no purpose for the rule to exist.

2. The proposed repeal does not require a change in work that will require the creation of new employee positions, nor will the repeal reduce work load to a degree that any existing employee positions are eliminated.

3. The proposed repeal does not require additional future legislative appropriations.

4. The proposed repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The proposed repeal is not creating a new regulation.

6. The action will repeal an existing regulation that is no longer needed.

7. The proposed repeal will not increase nor decrease the number of individuals subject to the rule's applicability, because as of November 2018 no entities were in contracts with the Department that would have been subject to this section.

8. The proposed repeal will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this proposed repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The proposed repeal does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the proposed repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Cervantes has determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be the elimination of an obsolete rule. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

g. REQUEST FOR PUBLIC COMMENT. The public comment period will be held March 8, 2019 to April 8, 2019, to receive input on the proposed repeal. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time April 8, 2019.

STATUTORY AUTHORITY. The repeal is adopted pursuant to TEX. GOV'T CODE, §2306.053, which authorizes the Department to adopt rules. Except as described herein the repealed sections affect no other code, article, or statute.

§5.802, Local Operators for the Section 8 Housing Choice Voucher Program

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BOARD ACTION REQUEST

EXECUTIVE DIVISION

FEBRUARY 21, 2019

Presentation, discussion, and possible action on an order proposing an amendment to 10 TAC §1.15, Integrated Housing Rule, and directing publication for public comment in the Texas Register

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the Department) is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, the provision of integrated housing through the Department's programs is authorized by Tex. Gov't Code §2306.111(g), which directs that the Department's funding priorities should provide that funds are awarded, when feasible, based on a project's ability to provide integrated affordable housing;

WHEREAS, this rule has a reference within it that warrants clarification; and

WHEREAS, upon Board approval, the proposed rule will be submitted to the Texas Register to be released for public comment, which will be accepted from March 8, 2019, through April 8, 2019;

NOW, therefore, it is hereby

RESOLVED, that the proposed amendment to 10 TAC §1.15, Integrated Housing Rule, is hereby approved; and

FURTHER RESOLVED, that the Acting Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the amendment to 10 TAC §1.15, Integrated Housing Rule, in the form presented to this meeting, to be published in the Texas Register and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles and any requested revisions to the preambles.

BACKGROUND

Tex. Gov't Code §2306.111(g) directs that the Department's funding priorities should provide that funds are awarded, when feasible, based on a project's ability to provide integrated affordable housing. This rule ensures that housing developments that are subject to the rule do not restrict occupancy solely to households with disabilities, with a maximum integration limit dependent on the size of the housing development. In September 2018 new changes to this rule were adopted. Inadvertently, one reference is in need of clarification. No other changes are being proposed.

Behind the preamble for the proposed amendment the rule is shown reflecting the proposed correction.

Attachment 1: Preamble, including required analysis, for proposed amendment to 10 TAC §1.15, Integrated Housing Rule

The Texas Department of Housing and Community Affairs (the Department) proposes an amendment to 10 TAC §1.15, Integrated Housing Rule. The purpose of the revision is to correct an incorrect citation to a regulation.

Tex. Gov't Code §2001.0045(b) does apply to the rule being adopted and no exceptions are applicable. However, the rule already exists and the correction is only administrative in nature. There are no costs associated with this proposed rule action, therefore no costs or impacts warrant a need to be offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX GOV'T CODE §2001.0221.

Mr. Cervantes has determined that, for the first five years the proposed amendment will be in effect:

1. The amended rule does not create or eliminate a government program, but relates to the activity of the Department to ensure that Developments voluntarily participating in programs funded by the Department offer an integrated housing opportunity for Households with Disabilities.
2. The amended rule does not require a change in work that will require the creation of new employee positions, nor is the amendment significant enough to reduce work load to a degree that any existing employee positions are eliminated.
3. The amended rule does not require additional future legislative appropriations.
4. The amended rule does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department
5. The amended rule is not creating a new regulation.
6. The amended rule makes changes only to clarify a reference.
7. The amended rule will not increase nor decrease the number of individuals subject to the rule's applicability.
8. The amended rule will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.111(g).

1. The Department has evaluated this proposed action and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.
2. This rule relates to the Department ensuring that Developments voluntarily participating in programs funded by the Department offer an integrated housing opportunity for Households with Disabilities. Other than in the case of a small or micro-business that is voluntarily participating in one of the Department's multifamily programs, no small or micro-businesses are subject to the rule. However, if a small or micro-business is pursuing a multifamily activity with the Department, this rule action merely clarifies a citation.

3. The Department has determined that because the proposed amendment merely clarifies a citation, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The amended rule does not contemplate nor authorize a taking by the Department; therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX GOV'T CODE §2001.024(a)(6).

The Department has evaluated the proposed rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the amended rule has no economic effect on local employment because the rule relates only to a correction to an incorrect citation.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that this rule merely provides a minor technical change, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). David Cervantes, Acting Director, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the amended section will be a rule with correct references. There will not be any economic cost to any individuals subject to the amended rule as the processes described by the rule have already been in existence.

f. FISCAL NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the amended section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments.

g. REQUEST FOR PUBLIC COMMENT. The public comment period will be held March 8, 2019 to April 8, 2019, to receive input on the proposed amended section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-0220, or email brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. Austin local time April 8, 2019.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute.

§1.15. Integrated Housing Rule

(a) Purpose. It is the purpose of this section to provide a standard by which Developments funded by the Department offer an integrated housing opportunity for Households with Disabilities. This rule is authorized by Tex. Gov't Code, §2306.111(g) that promotes projects that provide integrated affordable housing.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Capitalized words used herein have the meaning assigned in the specific Chapters and Rules of this Part that govern the program associated with the funded or awarded Development, or assigned by federal or state law.

(2) Integrated Housing--Living arrangements typical of the general population. Integration is achieved when Households with Disabilities have the option to choose housing units that are located among units that are not reserved or set aside for Households with Disabilities. Integrated Housing is distinctly different from assisted living facilities/arrangements.

(3) Households with Disabilities--A Household composed of one or more persons, at least one of whom is an individual who is determined to have a physical or mental impairment that substantially limits one or more major life activities; or having a record of such an impairment; or being regarded as having such an impairment. Included in this meaning is the term handicap as defined in the Fair Housing Act or disability as defined by other applicable federal or state law.

(c) Applicability. This rule applies to:

(1) All Multifamily Developments subject to ~~Chapter 10 of this Title, Uniform Multifamily Rules, Chapter 11 of this Title (relating to Qualified Allocation Plan (QAP)), Chapter 12 of this Title (relating to Multifamily Housing Revenue Bond Rules), and Chapter 13 of this Title (relating to Multifamily Direct Loan Rule),~~ with the exclusion of Transitional Housing Developments;

(2) Single Family Developments subject to Chapter 23, Subchapter G, of this Title, relating to HOME Program Single Family Developments, or done with Neighborhood Stabilization Program funds, with the exclusion of Scattered-site developments, meaning one to four family dwellings located on sites that are on non-adjacent lots, with no more than four units on any one site; and

(3) Only the restrictions or set asides placed on Units through a Contract, LURA, or financing source that limits occupancy to Persons with Disabilities. This rule does not prohibit a Development from having a higher percentage of actual occupants who are Persons with Disabilities.

(4) Previously awarded Multifamily Developments that would no longer be compliant with this rule are not considered to be in violation of the percentages described in subsection (d)(2) or subsection (d)(3) of this Title if the award is made prior to September 1, 2018, and the restrictions or set asides were already on the Development or proposed in the Application for the Development.

(d) Integrated Housing Standard. Units exclusively set aside or containing a preference for Households with Disabilities must be dispersed throughout a Development.

(1) A Development may not market or restrict occupancy solely to Households with Disabilities unless required by a federal funding source.

(2) Developments with 50 or more Units shall not exclusively set aside more than 25 percent of the total Units in the Development for Households with Disabilities.

(3) Developments with fewer than 50 Units shall not exclusively set aside more than 36 percent of the Units in the Development for Households with Disabilities.

(e) Board Waiver. The Board may waive the requirements of this rule if the Board can affirm that the waiver of the rule is necessary to serve a population or subpopulation that would not be adequately served without the waiver, and that the Development, even with the waiver, does not substantially deviate from the principle of Integrated Housing.

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BOARD ACTION REQUEST
HOUSING RESOURCE CENTER
FEBRUARY 21, 2019

Presentation, discussion, and possible action on the adoption of the 2019 State of Texas Low Income Housing Plan and Annual Report, and an order adopting the repeal and new 10 TAC §1.23 concerning State of Texas Low Income Housing Plan and Annual Report, and directing their publication in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, Tex. Gov't Code §2306.0721 requires that the Department produce a state low income housing plan, and Tex. Gov't Code §2306.0722 requires that the Department produce an annual low income housing report;

WHEREAS, Tex. Gov't Code §2306.0723 requires that the Department consider the annual low income housing report to be a rule;

WHEREAS, at the board meeting of December 6, 2018, the Board approved the proposed repeal and proposed new 10 TAC Chapter 1, Subchapter A, General Policies and Procedures §1.23 concerning State of Texas Low Income Housing Plan and Annual Report, and directed their publication for public comment in the *Texas Register*; and

WHEREAS, no public comment was received;

NOW, therefore, it is hereby

RESOLVED, that the repeal and new 10 TAC Chapter 1, Subchapter A, General Policies and Procedures §1.23 concerning State of Texas Low Income Housing Plan and Annual Report are hereby adopted in the form presented at this meeting; and

FURTHER RESOLVED, that the 2019 State of Texas Low Income Housing Plan and Annual Report, in the form presented to this meeting, together with such grammatical and non-substantive technical corrections as the Acting Director or his designees may deem necessary or advisable, is approved and adopted.

BACKGROUND

The Texas Department of Housing and Community Affairs (TDHCA or the Department) is required by Tex. Gov't Code to prepare and submit to the Board not later than March 18 of each year an annual report of the Department's housing activities for the preceding year. This State of Texas Low Income Housing Plan and Annual Report (SLIHP) must be submitted annually to the Governor, Lieutenant Governor, Speaker of the House, and legislative oversight committee members not later than 30 days after the Board receives and approves the final SLIHP. The document offers a comprehensive reference on statewide housing needs, housing resources, and strategies for funding allocations. It reviews TDHCA's housing programs, current and future policies, resource allocation plans to meet state housing needs, and reports on performance during the preceding state fiscal year (September 1, 2017, through August 31, 2018).

Tex. Gov't Code §2306.0723 requires that the Department consider the SLIHP to be a rule and in developing the SLIHP, the Department is required to follow rulemaking procedures required by Texas Government Code, Chapter 2001.

At the Board meeting of December 6, 2018, the Board approved the release of a draft 2019 SLIHP for public comment. The public comment period for the SLIHP was held from Monday, December 10, 2018, through Wednesday, January 9, 2019. A public hearing was held on Tuesday, December 18, 2018, in Austin. The Department received no public comment on the draft 2019 SLIHP.

The full text of the 2019 SLIHP may be viewed at the Department's website:<https://www.tdhca.state.tx.us/board/meetings.htm>. The public may also receive a copy of the 2019 SLIHP by contacting the Department's Housing Resource Center at (512) 475-3976.

Also at the Board meeting of December 6, 2018, the Board approved the proposed repeal and proposed new 10 TAC §1.23, concerning State of Texas Low Income Housing Plan and Annual Report, and directed their publication in the *Texas Register* for public comment. The public comment period for the proposed new 10 TAC §1.23 was open from Friday, December 21, 2018, through Wednesday, January 9, 2019, and no public comment was received.

A summary of the major changes in the 2019 SLIHP as compared to the 2018 SLIHP are provided below.

Summary of Major Changes from the 2018 SLIHP

- General updates:
 - Added information on the new Ending Homelessness Fund and My Choice Texas Home Program.
- Introduction chapter:
 - Updates made to the administrative structure and program descriptions to align with recent Department reorganizations.
- Housing Analysis chapter:
 - Updated with most recent socio-economic data available.
 - Detail added to the sections on Data Sources and Limitations, Race and Ethnicity demographics, and Special Needs Populations.
- Annual Report chapter:
 - Updated to reflect FY 2018 program performance by households/individuals, income group, and racial/ethnic category.
- Action Plan chapter:
 - Updates for program descriptions including the addition of My Choice Texas Home and Texas Homebuyer U.
 - Updates to Fair Housing Activities and Policy Initiatives descriptions.
 - The Housing Continuum has been updated to include new programs and more detail on Disaster Recovery activities.
- Public Participation chapter:
 - Added the Joint Housing Solutions Working Group to the Community Involvement section and updated descriptions for other workgroup activities.
- Colonia Action Plan chapter:
 - Updated for the 2018-2019 biennium, including updates to 2018 performance data.

Attachment A – Adopted repeal 10 TAC §1.23.

Attachment B – Adopted new 10 TAC §1.23.

Attachment C – 2019 SLIHP, as presented to the Board on February 21, 2019.

Attachment A: Preamble, including required analysis, for adopting the repeal of 10 TAC §1.23 State of Texas Low Income Housing Plan and Annual Report (SLIHP)

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.23, State of Texas Low Income Housing Plan and Annual Report (SLIHP). The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action, in order to adopt by reference the 2019 SLIHP.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. David Cervantes, Acting Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption by reference the 2019 SLIHP, as required by Tex. Gov't Code 2306.0723.
2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.
3. The repeal does not require additional future legislative appropriations.
4. The repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.
5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The action will repeal an existing regulation, but is associated with a simultaneous readoption in order to adopt by reference the 2019 SLIHP.
7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.
8. The repeal will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect

on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Cervantes, Acting Director, has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an updated rule under separate action, in order to adopt by reference the 2019 SLIHP. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The public comment period for the proposed repeal and proposed new rule was held between December 21, 2018, and January 9, 2019. The public comment period for the draft 2019 SLIHP was held between December 10, 2018 and January 9, 2019. A public hearing for the draft 2019 SLIHP was held on December 18, 2018, in Austin, TX. Written comments were accepted by mail, email, and facsimile. The Department received no public comment on the draft 2019 SLIHP or on the proposed repeal and proposed new rule.

The TDHCA Governing Board approved the 2019 SLIHP and the final order adopting the repeal on February 21, 2019.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the repealed section affects no other code, article, or statute.

10 TAC §1.23 State of Texas Low Income Housing Plan and Annual Report (SLIHP)

Attachment B: Preamble for adopting new 10 TAC §1.23 State of Texas Low Income Housing Plan and Annual Report (SLIHP)

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.23 State of Texas Low Income Housing Plan and Annual Report (SLIHP) without changes to the proposed text as published in the December 21, 2018 issue of the *Texas Register* (43 TexReg 8195). The purpose of the new section is to provide compliance with Tex. Gov't Code §2306.0723 and to adopt by reference the 2019 SLIHP, which offers a comprehensive reference on statewide housing needs, housing resources, and strategies for funding allocations. The 2019 SLIHP reviews TDHCA's housing programs, current and future policies, resource allocation plans to meet state housing needs, and reports on performance during the preceding state fiscal year (September 1, 2017, through August 31, 2018).

Tex. Gov't Code §2001.0045(b) does not apply to the adopted rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. David Cervantes, Acting Director, has determined that, for the first five years the new rule would be in effect:

1. The new rule does not create or eliminate a government program, but relates to the adoption, by reference, of the 2019 SLIHP, as required by Tex. Gov't Code 2306.0723.
2. The new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The new rule changes do not require additional future legislative appropriations.
4. The new rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The new rule will not expand, limit, or repeal an existing regulation.
7. The new rule will not increase nor decrease the number of individuals subject to the rule's applicability.
8. The new rule will not negatively nor positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural

communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.0723.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are no small or micro-businesses subject to the new rule for which the economic impact of the rule is projected to be null. There are no rural communities subject to the rule for which the economic impact of the rule is projected to be null.

3. The Department has determined that because the new rule will adopt by reference the 2019 SLIHP, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because the new rule will adopt by reference the 2019 SLIHP; therefore, no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rule will adopt by reference the 2019 SLIHP there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Cervantes, Acting Director, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane rule that will adopt by reference the 2019 SLIHP, as required by Tex. Gov't Code §2306.0723. There will not be any economic cost to any individuals required to comply with the new section because the adoption by reference of prior year SLIHP documents has already been in place through the rule found at this section being repealed.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments because the new rule will adopt by reference the 2019 SLIHP.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The public comment period for the proposed new rule was held between December 21, 2018, and January 9, 2019. The public comment period for the draft 2019 SLIHP was held between December 10, 2018 and January 9, 2019. A public hearing for the draft 2019 SLIHP was held on December 18, 2018, in Austin, TX. Written comments were

accepted by mail, email, and facsimile. The Department received no public comment on the draft 2019 SLIHP or on the proposed repeal and proposed new rule.

The TDHCA Governing Board approved the 2019 SLIHP and the final order adopting the new rule on February 21, 2019.

STATUTORY AUTHORITY. The new section is proposed pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new section affects no other code, article, or statute.

§1.23 State of Texas Low Income Housing Plan and Annual Report (SLIHP)

The Texas Department of Housing and Community Affairs (TDHCA or the Department) adopts by reference the 2019 State of Texas Low Income Housing Plan and Annual Report (SLIHP). The full text of the 2019 SLIHP may be viewed at the Department's website: www.tdhca.state.tx.us. The public may also receive a copy of the 2019 SLIHP by contacting the Department's Housing Resource Center at (512) 475-3800.

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BOARD ACTION REQUEST

HOME AND HOMELESSNESS PROGRAMS DIVISION

FEBRUARY 21, 2019

Presentation, discussion, and possible action regarding adoption of amendments to 10 TAC §23.24, concerning Administrative Deficiency Process, and §23.51 concerning Contract for Deed General Requirements, and directing their publication in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the Department) is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, the Department identified certain areas in Subchapter B and Subchapter E that required further clarification and revision, and necessitated the proposal of amendments that allow for ease in program administration;

WHEREAS, at the Board meeting of November 8, 2018, the Board approved the publication of the proposed amended 10 TAC Chapter 23, Subchapter B, Availability of Funds, Application Requirements, Review and Award Procedures, General Administrative Requirements, and Resale and Recapture of Funds, §23.24 concerning Administrative Deficiency Process, and Subchapter E, Contract for Deed Program, §23.51 concerning Contract for Deed General Requirements and the proposed rule was published for public comment in the *Texas Register* on November 23, 2018; and

WHEREAS, public comment was accepted from November 23, 2018, through December 26, 2018, and no public comment was received;

NOW, therefore, it is hereby

RESOLVED, that the Acting Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the adoption of the amendments to 10 TAC Chapter 23, Subchapter B, §23.24 Administrative Deficiency Process and Subchapter E, §23.51 Contract for Deed (CFD) General Requirements to be approved; and in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections, or preamble-related corrections, as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles.

BACKGROUND

The purpose of amending the State HOME Investment Partnerships Program (HOME) Rule at 10 TAC §23.24 Administrative Deficiency Process is to reduce the likelihood that obtaining a corrected local resolution of authority to apply for the funds would inadvertently cause an application to be terminated. Currently, the HOME Rules state that administrative deficiencies of a HOME application that are not resolved to the Department's satisfaction by the deficiency cure period support termination of the application. The Department may identify deficiencies in an applicant's resolution; however, the applicant may need to have such corrections to the deficient Resolutions approved by their Board or governing body, such as a council. The scheduling of the applicant's next Board or Council meeting may not occur during the Department's deficiency cure period, creating the possibility that the deficiency would not be able to be timely cured. The proposed amendment to 10 TAC §23.24 allows a corrected Resolution in response to a deficiency to be submitted, without penalty, to the Department outside of the deficiency response period, thereby avoiding the termination of an application because of a relatively minor and non-substantive error that applicants may not resolve before the application deficiency deadline.

The purpose of amending the HOME Rule under 10 TAC §23.51 Contract for Deed (CFD) General Requirements is to allow the funds dedicated to CFD activities to be expended statewide (subject to the statutory limitations on the use of HOME funds in Participating Jurisdictions) and to increase applicant eligibility from 60% of AMFI to 80% AMFI. Currently, the CFD Program is restricted to activities located in areas that meet the definition of a colonia as defined in Texas Government Code, Ch. 2306, and to households at 60% AFMI. One of the Department's subrecipients, Community Development Corporation of Brownsville (CDCB), has stated that the older established colonias as defined by Chapter 2306 are mostly paid off, and newer very large subdivisions that share characteristics of a colonia but do not meet the Chapter 2306 definition would benefit from CFD funding but are unable to be funded because they are not located in a state designated colonia. CDCB states they are able to layer funds with other rehabilitation program funding in the newer colonias, but they are unable to transfer the lots using HOME funds under the current CFD rule. The proposed amendment to 10 TAC §23.51 continues to limit CFD funding to areas that meet the definition of a colonia but only for a period of time; after that time, the rule would allow CFD funding in non-colonia areas. The rule also increases the pool of eligible households by increasing the AMFI requirement.

The proposed rule was published in the November 23, 2018, issue of the *Texas Register* (43 TxReg 7634) for public comment, and no comment was received. Staff recommends adoption of the proposed rule, without changes, as published in the *Texas Register*.

If adopted by the Board, the rule will be published in the *Texas Register* for adoption.

Attachment 1: Preamble, including required analysis, for adopting amendment of 10 TAC, §23.24, Administrative Deficiency Process

The Texas Department of Housing and Community Affairs (the Department) adopts amendments to 10 TAC Chapter 23, Single Family HOME Program, Subchapter B, §23.24, Administrative Deficiency Process to the proposed text as published in the November 23, 2018, issue of the *Texas Register* (43 TexReg 7634) without changes. The purpose of the adopted amended section is to update the rule to allow the submission of a corrected Resolution after the application review deficiency deadline for all HOME applications to prevent termination of the application. The current HOME Rules state that administrative deficiencies of a HOME application that are not resolved to the Department's satisfaction by the deficiency cure period substantiate termination of the application. The proposed amendments to §23.24 allow a corrected Resolution in response to a deficiency to be submitted to the Department without penalty and avoid the termination of an application because of a minor clerical error that applicants may not resolve before the application deficiency deadline.

Tex. Gov't Code §2001.0045(b) does not apply to the rule adopted for action because it has been determined that no costs are associated with this amendment, and therefore no costs warrant being offset.

The Department has analyzed this adopted rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Cervantes has determined that for the first five years the adopted amendments will be in effect, the adopted rulemaking does not create or eliminate a government program, but relates to the amending of this rule which makes changes to one narrow aspect of an existing activity, the acceptance of resolutions as it relates to the administration of the HOME Program
2. The adopted amended rule does not require a change in work that would require the creation of new employee positions, nor are the amendment changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The adopted amended rule does not require additional future legislative appropriations.
4. The adopted amended rule does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.
5. The adopted amended rule is not creating a new regulation.
6. The adopted amended rule will not expand, limit, or repeal an existing regulation, but merely clarifies an acceptable timeframe for receiving a corrected resolution from a subrecipient.
7. The adopted amended rule will not increase or decrease the number of individuals subject to the rule's applicability.
8. The adopted amended rule will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this adopted amended rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The adopted rule amendment does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the amended rule as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect the adopted amendment has no economic effect on local employment because this rule only applies to the administrative process of application review; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). David Cervantes, Acting Director, has determined that, for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of the amended section will be an updated and more flexible rule. There will not be any economic cost to any individuals required to comply with the amended section because the processes described by the rule have already been in place.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the amendment is in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local governments because this rule only applies to a deficiency process already in place for applicants pursuing HOME funding.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between November 23, 2018, and December 26, 2018. Comments regarding the proposed amendment were accepted in writing and by e-mail. No comments were received.

The Board adopted the final order adopting the amendments on February 21, 2019.

STATUTORY AUTHORITY. The amendments are adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the amended sections affect no other code, article, or statute.

§23.24. Administrative Deficiency Process.

(a) The administrative deficiency process allows staff to request that an Applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency notice. Staff will send the deficiency notice via an email or if an email address is not provided in the Application, by facsimile to the Applicant. Responses are required to be submitted electronically to the Department. A review of the Applicant's response may reveal that issues initially identified as an administrative deficiency are actually determined to be beyond the scope of an administrative deficiency process, meaning that they are in fact matters of a material nature not susceptible to being resolved. Department staff may in good faith provide an Applicant confirmation that an administrative deficiency response has been received or that such response is satisfactory. Communication from staff that the response was satisfactory does not establish any entitlement to points, eligibility status, or to any presumption of having fulfilled any requirements. Final determination regarding the sufficiency of documentation submitted to cure an administrative deficiency as well as the distinction between material and non-material missing information are reserved for the Director of the HOME Program, Executive Director, and Board, as applicable.

(b) An Applicant may not change or supplement any part of an Application in any manner after submission to the Department, and may not add any set-asides, except in response to a direct request from the Department to remedy an administrative deficiency or by amendment of an Application after the Board approval of a HOME award. An administrative deficiency may not be cured if it would, in the Department's determination, substantially change an Application, or if the Applicant provides any new unrequested information to cure the deficiency.

(c) Administrative deficiencies for HOME Applications under an open application cycle NOFA, including an Application for an RSP Agreement. The time period for responding to a deficiency notice commences

on the first business day following the deficiency notice date. If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 p.m., Austin local time, on the fifth business day following the date of the deficiency notice, the application shall be terminated. The Department may accept a corrected Board Resolution submitted after the deficiency deadline on the condition that the corrected Board Resolution resolves the deficiencies to the satisfaction of the Department, but the Board Resolution must be received and deemed satisfactory by the Department before the RSP Agreement or Contract start date. Applicants that have been terminated may reapply, and the application fee shall be waived for an Application submitted within 30 days of the termination of an Application.

(d) Administrative deficiencies for HOME Applications under a Competitive Application Cycle NOFA. The time period for responding to a deficiency notice commences on the first business day following the deficiency notice date. If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then one ~~(1)~~ point shall be deducted from the selection criteria score for each additional business day the deficiency remains unresolved. If administrative deficiencies are not resolved by 5:00 p.m., Austin local time, on the seventh business day following the date of the deficiency notice, then the Application shall be terminated. The Department may accept a corrected Board Resolution submitted after the deficiency deadline on the condition that the corrected Board Resolution resolves the deficiencies to the satisfaction of the Department, but the Board Resolution must be received and deemed satisfactory by the Department before the Contract start date.

Attachment 2: Preamble and amendment of Subchapter E, §23.51, Contract For Deed (CFD) General Requirements

The Texas Department of Housing and Community Affairs (the Department) adopts amended 10 TAC Chapter 23, Single Family HOME Program, Subchapter E, §23.51, Contract for Deed (CFD) General Requirements to the proposed text as published in the November 23, 2018, issue of the *Texas Register* (43 TexReg 7635) without changes. The purpose of amending this rule is to expand the funding of CFD activities statewide, and to increase the AMFI for eligible households from 60 percent to 80 percent. Currently, the CFD Program is restricted to areas that meet the definition of a colonia as defined in Tex. Gov't Code, Chapter 2306. Newer, very large subdivisions that share characteristics of a colonia, but do not meet the Chapter 2306 definition would benefit from CFD funding but are unable to be funded under the current rule. Proposed amendments to §23.51 would continue to limit CFD funding to areas that meet the definition of a colonia, but only for a period of time; the CFD funds would then be made available in non-colonia areas. Because funds are currently not fully utilized it is hoped that by expanding the AMFI, more households in a contract for deed will be eligible to participate.

Tex. Gov't Code §2001.0045(b) does not apply to the rule adopted for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Cervantes has determined that, for the first five years the amended rule will be in effect:

1. The adopted amended rule does not create or eliminate a government program, but relates to amending this rule which makes narrow changes to adjust the eligibility within an existing activity, the Contract for Deed activity within the HOME Program.
2. The adopted amended rule does not require a change in work that would require the creation of new employee positions, nor are the amendment changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The adopted amended rule changes do not require additional future legislative appropriations.
4. The adopted amended rule does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.
5. The adopted amended rule is not creating a new regulation.
6. The adopted amended rule will not expand, limit, or repeal an existing regulation.
7. The adopted amended rule will not increase or decrease the number of individuals subject to the rule's applicability.
8. The adopted amended rule will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department has evaluated this adopted amended rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The amended rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the adopted amended rule as to its possible effects on local economies and has determined that for the first five years the amended rule will be in effect the adopted amended rule may provide a possible positive economic effect on local employment. This amendment provides the possibility that program applicants not currently accessing these funds may do so, which could infuse funds into the local financial market. However because location of where program funds or development are directed is not determined in rule, that impact is not able to be quantified for any given community.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). David Cervantes, Acting Director, has determined that, for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of the amended section will be to allow CFD funds to be used in Contract for Deed situations that occur outside of a colonia and to assist households up to 80 percent AMFI. There will not be any economic cost to any individuals required to comply with the amended section because the processes described by the rule have already been in place.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the amendment is in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local governments because this rule only applies to expanded opportunities for eligibility to apply for funding.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between November 23, 2018, to December 26, 2018. Comments regarding the proposed amended section were accepted in writing and by e-mail. No comments were received.

The Board adopted the final order adopting the amended rule on February 21, 2019.

STATUTORY AUTHORITY. The amended sections are proposed pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed amended sections affect no other code, article, or statute.

§23.51. Contract for Deed (CFD) General Requirements.

(a) Program funds may be used for the following under this subchapter:

(1) Acquisition ~~acquisition~~ or acquisition and Rehabilitation, Reconstruction, or New Construction of single family housing units occupied by the purchaser as shown on an executory contract for conveyance; or

(2) Refinance ~~refinance~~ with Rehabilitation, Reconstruction, or New Construction of single family housing units occupied by the purchaser as shown on an executory contract for conveyance provided construction costs exceed the amount of debt that is to be refinanced;

(b) An MHU is not an eligible property type for Rehabilitation. MHUs must be installed according to the manufacturer's installation instructions and in accordance with Federal and State laws and regulations.

(c) The Household's income must not exceed 80 ~~60~~ percent ("AMFI") ~~(AMFI)~~ and the Household must complete a homebuyer counseling program/class.

(d) The Department shall limit the availability of funds for CFD for a minimum of 60 calendar days for Activities proposing to serve Households whose income does not exceed 60 percent AMFI, and for properties located in a Colonia as defined in Tex. Gov't Code §2306.083. ~~The property assisted must be-~~

located in a Colonia as defined in Texas Government Code, Chapter 2306. The Colonia must have a Colonia Classification Number, as assigned by the Office of the Texas Secretary of the State.

(e) The Department will require a first lien position.

(f) Direct Activity Costs, exclusive of Match funds, are limited to:

(1) Refinance ~~refinance~~, acquisition and closing costs: \$35,000. In the case of a contract for deed housing unit that involves the refinance or acquisition of a loan on an existing MHU and/or the loan for the associated land, the Executive Director may grant an exception to exceed this amount, however, the Executive Director will not grant an exception to exceed \$40,000 of assistance;

(2) Reconstruction and New Construction of site-built housing: the lesser of \$90 per square foot of conditioned space or \$100,000, or for Households of five or more Persons the lesser of \$90 per square foot of conditioned space or \$110,000 for a four-bedroom unit;

(3) Replacement ~~replacement~~ with an energy efficient MHU: \$75,000; and

(4) Rehabilitation that is not Reconstruction: \$60,000, or up to \$100,000 for properties listed in or identified as eligible for listing in the National Register of Historic Places.

(g) In addition to the Direct Activity Costs allowable under subsection (d) of this section, a sum not to exceed \$10,000 may be used to pay for any of the following:

(1) Necessary ~~necessary~~ environmental mitigation as identified during the Environmental review process;

(2) Installation ~~installation~~ of an aerobic septic system; or

(3) Homeowner ~~homeowner~~ requests for accessibility features.

(h) Activity soft costs eligible for reimbursement for Activities of the following types are limited to:

(1) Acquisition ~~acquisition~~ and closing costs: no more than \$1,500 per housing unit;

(2) Reconstruction or New Construction: no more than \$10,000 per housing unit;

(3) Replacement ~~replacement~~ with an MHU: no more than \$3,500 per housing unit;

(4) Rehabilitation that is not Reconstruction: \$7,000 per housing unit. This limit may be exceeded for lead-based remediation and only upon prior approval of the Division Director. The costs of testing and assessments for lead-based paint are not eligible Activity soft costs for housing units that are reconstructed or if the existing housing unit was built after December 31, 1977.

(i) Funds for administrative costs are limited to no more than four 4 percent of the Direct Activity Costs, exclusive of Match funds.

(j) The assistance to an eligible Household shall be in the form of a loan in the amount of the Direct Activity Costs excluding Match funds. The loan will be at zero percent interest and include deferral of payment and annual pro rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254. For refinancing activities, the minimum loan term and affordability period is 15 ~~fifteen (15)~~ years, regardless of the amount of HOME assistance.

(k) To ensure affordability, the Department will impose resale and recapture provisions established in this Chapter.

(l) For Reconstruction and New Construction, site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes, standards, ordinances, and zoning requirements. In addition, Reconstruction and New Construction housing is required to meet 24 CFR §92.251(a)(2) as applicable. Housing that is Rehabilitated under this ~~chapter~~ Chapter must meet the Texas Minimum Construction Standards (TMCS) and all other applicable local codes, Rehabilitation standards, ordinances, and zoning ordinances in accordance with the HOME Final Rule. Housing units that are provided assistance for acquisition only must meet all applicable state and local housing quality standards and code requirements. In the absence of such standards and requirements, the housing units must meet the Housing Quality Standards (HQS) in 24 CFR §982.401.

(m) Each unit must meet the design and quality requirements described in paragraphs (1) - (4) of this subsection:

(1) Include ~~include~~ the following amenities: Wired with RG-6 COAX or better and CAT3 phone cable or better to each bedroom and living room; Blinds or window coverings for all windows; Oven/Range; Exhaust/vent fans (vented to the outside) in bathrooms; Energy-Star or equivalently rated lighting in all rooms, which may include compact florescent bulbs. The living room and each bedroom must contain at least one ceiling lighting fixture and wiring must be capable of supporting ceiling fans;

(2) Contain ~~contain~~ no less than two bedrooms. Each unit must contain complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation;

(3) Each ~~each~~ bedroom must be no less than 100 square feet; have a length or width no less than eight ~~8~~ feet; be self contained with a door; have at least one window that provides exterior access; and have at least one closet that is not less than two ~~2~~ feet deep and three ~~3~~ feet wide and high enough to contain at least five ~~5~~ feet of hanging space; and

(4) Be ~~be~~ no less than 800 total net square feet for a two bedroom home; no less than 1,000 total net square feet for a three bedroom and two bathroom home; and no less than 1,200 total net square feet for a four bedroom and two bathroom home.

(n) Housing proposed to be constructed under this subchapter must meet the requirements of Chapters 20 and 21 of this title (relating to Single Family Programs Umbrella Rule and Minimum Energy Efficiency Requirements for Single Family Construction Activities, respectively) and must be certified by a licensed architect or engineer.

(1) The Department will reimburse only for the first time a set of architectural plans are used, unless any subsequent site specific fees are paid to a Third Party architect, or a licensed engineer; and

(2) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

1v

BOARD ACTION REQUEST

HOME AND HOMELESSNESS PROGRAMS DIVISION

FEBRUARY 21, 2019

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 7, Subchapter C, Emergency Solutions Grants; and an order adopting new 10 TAC Chapter 7, Subchapter C, Emergency Solutions Grants, and directing publication for adoption in the *Texas Register*

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the Department) is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, staff proposed a repeal and a proposed new rule to incorporate federal guidance previously communicated through Notices of Funding Availability and contracts and to incorporate into the ESG rule changes adopted to 10 TAC Chapter 7, Subchapter A, General Policies and Procedures for Homelessness Programs;

WHEREAS, at the Board meeting of November 8, 2018, the Board approved the publication of the proposed repeal and proposed new 10 TAC Chapter 7, Subchapter C, Emergency Solutions Grants, and the proposed rule was published for public comment in the *Texas Register* on November 23, 2018; and

WHEREAS, public comment was accepted from November 23, 2018, through January 2, 2019, and no public comment was received;

NOW, therefore, it is hereby

RESOLVED, that the Acting Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department to cause the repeal of the existing rule and adoption of the new 10 TAC Chapter 7, Subchapter C, Emergency Solutions Grants, in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make such non-substantive technical corrections, or preamble-related corrections, as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles.

BACKGROUND

The new 10 TAC Chapter 7, Subchapter C, Emergency Solutions Grants rule was proposed to clarify requirements for the Emergency Solutions Grant (ESG) Program. The Board previously approved on June 28, 2018, adoption of a new 10 TAC Chapter 7, Subchapter A, General Provisions which governs the Homeless Housing and Services Program, the Ending Homelessness Fund, and ESG. These programs, collectively, compose the Department's homelessness programs. Adoption of the new 10 TAC Subchapter A necessitates substantial changes to 10 TAC Subchapter C, Emergency Solutions Grant. Additionally, inclusion of several requirements and administrative provisions within the ESG rule which were previously included in Notices of Funding Availability and the ESG contract itself will assist the Department and subrecipients of ESG with consistent, transparent application for and administration of the grant.

In preparing the new rule, staff conducted extensive outreach, including four roundtable discussions in Austin, Dallas, and Houston, as well as at the Texas Homeless Network Conference in September 2018. Staff also hosted an online forum to solicit opinions on a staff draft of the rule from stakeholder from September 21, 2018, to October 1, 2018.

The proposed rule was published in the November 23, 2018, issue of the *Texas Register* (43 TxReg 7620) for public comment, and no comment was received. Staff recommends adoption of the proposed rule as published in the *Texas Register*.

If adopted by the Board, the rule will be published in the Texas Register for adoption.

Attachment 1: Preamble, including required analysis, for adopting the repeal of 10 TAC §§7.2001-7.2007, Emergency Solutions Grants

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC §§7.2001-7.2007, Emergency Solutions Grants. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Cervantes has determined that for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program but relates to the repeal, and simultaneous re-adoption making changes to an existing activity, the administration of the Emergency Solutions Grant (ESG) Program.
2. The repeal does not require a change in work that will require the creation of new employee positions, nor is the repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.
3. The repeal does not require additional future legislative appropriations.
4. The repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.
5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The action will repeal an existing regulation, but is associated with a simultaneous re-adoption making changes to an existing activity, the administration of the Emergency Solutions Grant (ESG) Program.
7. The repeal will not increase nor decrease the number of individuals subject to the rule's applicability.
8. The repeal will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). David Cervantes, Acting Director, has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be to eliminate an outdated rule while adopting a new updated rule under separate action. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between November 23, 2018, and January 2, 2019. Comments regarding the proposed repeal were accepted in writing and by e-mail. No comments were received.

The Board adopted the final order adopting the repeal on February 21, 2019.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the repealed sections affect no other code, article, or statute.

10 TAC Chapter 7, Subchapter C, Emergency Solutions Grants

- §7.2001 Background
- §7.2002 Purpose and Use of Funds
- §7.2003 Availability, Distribution, and Redistribution of ESG Funds
- §7.2004 Eligible Applicants
- §7.2005 Program Income
- §7.2006 Environmental Clearance
- §7.2007 VAWA Requirements

Attachment 2: Preamble for adopting new 10 TAC §§7.31-7.44, Emergency Solutions Grants

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 7, Subchapter C, §§7.31-7.44, Emergency Solutions Grants with changes to §7.33 and §7.36-7.42 in the proposed text as published in the November 23, 2018, issue of the *Texas Register* (43 TexReg 7620). The purpose of the new sections are to provide compliance with Tex. Gov't Code §2306.094 and to update the rule to clarify the eligible uses of the grant, codify the formula utilized to allocate funds, establish selection criteria for Applications for ESG funds, outline Contract terms and requirements, and provide guidance for requirements for administration of the ESG funds.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Cervantes has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program. This rule provides for clarification and guidelines for administration of the ESG grant, and codifies requirements previously provided in notices of funding availability. Inclusion in rule allows for greater transparency, as well as consistency in administration of the grant which benefits the subrecipients and beneficiaries of the ESG Program.
2. The new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The new rule changes do not require additional future legislative appropriations.
4. The proposed rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The rule will not limit or repeal an existing regulation, but can be considered to "expand" the existing regulations on this activity because the new rule now reflects requirements previously elaborated only in notices of funding availability and contracts. However, the added requirements were applicable through rules and contracts so are not new requirements in most cases. These changes are necessary to ensure compliance with federal requirements governing the ESG Program.
7. The new rule will not increase nor decrease the number of individuals subject to the rule's applicability; and
8. The new rule will not negatively nor positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.094.

1. The Department has evaluated this rule and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.
2. The Department has determined that because this rule is only applicable to nonprofits and local governments that are eligible subrecipients of ESG funds; there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment rule only applies to administration of an established grant; therefore, no local employment is affected.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the amount of funding is not decreased or increased, and this rule only provides clarification for administration of an existing grant program, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. David Cervantes, Acting Director, has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane rule. There will not be any economic cost to any individuals required to comply with the new section because the processes described by the rule have already been in place through notices of funding availability and contractual requirements.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments because this rule only provides clarification for administration of an existing grant program.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between November 23, 2018, and January 2, 2019. Comments regarding the proposed rule were accepted in writing and by e-mail, and no comments were received.

The Board adopted the final order adopting the new rule on February 21, 2019.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute.

10 TAC Chapter 7, Subchapter C, Emergency Solutions Grants

§7.31. Purpose.

(a) The purpose of this rule is to provide guidance and procedures for the Emergency Solutions Grant (ESG) Program as authorized by Tex. Gov't Code §2306.053. ESG funds are federal funds awarded to the State of Texas by HUD and administered by the Department.

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

(c) In addition to this subchapter, an ESG Subrecipient shall comply with the regulations applicable to the ESG Program as set forth in Chapters 1 and 2 of this title (relating to Administration and Enforcement, respectively), Subchapter A of Chapter 7 of this title (relating to General Policies and Procedures) and as set forth in 24 CFR Part 91 and 24 CFR Part 576 (the Federal Regulations). ESG Subrecipients must also follow all other applicable federal and state statutes and the regulations established in this chapter, as amended or supplemented.

(d) In the event that Congress, the Texas Legislature, or HUD add or change any statutory or regulatory requirements, special conditions, or waivers, concerning the use or administration of these funds, an ESG Subrecipient shall comply with such requirements at the time they become effective.

§7.32. Use of ESG Funds.

(a) The purpose of ESG is to assist people in regaining stability in permanent housing quickly after experiencing a housing crisis and/or Homelessness.

(b) ESG Applications for provision of Program Participant services under emergency shelter, street outreach, homeless prevention and/or rapid re-housing may include a request for funds for Homeless Management Information Systems (HMIS) activities. Applications proposing to provide only HMIS activities are not eligible for an award of funds.

(c) Subrecipients may not Subgrant funds, but may Subcontract for the provision of services. Such Subcontracts are subject to applicable procurement requirements.

(d) The Department's Governing Board of Directors, Executive Director, or his/her designee may limit activities in a Notice of Funding Availability, or by Contract.

(e) Program Participant services may be provided under street outreach, emergency shelter, homeless prevention or rapid re-housing, as described in this subsection or otherwise permitted in Federal Regulations.

(f) The street outreach component may be provided to unsheltered Homeless persons as defined in 24 CFR §576.101(a). Eligible costs for Program Participants of street outreach include the following services:

(1) Engagement costs to locate, identify, and build relationships with unsheltered Homeless persons, including assessment of needs, crisis counseling, addressing urgent physical needs, provision of information and referrals;

(2) Case management costs to assess housing and service needs and coordinate delivery of services;

(3) Emergency health services to the extent that other health services are inaccessible or unavailable in the area;

(4) Emergency mental health services to the extent that other mental health services are inaccessible or unavailable in the area; and

(5) Transportation for outreach workers and Program Participants.

(g) The emergency shelter component may be provided to Homeless persons per 24 CFR §576.102. Eligible emergency shelter costs are for Program Participant services and costs related to the shelter building, relocation, and operation.

(1) Eligible costs for Program Participants of emergency shelter services include:

(A) Case management to coordinate individualized services;

(B) Child care for children under the age of 13, and for disabled children under the age of 18;

(C) Education services providing instruction or training to enhance their ability to obtain and maintain housing, including but not limited to literacy, English literacy, General Educational Requirement (GED) preparation, consumer education, health education, and substance abuse prevention;

(D) Employment assistance and job training services;

(E) Outpatient health services to the extent that other health services are inaccessible or unavailable in the area;

(F) Legal services, to the extent that legal services are unavailable or inaccessible within the community, to assist with housing needs, excluding immigration and citizenship matters, matters related to mortgages, legal retainers and contingency fees;

(G) Life skills training including budgeting resources, managing money, managing a household, resolving conflict, shopping for food and need items, improving nutrition, using public transportation, and parenting;

(H) Outpatient mental health services to the extent that other mental health services are inaccessible or unavailable in the area;

(I) Outpatient substance abuse treatment services up to 30 days, excluding inpatient treatment; and

(J) Transportation for staff and Program Participants related to the provision of essential services.

(2) Eligible emergency shelter costs related to the shelter building, relocation, and operation include:

(A) Renovation, rehabilitation or conversion of buildings for use as emergency shelter;

(B) Certain costs for operation of emergency shelters, including provision of hotel or motel vouchers to Program Participants when no appropriate emergency shelter is available; and

(C) Assistance required under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(h) The homelessness prevention component may be provided to Homeless persons and persons At-risk of Homelessness per 24 CFR §576.103, and the rapid re-housing component may be provided to Homeless persons per 24 CFR §576.104. Homelessness prevention and rapid re-housing may be provided for up to 24 months of assistance in a 36-month period. Eligible costs for homelessness prevention and rapid re-housing include housing relocation and stabilization for financial assistance, housing relocation and stabilization services, and rental assistance.

(1) Housing relocation and stabilization for financial assistance include:

(A) Rental application fees;

(B) Security deposits (equal to not more than two month's rent) and last month's rent;

(C) Utility deposits and/or utility payments;

(D) Moving costs, such as truck rental or hiring a moving company. Payment of arrearages for temporary storage is not an eligible cost; and

(E) Costs to break a lease to effect an emergency transfer per 24 CFR §5.2005(e), if Program Participant is receiving rental assistance under ESG.

(2) Housing relocation and stabilization services include:

(A) Housing search and placement costs to assist in locating, obtaining, and retaining suitable permanent housing;

(B) Housing stability case management for assessing, arranging, coordinating and monitoring the delivery of individual services to facilitate housing stability;

(C) Mediation between the Program Participant and the landlord/owner to prevent loss of current housing;

(D) Legal services for housing needs excluding immigration and citizenship matters, matters related to mortgages, legal retainers and contingency fees; and

(E) Credit repair and resolution, excluding payment or modification of debts.

(3) Non-duplicative rental assistance may be provided for up to 24 months within any 36-month period. Late payment penalties during the term of assistance are not eligible ESG expenses. Rental assistance includes:

(A) Short-term rental assistance which is up to three months of rent, inclusive of arrearages, late fees, last month's rent; and

(B) Medium-term rental assistance which is more than three months of rent but not more than 24 months of rent, inclusive of up to six months of arrearages, late fees, last month's rent.

(i) Costs to participate in HMIS are eligible ESG costs. Eligible costs related to HMIS include:

(1) Hardware, software, equipment, office space, utility costs;

(2) Salary and staff costs for operation of HMIS, including technical support;

(3) HMIS training and overhead costs, including travel to HUD sponsored and approved HMIS training programs and travel costs for staff to conduct intake;

(4) HMIS participation fees charged by the HMIS lead agency; and

(5) HMIS-comparable databases for victim services providers or legal services providers.

(j) Eligible administrative costs for ESG are:

(1) General management and oversight of the ESG award, excluding cost to purchase office space;

(2) Provision of ESG training and costs to attend HUD-sponsored ESG training; and

(3) Costs to carry out required environmental reviews.

§7.33. Apportionment of ESG Funds.

(a) The Department will retain funds for Administrative activities. A portion of these Administrative funds in an amount not to exceed .25% of the Department's total allocation of ESG funds may be retained by TDHCA to procure entities to administer a Local Competition for funding within a CoC

region. Funds for Administrative or Program Participant services may be retained by TDHCA to subgrant specific ESG activities, such as legal services. Additionally, if the Department receives ESG funding from HUD that has additional activity or geographic restrictions, the Department may elect not to use the Allocation Formula. Retained funds are not subject to the Allocation Formula.

(b) ESG funds not retained for the purposes outlined above will be made available by CoC region based on an Allocation Formula. Allocation Formula factors noted in paragraphs (1)-(4) of this subsection will be used to calculate distribution percentages for each CoC region as follows:

(1) Fifty percent weight will be apportioned to renter cost burden for Households with incomes less than 30% Area Median Family Income (AMFI), as calculated in the U.S. Department of Housing and Urban Development's (HUD) Comprehensive Housing Affordability Strategy;

(2) Fifty percent weight will be apportioned for the number of persons in poverty from the most recent five-year estimate of the American Community Survey released by the U.S. Census Bureau;

(3) Fifty percent weight will be apportioned to point-in-time counts, which are annual counts of sheltered and unsheltered persons experiencing homelessness on one day during the last two weeks of January as required by HUD for CoCs; and

(4) Negative 50% weight will be apportioned based on a total of all ESG funding allocated by HUD to local jurisdictions within the CoC region, and ESG funding awarded by the Department within the region from the previous fiscal year.

(c) Each CoC region is allocated a minimum amount of \$100,000. This is accomplished by taking the amounts of all regions with over \$100,000 during the initial allocation and redistributing a proportional share to the regions with less than \$100,000. If the Department distributes by Allocation Formula less than the amount required to provide all regions with \$100,000, than the funds will be split evenly among the COC regions.

(d) Those ESG funds allocated based on the formula in subsection (b) of this section will be made available for the provision of Program Participant services, and will be made available through a NOFA which may be released on an annual or biennial basis.

(1) Not more than 60% of allocated funds may be awarded for the provision of street outreach and emergency shelter activities.

(2) Contract funding limits include the funding request for all Program Participant services proposed in the Application, HMIS, and Administrative funds.

(A) Applicant must apply for an award amount of at least \$50,000 and not more than \$300,000 for all Program Participant services proposed in the Application.

(B) Funds awarded for HMIS are limited to 12% of the amount of funds awarded for Program Participant services.

(C) Administrative activities are limited to three percent of the amount of funds awarded for Program Participant services.

(e) ESG funds that have been deobligated by the Department or that have been voluntarily returned from an ESG Contract may be reprogrammed at the discretion of the Department, and are not included in the Allocation Formula or award process detailed in subsections (b)-(d) of this section.

§7.34. Local Competition for Funds.

(a) TDHCA may procure contractors for the purpose of administering a local competition within a CoC. The contractor selected will be the designated ESG Coordinator for the COC region or COC regions in which a contract is awarded.

(b) Application materials, other than those created by the Department that will be utilized by an ESG Coordinator during a CoC Local Competition are subject to Department review prior to the Application acceptance period, and must not conflict with §7.33(d) of this subchapter (relating to Apportionment of ESG Funds). Applicants recommended to the Department by the ESG Coordinator after a CoC Local Competition must satisfy the general threshold criteria established in §7.36 of this subchapter (relating to General Threshold Criteria under a Department NOFA), and establish performance targets as required by §7.40 of this subchapter (relating to Program Participant Services Selection Criteria).

(c) The ESG Coordinator must submit Applications recommended for funding under the CoC Local Competition to the Department prior to award recommendations being made by the Department to its Board. The recommendations must utilize all funding available in the region, unless all eligible Applications received are funded, and there is a remaining balance in the region. An Applicant that applies in a Local Competition for funding is not eligible to be awarded funding in the TDHCA funding competition.

(d) Applications not recommended by the ESG Coordinator for funding must be retained by the ESG Coordinator for a minimum of five years in accordance with 24 CFR §576.500 and must be made available to the Department upon request.

§7.35. Eligible Applicants.

(a) An eligible Subrecipient is a Unit of Local Government as defined by HUD in CPD Notice 17-10, or a Private Nonprofit Organization.

(b) The Department reserves the option to limit eligible Subrecipient entities in a given NOFA.

§7.36. General Threshold Criteria under a Department NOFA.

(a) Applications submitted to the Department in response to a NOFA are subject to general threshold criteria. Applications which do not meet the general threshold criteria or which cannot resolve an administrative deficiency related to general threshold criteria are subject to termination. Applicants applying directly to the Department to administer the ESG Program must submit an Application on or before the deadlines specified in the NOFA, and must include items in paragraphs (1)-(13) of this subsection:

(1) Application materials as published by the Department including, but not limited to, program description, budget, and performance statement.

(2) An ESG budget that does not exceed the total amount available within the CoC region or other geographic limitation, as applicable.

(3) A copy of the Applicant's written standards that comply with the requirements of 24 CFR §576.400 and certification of compliance with these standards. Any occupancy standard set by the Subrecipient must not conflict with local regulations or Texas Property Code §92.010.

(4) A copy of the Applicant's policy for termination of assistance that complies with the requirements of 24 CFR §576.402 and certification of compliance with these standards.

(5) For a NOFA under the Allocation Formula, a Service Area which consists of at least the entirety of one county or multiple counties within the CoC region under which Application is made, unless a CoC region does not include an entire county. When the CoC region does not encompass at least the entirety of one county, the Service Area must encompass the entire CoC region. The Service Area selected within an Application must be fully contained within one CoC region.

(6) Commitment in the budget to the provision of 100% Match, or request for a Match waiver, as applicable. Match waivers will be considered by the Department based on the rank of the Application. Applicants requesting an award of funds in excess of \$50,000 are not eligible to request or receive a Match waiver. In the event that the Match waivers requested exceed \$100,000, the waivers will be considered only for the highest scoring eligible Applications, subject to availability of excess match provided by ESG Applicants. Applicants that do not receive the waiver and are unable to provide a source of Match funding will be ineligible for an ESG award.

(7) For a NOFA under the Allocation Formula, evidence from the CoC Lead Agency in the region that the Applicant consulted with the CoC in the preparation of their ESG application and that the CoC Lead Agency agrees that the Application meets CoC priorities for serving persons experiencing homelessness and/or persons At-risk of Homelessness.

(8) Applicant certification of compliance with State and federal laws, rules and guidance governing the ESG Program as provided in the Application.

(9) Evidence of Data Universal Numbering System (DUNS) number for Applicant.

(10) Documentation of existing Section 501(c) tax-exempt status, as applicable;

(11) Completed previous participation review materials, as outlined in 10 TAC Chapter 1, Subchapter C of this title (relating to Previous Participation) for Applicant.

(12) Local government approval per 24 CFR §576.202(a)(2) for Applicant that will be providing shelter activities with ESG or as ESG Match, as applicable. This documentation must be submitted no later than 30 calendar days after the Application submission deadline as specified in the NOFA. If the documentation is not received by the Department within 30 calendar days of the Application submission deadline, the emergency shelter funding components in the Application will be removed from consideration in the Application review; the amount requested will be reduced by the amount that had been designated for emergency shelter funding; any points requested for emergency shelter activities will be deducted from the self-score and final score; and performance for emergency shelter component will be removed from expected deliverables.

(13) A resolution or other governing body action from the Applicant's direct governing body which includes:

(A) Authorization of the submission of the Application;

(B) Title of the person authorized to represent the entity and who also has signature authority to execute a Contract; and

(C) Date that the resolution was passed by the governing body, which must be within 12 months preceding the date the Application is submitted.

(b) An Application must be substantially complete when received by the Department. An Application may be terminated if the Application is so unclear or incomplete that a thorough review cannot reasonably be performed, as determined by the Department. Such Application will be terminated

without being processed as an administrative deficiency. Specific reasons for a Department termination will be included in the notification sent to the Applicant but, because the termination may occur prior to completion of the full review, will not necessarily include a comprehensive list of all deficiencies in the Application. Termination of an Application may be subject to §1.7 of this title, (relating to the Appeals Process).

§7.37. Application Review and Administrative Deficiency Process for Department NOFAs.

(a) The Department will accept Applications on an ongoing basis during the Application acceptance period as specified in the NOFA. Applications will be reviewed for threshold criteria and selection criteria, administrative deficiencies, and then ranked based upon the score of the Application as determined by the Department upon completion of the review.

(b) The administrative deficiency process allows the Applicant to provide additional information with regard to an Application after the Application acceptance period has ended, but only if it is requested in writing by Department staff. Staff may request that an Applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency notice. Staff will send the deficiency notice via email and responses must be in kind unless otherwise defined in the notice. A review of the Applicant's response may reveal that additional administrative deficiencies are exposed or that issues initially identified as an administrative deficiency are actually determined to be beyond the scope of an administrative deficiency process, meaning that they are in fact matters of a material nature not susceptible to be resolved. For example, a response to an administrative deficiency that causes a new inconsistency which cannot be resolved without reversing or eliminating the need for the first deficiency response would be an example of an issue that is beyond the scope of an administrative deficiency. Department staff will make a good faith effort to provide an Applicant confirmation that an administrative deficiency response has been received and/or that such response is satisfactory. Communication from staff that the response was satisfactory does not establish any entitlement to points, eligibility status, or to any presumption of a final determination that the Applicant has fulfilled any other requirements as such is the sole determination of the Department's Board.

(c) An Applicant may not change or supplement any part of an Application in any manner after submission to the Department, except in response to a direct written request from the Department to remedy an administrative deficiency or by amendment of an Application after the Board approval of an ESG award. An administrative deficiency may not be cured if it would, in the Department's determination, substantially change an Application including score, or if the Applicant provides any new unrequested information to cure the deficiency.

(d) The time period for responding to a deficiency notice commences on the first day following the deficiency notice date. If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 p.m. on the seventh calendar day following the date of the deficiency notice, then one point shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. If administrative deficiencies are not resolved by 5:00 p.m., Austin local time on the fourteenth calendar day following the date of the deficiency notice, then the Application shall be terminated.

§7.38. Award and Funding Process for Allocated Funds.

(a) An Applicant recommended to the Department by the ESG Coordinator after a Local Competition may be awarded funding, pending Previous Participation Review and Board approval. If the Applicant does not meet the requirements of the Previous Participation Review or the Board does not approve the recommendations of the ESG Coordinator, if there is another scheduled Board meeting before the

Department must commit funding in accordance with 24 CFR §576.203(a)(1)(i), the Department will provide the ESG Coordinator the option to revise the list of recommended Applicants and recommended award amounts in order to still recommend awards for the full amount of funding in the region. If there are any funds in a CoC region for which an ESG Coordinator administered the CoC Local Competition process that are not recommended for an award by the ESG Coordinator or not approved by the Board, and there are no other Applicants in the COC region or the Department must commit funding in accordance with 24 CFR §576.203(a)(1)(i), these funds will be added into other resources as described in subsection (j) of this section.

(b) An Application may by submitted requesting funds for Program Participant services under street outreach, emergency shelter, homeless prevention, and/or rapid re-housing, per §7.33(d) of this subchapter (relating to Apportionment of ESG Funds). Each Application submission will include one uniform Application with information applicable across all Program Participant service types, and then information on each Program Participant service requested. Each Program Participant service reflected in an Application will be treated as a separate Application, assigned a separate Application number per service type, and will be scored and ranked separately for each service type selected. Applicants may be awarded funds for one or more Program Participant services in accordance with this section. Because each Program Participant service is reviewed separately and competes separately, an award of funds for provision of one Program Participant service does not affect an award of funds in any other Program Participant service reflected in that same Application submission.

(c) Applications submitted directly to the Department for consideration in COC areas in which there is not an ESG Coordinator will receive points based on experience, program design, budget, previous performance, collaboration, and performance measures. Applications will be scored and ranked based on selection criteria described in this subchapter.

(d) Applicants will be required to submit a self-score within the Application. In no event will the points awarded to the Applicant exceed the point value of the self-score in any selection criterion.

(e) Tie breakers. Each Application submitted to the Department shall be assigned a number between one and the total number of applications. The number assignment will be determined in a random selection process to occur immediately following the close of the application acceptance period, and Applicants will be notified of said number assignment as soon as possible thereafter. The randomly assigned numbers will be used to resolve ties, with the highest assigned number having the highest priority.

(f) Partial awards. In order to maintain funding within the Allocation Formula amounts designated for each COC region as determined in this subchapter, an Applicant may be offered a partial award of their requested funds. An Applicant offered a partial award of funds must confirm their acceptance of a partial award, and submit updated information related to the reduction within seven calendar days following the date of notification. Scoring criteria may be updated based on the reduced funding request, but any changes to the scoring criteria must allow the Application to maintain its rank.

(g) Funding will be recommended first for Applicants within the CoC region up to the Allocation Formula amount designated for the COC region as determined in this subchapter.

(1) Eligible Applications will be ranked in descending order by score within the CoC region which the Application proposes to serve. Paragraph (e) of this section will be used to determine the priority of tied scores.

(2) ESG funds allocated to each CoC region will be awarded starting with the highest ranking Application and continue until the funds allocated for that CoC region are fully utilized, but not exceeded, or until

the Applicant for the last application to be recommended in the region declines an offer of a partial award.

(3) Applications proposing street outreach or emergency shelter will be ranked alongside all Applications in the region, however, a recommendation for a full award of an Application for street outreach or emergency shelter will not be made through the first level of funding if funding recommendations in the CoC region for street outreach and emergency shelter will exceed 60% of the funding available in the CoC region. Applications proposing street outreach and emergency shelter services but causing awards for such services in the region to exceed 60% of the available funding in the region, will be offered a partial award of up to the amount remaining to reach 60% for the region. If no funds remain available that would not exceed 60% at the regional level for a partial award, or if they decline such partial award, the Application will be passed over and recommendation of funding would proceed to the next highest scoring application(s) in the region in order to fully fund the Formula Allocation amount for the region. Applications that were passed over for funding may be eligible to compete in the second level of the award process described in subsection (h) of this section, if no more than 60% of funds have been awarded for street outreach and emergency shelter in the total allocated funds.

(4) A partial award may be offered to the last highest ranking Application which is otherwise eligible for funding within the CoC region to ensure that the amount of funds recommended for a region does not initially exceed the amount identified in the Formula Allocation.

(A) The Applicant or Applicants that accept an offer of a partial award may be required to amend the Application if the reduction in funds is expected to impact scored items and to adjust performance deliverables based on the reduced amount of funding. The revised score based on the partial award must still ensure the Application ranking would not be affected. If a partial award or the Applicant's subsequent adjustments results in a reduced score that alters their scoring rank within the CoC region, the opportunity to be funded from the first level of funding recommendations will not be offered to the Application.

(B) The Applicant may decline the partial award of funds and instead request to be included for consideration in the second level of funding recommendations.

(h) The second level of recommendations is available only to Applications in CoC regions where the initially allocated funds were not fully awarded under the first level of recommendations. Remaining funds after the completion of the first level of funding will be collapsed from CoC regions which had insufficient eligible Applications to utilize the entire Allocation Formula amount. This collapse of funds will be made available to Applicants within each of the CoC regions that are determined to be underfunded based on total award recommendations within the CoC, and their respective Allocation Formula amount. Applications eligible for an award will be ranked first by the degree to which their CoC region was underfunded, and then by Application score.

(1) The Department will determine the degree to which a CoC region is underfunded by dividing the total funds recommended through the first level of funding recommendation by the amount of funds that were initially allocated to the CoC region according to the Allocation Formula. Regions where this percentage is greater than zero and less than 100 will be ranked in order, such that the lowest percentage funded is the highest degree underfunded and therefore has the highest priority. Subsection (e) of this section will be used to determine the outcome of tied scores. The highest ranking unfunded Applicant in the most underfunded region will be recommended for an award of full funding if sufficient funds remain available for funding or a partial award of funds if an insufficient statewide balance remains.

(2) Applications proposing street outreach or emergency shelter will be ranked alongside all Applications. If 60% of the total allocated funding available has been awarded to Applications proposing street outreach and emergency shelter, Applications proposing these activities will not be recommended, and will be passed over to fund Applications proposing homeless prevention or rapid re-housing.

(A) An Application which is otherwise eligible for funding within the second level, except that requested funds exceed the amount available for street outreach and emergency shelter, may be offered a partial award of funds. In no event shall the partial award cause the Department to award funds in excess of 60% of allocated funds for street outreach and emergency shelter.

(B) An Applicant that accepts an offer of a partial award may be required to amend the Application if the reduction in funds is expected to impact scored items and to adjust performance deliverables based on the reduced amount of funding. The revised score based on the partial award must still ensure the Applications ranking would not be affected. If a partial award or the Applicant's subsequent adjustments result in a reduced score that alters their scoring rank within this second level of funding recommendations, the opportunity to be funded from this second level of recommendations will not be offered to this Applicant.

(3) As long as collapsed funds remain available, the process continues with the next highest ranked unfunded Application within the highest underfunded region receiving a recommendation for an award. When more than one CoC region is equally underfunded, the CoC region with the highest ranked unfunded Application will first be offered the funding. It is anticipated that only one Application will be funded per underserved CoC region during the second level of recommendations, but the process will continue until the earlier of all CoC regions with sufficient eligible Applicants are recommended for funding up to their Allocation Formula amount, or no collapsed funds remain. If an Applicant declines the final offer of a partial award, or is unable to maintain their rank within their region, then the next highest ranked unfunded Application in the region will have an option to receive the remaining funds. This offer will be made only one time per region in the second level of recommendations. If no other eligible Application exist, the next most underfunded regions highest application will be offered the funds. Any funds remaining after all underfunded regions have had the opportunity to be fully funded will be utilized in the third level of funding recommendations.

(i) If any funds remain after recommendations for all eligible Applications in the second level of recommendations is completed, such funds shall collapse and be made available statewide.

(1) All eligible Applications not recommended to be awarded under the first two levels of funding recommendations will be ranked in descending order of score with the highest scoring unfunded Application, regardless of region, having the highest priority rank. Paragraph (e) of this section will be used to determine the outcome of tied scores.

(2) Funds will be awarded in this level of funding starting with the highest ranked Application and continuing until no funds remain available to award or until there are no eligible Applications left to be recommended for funding.

(3) Applications proposing street outreach or emergency shelter will be ranked alongside all Applications. If the 60% of the allocated funds has been awarded to Applications proposing street outreach and emergency shelter, Applications proposing these activities will not be recommended and will be passed over to fund Applications proposing homeless prevention or rapid re-housing.

(4) The final award in the third level of recommendations and the 60% capped street outreach and emergency shelter funding may be a partial award if an Application cannot be fully funded.

(A) An Applicant that accepts an offer of a partial award may be required to amend the Application if the reduction in funds is expected to impact scored items and to adjust performance deliverables based on the reduced amount of funding. The revised score based on the partial award must still ensure the Application's ranking would not be affected

(B) The Applicant may decline a partial award of funds. Applicants that decline a partial award of funding within the statewide competition will be withdrawn from competition, as there are not sufficient remaining funds to award the Application.

(C) If a partial award or the Applicant's subsequent adjustments result in a reduced score that alters the scoring rank or an Applicant declines a partial award, the next highest ranked Application will be presented with the opportunity to be funded. This offer will be made only one time per region in the third level of recommendations.

(j) If there are still funds available after the third level of recommendations, the Department may offer and recommend award amounts in excess of the funds requested and in excess of the award amount limits identified in §7.33(c) of this subchapter (relating to Apportionment of ESG Funds), starting with the highest scoring Applications already identified to be recommended for an award, not to exceed an award more than 50% greater than their original request. The Department will provide notice of the proposed increase to the impacted Applicants. The budget and Performance targets would increase proportionally to the additional funding received. An Applicant will have the opportunity to accept or reject the recommendation for increased funding prior to final award by the Department.

(k) In the event that the Department elects to include a provision to award funds biennially, the distribution of funding for the second funding cycle is contingent upon the amount of the ESG allocation granted to the Department in the subsequent federal fiscal year. An ESG Subrecipient that does not satisfy the requirements of the Previous Participation Review or is not approved by the Department's Governing Board is ineligible for funding. An ESG Subrecipient may have the right to appeal funding decisions per 10 TAC §1.7 of this chapter (relating to the Appeals Process). When the total amount of ESG funding in the subsequent year is less than 100% of the first year's funding, awards will be reduced proportionally.

(1) When the total amount of ESG funding in the subsequent year's Allocation Formula is greater than 100% of the first year funding or if there are funds available from reduced awards, the additional funding will be used first to increase any partial awards to ESG Subrecipients that have met their first Expenditure benchmark. The funds will be divided by the number of ESG Subrecipients with partial awards who met the first Expenditure benchmark in year one. This amount or the amount needed to increase the partial awards up to the original Application request, whichever is less, will be offered to these Subrecipients. If this process results in one or more Subrecipients receiving funds adequate to fulfill the original Application request, the funds in excess of the full award amount will be offered again to the remaining Subrecipients with a partial award. This process will continue until all partial awards of these Subrecipients are funded up to the original Application request, or until funds are exhausted.

(2) Funds remaining after the partial award increase under paragraph (1) of this subsection will be awarded to ESG Subrecipients in proportion to the ESG allocation. The budget and Performance targets would be adjusted proportionally to the funding. If the subsequent year allocation (after subtracting the amounts allocated under subparagraph (1) of this section) is equal to or less than 150% of the first year of allocation, ESG Subrecipients may be offered an award of funds not to exceed 150% of their first award of funding under the NOFA.

(3) Funds remaining after increasing ESG Subrecipients to 150% of their original award will be offered to fully or partially fund the next highest ranking Applications from the ESG competition for a 12-month period.

(l) The Department reserves the right to negotiate the final Contract amount and local Match with a Subrecipient.

§7.39. Uniform Selection Criteria.

(a) An Application for funding allocated in accordance with §7.33(b) of this section (relating to Apportionment of ESG Funds) and made to the Department may be awarded points under the following uniform selection criteria. The total of the score under this part will be the uniform Application score. The uniform Application score will be comprised of points awarded under each of the following criteria:

(1) Homeless participation. An Application may receive a maximum of three points for the participation of persons who are Homeless in the Applicant's program design. Points may be earned under subparagraphs (A) and (B) of this paragraph for a total of up to three points.

(A) An Application may receive a maximum of two points when at least one person who is Homeless or formerly Homeless is a member of or consults with the Applicant's policy-making entity for facilities, services, or assistance under ESG; and

(B) An Application may receive a maximum of one point when at least one person who is Homeless or formerly Homeless assists in constructing, renovating, or maintaining the Applicant's ESG facilities.

(2) Organizational or management experience. An Application may receive a maximum of eight points for the Applicant's or its management's experience administering federal or State programs.

(A) An Application may receive a maximum of six points for Applicant's or its management staff with one to five years of experience; or

(B) An Application may receive a maximum of eight points for an Applicant or its management staff with six or more years of experience.

(3) Percentage of prior ESG awarded funds expended. An Application may receive a maximum of five points for the Applicant's past expenditure performance of ESG funds proportionate to the award of funds from TDHCA to the Applicant. This will apply to any and all ESG Contract(s) administered by the Applicant that were subject to the second Expenditure benchmark or closed within 12 months prior to the date of the Application deadline established in the by the Department. Contract Expenditures will be averaged among all ESG Contracts that were closed within 12 months of the Application deadline, or met the second Expenditure benchmark without requiring an amendment if the Applicant was awarded multiple Contracts. The percentage of ESG funds expended will be calculated utilizing the amount of the Contract as of its closing or the second Expenditure benchmark as stated in the Contract prior to amendments, except where the Applicant voluntarily return funds in accordance with this subchapter. Expenditure will be defined as the Applicant having reported the funds as expended. Applications may receive:

(A) Three points if the Applicant expended 91-94% of its prior ESG Contract funds as of its closing or the second Expenditure benchmark as stated in the Contract prior to amendments;

(B) Four points if the Applicant expended 95% to less than 100% of its prior ESG Contract funds as of its closing or the second Expenditure benchmark as stated in the Contract prior to amendments; or

(C) Five points if the Applicant expended 100% of its prior ESG Contract funds as of its closing or the second Expenditure benchmark as stated in the Contract prior to amendments.

(4) Contract History on Reporting and percentage of Outcomes. An Applicant may receive a maximum of five points for its prior timeliness of reports and performance achieved for previously awarded ESG Contract(s) that met the second Expenditure benchmark or closed within 12 months prior to the date of the Application deadline established by the Department. Points may be requested under all of the subparagraphs (A) to (E) of this paragraph not to exceed a total of five points. The Outcome percentages will be averaged among all prior ESG Contracts that met the second Expenditure benchmark or closed within 12 months prior to the date of the Application deadline to determine the final percentage amount for this scoring criterion. Applications may receive points as follows:

(A) One point if the Applicant submitted the last three reports on or before the Contract end date within the reports' respective reporting deadlines;

(B) One point if the Applicant met 100% or more of their street outreach target of persons exiting to temporary or transitional or permanent housing destination;

(C) One point if the Applicant met 100% or more of their emergency shelter exits to permanent housing;

(D) One point if the Applicant met 100% or more of their Homeless prevention target for maintaining housing for three months or more; and

(E) One point if the Applicant met 100% or more of their rapid re-housing target for maintaining housing for three months or more.

(5) Monitoring history. Applications may receive a maximum of five points for the Applicant's previous monitoring history. The Department will consider the monitoring history for three years before the date that Applications are first accepted under the NOFA when determining the points awarded under this criterion. Findings that were subsequently rescinded will not be considered Findings for the purposes of this scoring criterion. Applications may be limited to a maximum of:

(A) Five points if the Applicant has not received any monitoring Findings, including Applicants with no previous monitoring history;

(B) Not more than three points if the monitoring history has a close-out letter that included Findings, but the Findings were not related to Household eligibility or violations of procurement requirements;

(C) Not more than two points if the monitoring history has a close-out letter that included Findings related to Household eligibility; or

(D) Not more than one point if the monitoring history has a monitoring close-out letter that included Findings related to violations of procurement requirements.

(E) Zero points may be requested under this criterion if the Applicant received a Finding resulting in disallowed costs in excess of \$5,000 which required repayment to the Department.

(6) Priority for certain communities. Applications may receive two points if at least one Colonia, as defined in Tex. Gov't Code §2306.083, is included in the Service Area identified in the Application. Applicants awarded points under this criterion will be contractually required to maintain a Service Area that includes at least one Colonia as identified on the Office of Attorney General's website.

(7) Previously unserved areas. Applications may receive a maximum of 10 points for provision of ESG services if at least one county in the Service Area included in the Application has not received ESG funds

from the Department or directly from HUD within the previous federal funding year for services. Applications may receive a maximum of:

(A) Five points if at least one county within the Service Area as stated in the Application did not receive an award of ESG funds from the Department within the previous federal funding year; or

(B) Ten points if no portion of the Service Area has received ESG funds within the previous federal funding year.

§7.40. Program Participant Services Selection Criteria.

(a) An Application for funding allocated under §7.33(b) of this subchapter (relating to Apportionment of ESG Funds), and made to the Department, may be awarded points for Program Participant services under each category. Points awarded for Program Participant services will be separately tabulated and added to the uniform Application score to determine a score for each of the Program Participant services Applications submitted. All scoring criteria that are based upon measurable future performance expectations will be measured and expected to be fulfilled by being included as a performance requirement in the Contract should the Application be awarded funds.

(b) Street outreach. An Application proposing street outreach may receive points under the following criteria:

(1) Street outreach CoC collaboration. Applications may receive up to 10 points for support from the CoC under which the Application is submitted. Applications may receive a maximum of:

(A) Three points based on an “approved” rating from the CoC;

(B) Seven points based on “recommended” rating from the CoC; and

(C) Ten points based on a “strongly recommended” rating from the CoC.

(2) Matching funds for street outreach. An Application may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for street outreach.

(3) Street outreach serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(b)(34) of this chapter (relating to Definitions). An Applicant providing street outreach may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who are in one or more Homeless Subpopulation;

(B) Two points based on a minimum target of 80% of persons served who are in one or more Homeless Subpopulation;

(C) Three points based on a minimum target of 90% of persons served who are in one or more Homeless Subpopulation;

(D) Four points based on a minimum target of 95% of persons served who are in one or more Homeless Subpopulation;

(E) Five points based on a minimum target of 100% of persons served who are in one or more Homeless Subpopulation;

(4) Street outreach temporary/transitional/permanent housing. An Application may receive a maximum of five points based on the percentage of persons targeted to be served with street outreach who will be placed in temporary, transitional or permanent housing. An Application may receive a maximum of:

(A) Two points based on a minimum target of 25% of persons served with street outreach who will be placed in temporary housing;

(B) Three points based on a minimum target of 35% of persons served with street outreach who will be placed in temporary housing;

(C) Four points based on a minimum target of 45% of persons served with street outreach who will be placed in temporary housing; or

(D) Five points based on a minimum target of 55% of persons served with street outreach who will be placed in temporary housing.

(5) Street outreach services. An Application may receive a maximum of five points based on the number of street outreach services provided through ESG or other funds including engagement, case management, emergency health services, emergency mental health services, and transportation services. Emergency health services and emergency mental services may only be provided by ESG funds if these services are inaccessible or unavailable within the area. An Application may receive a maximum of:

(A) Two points if the Applicant provides street outreach engagement and case management;

(B) Three points if the Applicant provides street outreach engagement and case management, and one other service;

(C) Four points if the Applicant provides street outreach engagement and case management, and two other services; or

(D) Five points if the Applicant provides street outreach engagement and case management, and three other services.

(6) Experience providing street outreach. An Application may receive a maximum of 10 points based on the Applicant's experience providing street outreach services.

(A) Two points if the Applicant has provided street outreach for up to two years;

(B) Four points if the Applicant has provided street outreach for up to four years;

(C) Six points if the Applicant has provided street outreach for up to six years;

(D) Eight points if the Applicant has provided street outreach for up to eight years; or

(E) Ten points if the Applicant has provided street outreach for 10 or more years.

(c) Emergency shelter. An Application proposing emergency shelter may receive points under the following criteria:

(1) Emergency shelter CoC collaboration. Applications may receive up to 10 points for support from the CoC under which the Application is submitted. Applications may receive a maximum of:

(A) Three points based on an "approved" rating from the CoC;

(B) Seven points based on “recommended” rating from the CoC; and

(C) Ten points based on a “strongly recommended” rating from the CoC.

(2) Matching funds for emergency shelter. An Application may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for emergency shelter.

(3) Emergency Shelter serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(b)(34) of this chapter (relating to Definitions). An Applicant providing emergency shelter may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who are in one or more Homeless Subpopulation;

(B) Two points based on a minimum target of 80% of persons served who are in one or more Homeless Subpopulation;

(C) Three points based on a minimum target of 90% of persons served who are in one or more Homeless Subpopulation;

(D) Four points based on a minimum target of 95% of persons served who are in one or more Homeless Subpopulation; or

(E) Five points based on a minimum target of 100% of persons served who are in one or more Homeless Subpopulation;

(4) Emergency shelter permanent housing. An Applicant may receive a maximum of five points based on the percentage of persons served with emergency shelter targeted to be placed in permanent housing. An Application may receive a maximum of:

(A) Two points based on a minimum target of 25% of persons served with emergency shelter who will be placed in permanent housing;

(B) Three points based on a minimum target of 35% of persons served with emergency shelter who will be placed in permanent housing;

(C) Four points based on a minimum target of 45% of persons served with emergency shelter who will be placed in permanent housing; or

(D) Five points based on a minimum target of 55% of persons served with emergency shelter who will be placed in permanent housing.

(5) Emergency shelter services. An Applicant may receive a maximum of five points based on the number of emergency shelter services provided through ESG or other funds, as listed in 24 CFR §576.102. Emergency shelter services include case management, child care, education services, employment assistance and job training, outpatient health services, legal services, life skills training, outpatient mental health services, outpatient substance abuse treatment services, and transportation. Outpatient health services, mental services, and substance abuse treatment services should only be provided by ESG funds if these services are otherwise inaccessible or unavailable within the Service Area. This selection criterion will become a contractual requirement if the Applicant is awarded a Contract. An Application may receive a maximum of:

(A) Two points if the Applicant provides case management and two of the other services;

(B) Three points if the Applicant provides case management and three of the other services;

(C) Four points if the Applicant provides case management and four of the other services; or

(D) Five points if the Applicant provides case management and five of the other services.

(6) Experience providing emergency shelter. An Application may receive a maximum of 10 points based on the Applicant's experience providing emergency shelter services.

(A) Two points if the Applicant has provided emergency shelter for up to two years;

(B) Four points if the Applicant has provided emergency shelter for up to four years;

(C) Six points if the Applicant has provided emergency shelter for up to six years;

(D) Eight points if the Applicant has provided emergency shelter for up to eight years; or

(E) Ten points if the Applicant has provided emergency shelter for 10 or more years.

(d) Homeless prevention. An Application proposing homeless prevention may receive points under the following criteria:

(1) Homeless prevention CoC collaboration. An Application may receive a maximum of 10 points for support from the CoC under which the Application is submitted. An Application may receive a maximum of:

(A) Three points based on an "approved" rating from the CoC;

(B) Seven points based on "recommended" rating from the CoC; and

(C) Ten points based on a "strongly recommended" rating from the CoC.

(2) Matching funds for homeless prevention. An Application may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for homelessness prevention.

(3) Homelessness prevention serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(b)(34) of this chapter (relating to Definitions). An Applicant providing homelessness prevention may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who have one or more special needs;

(B) Two points based on a minimum target of 80% of persons served who have one or more special needs;

(C) Three points based on a minimum target of 90% of persons served who have one or more special needs;

(D) Four points based on a minimum target of 95% of persons served who have one or more special needs; or

(E) Five points based on a minimum target of 100% of persons served who have one or more special needs.

(4) Homeless prevention maintaining housing. An Application may receive a maximum of five points based on the percentage of persons served with Homelessness prevention who are targeted to maintain their housing for three months or more after program exit. Applications may receive a maximum of:

(A) Two points based on a minimum target of 40% of persons served with homelessness prevention maintaining housing for three months;

(B) Three points based on a minimum target of 50% of persons served with homelessness prevention maintaining housing for three months;

(C) Four points based on a minimum target of 60% of persons served with homelessness prevention maintaining housing for three months; or

(D) Five points based on a minimum target of 70% of persons served with homelessness prevention maintaining housing for three months.

(5) Homeless prevention services and rental assistance. An Application may receive a maximum of five points based on the number of homeless prevention services and type of rental assistance provided through ESG or other funds. Homeless prevention services and rental assistance include rental application fees, security deposits and last month's rent, utility payments/deposits, moving costs, housing search and placement, housing stability case management, mediation, legal services, credit repair, short-term rental assistance, and medium-term rental assistance. An Application may receive a maximum of:

(A) Two points if the Applicant provides housing stability case management and three of the other services or rental assistance;

(B) Three points if the Applicant provides housing stability case management and four of the other services or rental assistance;

(C) Four points if the Applicant provides housing stability case management and five of the other services or rental assistance;

(D) Five points if the Applicant provides housing stability case management and six of the other services or rental assistance;

(6) Experience providing homeless prevention or rental assistance services. An Application may receive a maximum of 10 points based on the Applicant's experience providing homeless prevention or tenant-based rental assistance services.

(A) Two points if the Applicant has provided homeless prevention or tenant-based rental assistance services for up to two years;

(B) Four points if the Applicant has provided homeless prevention or tenant-based rental assistance services for up to four years;

(C) Six points if the Applicant has provided homeless prevention or tenant-based rental assistance services for up to six years;

(D) Eight points if the Applicant has provided homeless prevention or tenant-based rental assistance services for up to eight years; or

- (E) Ten points if the Applicant has provided homeless prevention or tenant-based rental assistance services for 10 or more years.
- (e) Rapid re-housing. An Application proposing rapid re-housing may receive points under the following criteria:
- (1) Rapid re-housing CoC collaboration. An Application may receive up to 10 points for support from the CoC under which the Application is submitted. Applications may receive a maximum of:
- (A) Three points based on an “approved” rating from the CoC;
- (B) Seven points based on “recommended” rating from the CoC; and
- (C) Ten points based on a “strongly recommended” rating from the CoC.
- (2) Matching funds for rapid re-housing. Applications may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for rapid re-housing.
- (3) Rapid re-housing serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in 10 TAC §7.2(b)(34) (relating to Definitions). Applicants providing rapid re-housing may receive a maximum of:
- (A) One point based on a minimum target of 70% of persons served who are in one or more Homeless Subpopulation;
- (B) Two points based on a minimum target of 80% of persons served who are in one or more Homeless Subpopulation;
- (C) Three points based on a minimum target of 90% of persons served who are in one or more Homeless Subpopulation;
- (D) Four points based on a minimum target of 95% of persons served who are in one or more Homeless Subpopulation; or
- (E) Five points based on a minimum target of 100% of persons served who are in one or more Homeless Subpopulation.
- (4) Rapid re-housing maintaining housing. Applicants may receive a maximum of five points based on the percentage of persons served with rapid re-housing targeted to maintain their housing for three months or more after program exit. Applications may receive a maximum of:
- (A) Two points based on a minimum target of 40% of persons served with rapid re-housing maintaining housing for three months;
- (B) Three points based on a minimum target of 50% of persons served with rapid re-housing maintaining housing for three months;
- (C) Four points based on a minimum target of 60% of persons served with rapid re-housing maintaining housing for three months; or
- (D) Five points based on a minimum target of 70% of persons served with rapid re-housing maintaining housing for three months.

(5) Rapid re-housing services and rental assistance. Applicants may receive a maximum of five points based on the number of rapid re-housing services and type of rental assistance provided through ESG or other funds. Rapid re-housing services and rental assistance include rental application fees, security deposits/last month's rent, utility payments/deposits, moving costs, housing search and placement, housing stability case management, mediation, legal services, credit repair, short-term rental assistance, medium-term rental assistance. Applications may receive a maximum of:

(A) Two points if the Applicant provides housing stability case management and three of the other services or rental assistance;

(B) Three points if the Applicant provides housing stability case management and four of the other components;

(C) Four points if the Applicant provides housing stability case management and five of the other components; or

(D) Five points if the Applicant provides housing stability case management and six of the other components.

(6) Experience providing rapid re-housing or tenant-based rental assistance services. Applications may receive a maximum of 10 points based on the Applicant's experience providing homeless prevention or tenant-based rental assistance services.

(A) Two points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to two years;

(B) Four points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to four years;

(C) Six points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to six years;

(D) Eight points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to eight years; or

(E) Ten points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for 10 or more years.

§7.41. Contract Term, Expenditure Benchmarks, and Return of Funds.

(a) The Contract Term for allocated funds may not exceed 12 months under a one-year funding cycle. The initial Contract Term for allocated funds and may not exceed 12 months under a two-year funding cycle, but may be amended to include an additional 12 months if allocated funds are awarded to the Applicant in the second year of the funding cycle. The Contract Term for a two-year funding cycle shall not exceed 24 months, as amended, unless an extension has been granted in accordance with this section.

(b) Expenditure benchmarks are ineligible for extension, except that an extension may be granted for expenditure benchmark two or four. A request to extend an expenditure benchmark must support that the extension is necessary to provide services required under the Contract, must evidence good cause for failure to meet the benchmark, and is subject to approval by the Department.

(1) The Division Director or his or her designee may approve an extension to the Contract Term or Expenditure benchmark two or four that do not exceed one month.

(2) The Executive Director or his or her designee may approve an extension to the Contract Term or Expenditure benchmark two or four that does not exceed three months.

(3) If the Subrecipient requests to extend the Contract Term or Expenditure benchmark for more than three months, but less than six months, Board approval is required. Extensions for greater than six months may not be granted.

(4) Extensions will be considered on a cumulative basis.

(c) Expenditure benchmarks for 12 or 24 month Contracts are listed in paragraphs (1) – (4) of this paragraph, unless otherwise stated in the Contract as amended. For Contracts with a 12-month term, the third and fourth Expenditure benchmarks do not apply.

(1) Expenditure benchmark one: Subrecipient is required to have reported expenditures in its Monthly Expenditure Reports reflecting at least 50% of the Contracted funds by month nine of the original Contract Term. A Subrecipient that has not met the first Expenditure benchmark must submit a plan to the Department evidencing the ability of the Subrecipient to expend the remaining funds by month 12 of the original Contract Term.

(2) Expenditure benchmark two: A Subrecipient is required to have reported expenditures in its first 12 Monthly Expenditure Reports reflecting at least 100% of the Contracted funds. A Subrecipient that has not met the second Expenditure benchmark, or that has not timely submitted Monthly Expenditure Reports, is subject to deobligation of funds.

(3) Expenditure benchmark three: A Subrecipient awarded funds in the second year of a two-year funding cycle is required to have reported expenditures in its Monthly Expenditure Reports reflecting at least 75% of the Contracted funds by month 21 of the amended Contract. Subrecipients that have not met the third Expenditure benchmark evidencing the ability of the Subrecipient to expend the remaining funds by end of the amended Contract Term.

(4) Expenditure benchmark four: Subrecipients awarded funds in the second year of a two-year funding cycle are required to have reported expenditures in its last Monthly Expenditure Report reflecting at least 100% of the Contracted funds expended. Funds remaining after the deadline for submission of the last Monthly Expenditure Report are subject to deobligation of funds.

(d) Funds remaining at the end of Contract's close out period will be automatically deobligated. Deobligation of funds may affect future funding recommendations.

(e) Prior to the Expenditure benchmarks two and four, as applicable, a Subrecipient may submit a written request to voluntarily return some or all of its funds to the Department, if the Subrecipient expects it will not fully expend and wishes to avoid deobligation or a reduced second funding cycle if awarded during a two-year cycle. Voluntary return of funds prior to the Expenditure benchmark will not impact future funding recommendations.

(f) The Department may request information regarding the performance or status of a Contract prior to a Contract benchmark, or at various times during the term of a Contract. Subrecipient must respond within the time limit stated in the request. Prolonged or repeated failure to respond may result in suspension of funds, default of the Contract, and ultimately in termination of the Contract by the Department.

(g) If additional funds become available through deobligated amounts from an award made under the allocation formula or program income generated from an award made under the allocation formula, the funds will be offered to the ESG Subrecipients with active contracts with the highest expenditure rate, as

of the most recent Monthly Expenditure Report. These funds will be offered first to the ESG Subrecipients within the CoC region from which the additional funds became available, and then available statewide. The funds may increase the Contract of an ESG Subrecipient one time by up to 25% of the original Contract amount. Upon Board Approval, the Department may elect to reallocate retained funds by this method.

§7.42. General Administrative Requirements.

(a) Subrecipient must have written policies and procedures to ensure that sufficient records are established and maintained to enable a determination that ESG requirements are met. The written standards must be applied consistently for all Program Participants. Written policies must include, but not be limited to Inclusive Marketing outlined in §7.10 of this chapter.

(b) Subrecipient must obtain the correct level of environmental clearance prior to expenditure of ESG funds. Activities for which the Subrecipient does not properly complete the Department's environmental review process are ineligible, and funds will not be reimbursed or will be required to be repaid.

(c) Subrecipient is prohibited from charging occupancy fees for emergency shelter supported by funds covered by this subchapter.

(d) If a Private Nonprofit Organization ESG Subrecipient wishes to expand the geographic scope of its emergency shelter activities after Contract execution, an updated certification of approval from the Unit of General Purpose Local Government with jurisdiction over the updated Service Area must be submitted to the Department before funds are spent on emergency shelter in those areas.

(e) Subrecipient must document compliance with the shelter and housing standards per 24 CFR §576.500(j) and (k), including but not limited to, maintaining sufficient construction and shelter inspection reports.

(f) Rental developments must comply with all construction or operational requirements governing the development or program to which ESG funds are comingled, and must comply with local health and safety codes.

(g) Subrecipient may be required to complete Contract orientation training prior to submission of the first Monthly Expenditure Report. Subrecipient must also complete training as requested by the Department in response to Findings or other issues identified while managing the Contract.

(h) Subrecipient must report on all measures in the Monthly Performance Report for demographics and Program Participant Services for which they are awarded.

(i) Subrecipient must develop and establish written procurement procedures that comply with federal, State, and local procurement requirements. A conflict of interest related to procurement is prohibited by 2 CFR §200.317-318 or Chapter 171 of the Local Government Code, as applicable.

(j) In instances where a potential conflict of interest exists related to a beneficiary of ESG assistance, Subrecipient must submit a request to the Department to grant an exception to any conflicts prohibited using the procedures at 24 CFR §576.404. The request submitted to the Department must include a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict, a description of how the public disclosure was made, and an attorney's opinion that the conflict does not violate State or local law. No ESG funds will be committed to assist a Household until HUD has granted an exception.

(k) Subrecipient will comply with the requirements under 24 CFR §576.409, "Protection for victims of domestic violence, dating violence, sexual assault, or stalking."

(1) Compliance with 24 CFR §576.409 includes, but is not limited to, providing two Departmental forms called "Notice of Occupancy Rights under the Violence Against Women Act" based on HUD form 5380 and "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking," HUD form 5382, to each of the following:

(A) All applicants for short- and medium-term rental assistance at the time of admittance or denial;

(B) Program Participants of short- and medium-term rental assistance prior to execution of a Rental Assistance Agreement;

(C) Program Participants of short- and medium-term rental assistance with any notification of eviction or notification of termination of assistance; and

(D) Program Participants of short- and medium-term rental assistance either during an annual recertification or lease renewal process, whichever is applicable.

(2) Subrecipient will adopt and follow an Emergency Transfer Plan based on HUD's model Emergency Transfer Plan by no later than June 14, 2017, pursuant to 24 CFR §5.2005(e). Within three calendar days after Program Participants request transfers, Subrecipients will inform Program Participants of their eligibility under their Emergency Transfer Plan and keep records of all outcomes.

§7.43. Program Income.

(a) Program income is gross income received by the Subrecipient or its Affiliates directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period.

(b) Program income received and expended during the Contract Term will count toward meeting the Subrecipient's Matching requirements, per 24 CFR §576.201(f), provided the costs are eligible ESG costs that supplement the ESG program.

(c) Security and utility deposits paid on behalf of a Program Participant should be treated as a grant to the Program Participant. The deposit must remain with the Program Participant, and if returned, is to be returned only to the Program Participant. If the deposit is returned to the Subrecipient, it is program income, and must be treated as described in this subsection.

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

(e) Program income that is received after the end of the Contract Term, or not expended within the Contract Term, along with program income received two years following the end of the Contract Term must be returned to the Department within 10 calendar days of receipt. Income directly generated by a grant-supported activity after the two year period is no longer program income and may be retained by the Subrecipient.

§7.44. Program Participant Eligibility and Program Participant Files.

(a) Program participants must meet the applicable definitions of Homeless or At-risk of Homelessness. Proof of the eligibility or ineligibility for Program Participants must be maintained in accordance with 24 CFR §576.500, Recordkeeping and reporting requirements.

(1) The Applicant must keep income documentation for Program Participants receiving homelessness prevention or being re-certified for rapid re-housing. The Department offers Income Certification and Income Screening Tool forms, which may be used by the Applicant.

(2) The Department's Declaration of Income Statement (DIS) form must be utilized if income cannot be documented for Program Participants receiving homelessness prevention or being recertified for rapid re-housing. The DIS must be completed and signed by Program Participants for activities that have an income requirement. The DIS is not subject to provisions in HUD Handbook 4350.

(b) The Subrecipient must document eligibility before providing services after a break-in-service. A break-in-service occurs when a previously assisted Household has exited the program and is no longer receiving services through Homeless Programs. Upon reentry into ESG, the Household is required to complete a new intake application and provide updated source documentation, if applicable.

(c) The ESG Subrecipient must utilize the rental assistance agreement promulgated by the Department if providing rental assistance. The rental assistance agreement does not take the place of the lease agreement between the landlord/property manager and the tenant.

(d) The Subrecipient must retain a copy of the signed Disclosure Information on Lead Based Paint and/or Lead-Based Hazards for housing built before 1978 in the Program Participant's file in accordance with 24 CFR §576.403(a).

ACTION ITEMS

2a

TDHCA Outreach Activities, January - February

A compilation of outreach and educational activities designed to enhance the awareness of TDHCA programs and services among key stakeholder groups and the general public.

Activity	Event	Date	Location	Division
Training	Multifamily Environmental Requirements	January 23	Austin, TX	Program Services
Meeting	Texas Interagency Council for the Homeless Quarterly Meeting	January 29	Austin, TX	Housing Resource Center
Meeting	Housing and Health Services Coordination Council Quarterly Meeting	January 30	Austin, TX	Housing Resource Center
Webinar	Multifamily Environmental Requirements	January 30	N/A	Program Services
Roundtable	HOME Single Family - HBA with New Construction/Rehabilitation	January 23, January 29, February 5	El Paso, TX Brownsville, TX Austin, TX	HOME
Training	Income Determination Training	February 7	Austin, TX	Compliance

Internet Postings of Note

A list of new or noteworthy postings to the Department's website.

Amy Young Barrier Removal

- Added 2019 Statewide Allocation Application to Access the Reservation System
- Added 2019 Statewide Allocation NOFA information

Asset Management

- Added Material Amendments to be presented to the TDHCA Board at February meeting (presentation discussion and possible action regarding a Material Amendment to the HTC Application, Vista Bella and Cambrian East Riverside; Presentation, discussion and possible action regarding a Material Amendment to the Housing Tax Credit LURA, Northstar Apartments, Town Park Townhomes)

Board (Executive)

- Added Administrative Penalty Orders (24 properties added to list); Debarment Orders (one added to list)

Bootstrap Loan Program

- Updated Nonprofit Owner-Builder Housing Provider certification application

Colonia Self Help Centers

- Added Spanish language files for Verification of Employment, Intake Application, Asset Verification, Income Certification, Reconstruction Feasibility Form, and Service Agreement and Certification to Participate

Communications:

- Posted TDHCA homepage article, "Thank You, Texas!" Related to Ending Homelessness Fund one year update
- Added promotional marketing related to Homeownership special bond rate to social media and associated web pages

Community Affairs

- Updated Income Limits for CEAP, WAP, and CSBG Client Eligibility
- Added 2019 LIHEAP State Plan
- Added O.S.4.3 Implementation Checklist for Organizational Standards (CSBG, best practices)
- Updated CEAP Poverty Population Analysis Tool
- Added Case Management Forms for CSBG training series
- Added SAVE Commonly Used Immigration Documents
- Updated Agreement and Election Statement

Compliance

- Added 2019 Control Form

HOME and Homeless:

- Added one year data update for Ending Homelessness Fund

Homeownership

- Posted information related to offering Texas Mortgage Credit Certificate Program as a combo option with My First Texas Home Program
- Updated Lender Request to Participate form

Housing Resource Center

- Added amendment to the 2018 One Year Action Plan related to HOME
- Added 2017 Annual Report (Pathways Home)

Multifamily:

- Added archival information related to 2016-2018 full applications and supporting information
- Added Appraisals, Environmental Site Assessments, Market Studies, Property Condition Assessments, Site Design Feasibility Reports for 2019 4% HTC reporting
- Updated Program Rules with Proposed New 10 TAC Chapter 13, Multifamily Direct Loan Rule
- Added 2019 Qualified Allocation Plan, Multifamily Direct Loan Program
- Added approved Trustees for Multifamily Bond Transactions
- Added 2018/2019 4% HTC Bond Status Log
- Added 2019 9% Housing Tax Credit Pre-Application Log
- Replaced 2019 QCP Neighborhood Information Packet
- Added 2019 Multifamily Direct Loan Program Overview Webinar
- Posted 2019 Multifamily Bond Pre-App Submission Procedures Manual and Pre-Application Supplement
- Updated Agreement and Election Statement for 4% HTC Program
- Added 2019 4% Housing Tax Credit and Tax Exempt Bond Process Manual

- Added Utility Allowances for 2019 9% HTC Applications

NOFA

- 2019 Statewide Allocation Amy Young Barrier Removal Program, \$1.6 million
- FFY 2019 CSBG Discretionary Funds for Services to Native American and Migrant Seasonal Farm Worker Populations, total \$300,000

Frequently Used Acronyms

AMFI	Area Median Family Income	LURA	Land Use Restriction Agreement
AYBR	Amy Young Barrier Removal Program	MF	Multifamily
CEAP	Comprehensive Energy Assistance Program	MFTH	My First Texas Home Program
CFD	Contract for Deed Program	MRB	Mortgage Revenue Bond Program
CFDC	Contract for Deed Conversion Assistance Grants	NHTF	National Housing Trust Fund
CHDO	Community Housing Development Organization	NOFA	Notice of Funding Availability
CMTS	Compliance Monitoring and Tracking System	NSP	Neighborhood Stabilization Program
CSBG	Community Services Block Grant Program	OIG	Office of Inspector General
ESG	Emergency Solutions Grants Program	QAP	Qualified Allocation Plan
FAQ	Frequently Asked Questions	QCP	Quantifiable Community Participation
HBA	Homebuyer Assistance Program	REA	Real Estate Analysis
HHSCC	Housing and Health Services Coordination Council	RFA	Request for Applications
HHSP	Homeless Housing and Services Program	RFO	Request for Offer
HRA	Homeowner Rehabilitation Assistance Program	RFP	Request for Proposals
HRC	Housing Resource Center	RFQ	Request for Qualifications
HTC	Housing Tax Credit	ROFR	Right of First Refusal
HTF	Housing Trust Fund	SLIHP	State of Texas Low Income Housing Plan
HUD	U.S. Department of Housing and Urban Development	TA	Technical Assistance
IFB	Invitation for Bid	TBRA	Tenant Based Rental Assistance Program
		TICH	Texas Interagency Council for the Homeless
		TSHEP	Texas Statewide Homebuyer Education Program
		TXMCC	Texas Mortgage Credit Certificate
		VAWA	Violence Against Women Act
		WAP	Weatherization Assistance Program

2b

BOARD REPORT ITEM

MULTIFAMILY DIVISION

FEBRUARY 21, 2019

Staff held its first roundtable for the 2020 Qualified Allocation Plan (QAP) on December 6, 2018, to gather stakeholder feedback on topics they would like to address during the QAP planning process in 2019. At that meeting, staff presented several public comments that had been requested as changes to the 2019 QAP that were not incorporated into the final QAP. These requests were also presented in a report to the Governing Board on December 6, 2018.

Regarding the frequency of the 2020 QAP meetings, stakeholders requested that staff hold only two to three meetings in the coming months; stakeholders indicated that fewer but more structured meetings would be more productive, with several topics slated to be discussed at each of those meetings, instead of just one. Input included discussion of having more advance materials made available to inform the discussions. Stakeholders also requested that these meetings be held the day before board meetings so that those who are flying in to Austin can attend. Some stakeholders requested that staff hold duplicative meetings in other cities throughout the state. Lastly, stakeholders requested that staff invite subject matter experts when appropriate, and that a representative from the Office of the Governor be present at the planning meetings.

In light of this input, staff has tentatively scheduled three 2020 QAP roundtables, to be held in either March, April, May, or June of 2019. Each roundtable will consist of at least two topics, and other divisions may be invited to seek stakeholder input at these meetings for their respective rules, such as Asset Management and Compliance Monitoring. Following those sessions, staff will then devote June and July to drafting the proposed revisions to the 2020 QAP. As in past years, staff will seek to release a staff draft in the late summer before presenting a draft to the Board for approval, and then moving into the official public comment period in the fall of 2019.

Possible topics to be discussed during the 2020 QAP planning process include those items delivered on consent to the Governing Board at its meeting of December 6, 2018. These items include scoring and threshold items that pertain to extended affordability and preservation, rehabilitation costs, common amenities, development costs, and development construction features.

In addition to those items, staff would also like to propose the following topics for stakeholder input during the 2020 QAP planning process:

- **Explore the possibility of including a ‘proximity to jobs’ scoring item to the QAP.**

Staff has identified a public data source that annually releases jobs data. Furthermore, the US government releases this data through a user-friendly web-based tool, so that all

of our applicants would easily be able to determine how proposed development sites fare under the scoring item. Staff would like to discuss with stakeholders if jobs proximity is a factor that they would like to see in the QAP and if such proximity would resonate with potential residents of their properties. Several stakeholders have shared their concerns that the 'proximity to the urban core' scoring item may be saturating urban markets, or, at the very least, driving up land costs for our developments. As it currently appears, a 'proximity to jobs' scoring item would incentivize more diffuse areas in a metropolitan region, and not just the downtown core.

- **Expand or revise the Underserved Area scoring items.**

At the 2020 QAP stakeholder meeting held in December 2018, several stakeholders expressed interest in staff developing underserved area scoring items that are not necessarily tied to census tract related criteria. In previous years, the bulk of this scoring items pertained to whether or not a census tract and its surrounding census tracts had received an award from the Department in the previous 15 or 30 years. For the 2019 QAP, staff added additional scoring items that do not pertain to this "look back period" of previous awards. Staff will monitor how impactful these two new scoring items are on receiving an award in the 2019 competitive cycle, and may present to stakeholders additional scoring items that could be added to this section.

- **Move additional sustainability/green building measures from threshold requirements to competitive scoring and further evaluate the items included.**

Several stakeholders, from developers to advocacy groups to certification institutes, have requested that not only more options for green building be provided, but that some of those options be more stringent and competitive in the QAP. They suggest that doing so not only promotes sustainability and residents' health but also can make economic sense. Staff will continue to monitor building science advancements and will consider reasonable revisions to the QAP that encourage more developers to implement advanced building techniques, and staff would like to discuss possible changes to the QAP with a wider audience.

- **Review components of the QAP, 10 TAC Chapter 10, and 10 TAC Chapter 13 that speak to the Department's efforts to preserve existing affordable housing.**

Several stakeholders have requested changes to the Department's rules regarding affordable Developments nearing the end of their initial compliance periods and their LURAs, and efforts the state should take to prevent loss of affordable units. Furthermore, in December 2018 the University of Texas at Austin published a study called "The Low-Income Housing Tax Credit Program in Texas: Opportunities for State and Local Preservation Strategies," which has several recommendations. While some of these requests suggest revisions to threshold or scoring provisions in the QAP, they primarily involve policies set forth in 10 TAC Chapter 10, Subchapter E, Post Award and Asset

Management Requirements. Staff would like to facilitate a discussion among the affordable housing community about how to best preserve existing affordable housing while also strongly encouraging the development of new affordable housing.

- **Development Costs and Tax Credit/Unit Benchmarks.**

Last year staff increased the development cost per square foot item based on early public input and a fairly rough evaluation of internal data. Staff committed to the public that it would spend time prior to the next QAP looking more thoroughly at data trends from cost certifications, to identify whether trends need further diversification by type of development, geographic area, etc. Staff will be completing that research and discussing it with the development community. Several commenters also requested that tax credits per unit be included as a benchmark for consideration.



2020 Qualified Allocation Plan ("QAP")

Project Plan

February 21, 2019

IMPORTANT DISCLAIMER: THIS PROCESS IS INTENDED TO ENABLE STAKEHOLDERS AND STAFF TO PROPOSE AND DEVELOP IDEAS AND CONCERNS TO BE CONSIDERED IN THE DEVELOPMENT OF THE QAP AND OTHER APPLICABLE RULES FOR 2020. THE OFFICIAL PUBLICATION OF A BOARD APPROVED DRAFT FOR PUBLIC COMMENT WILL OCCUR IN ACCORDANCE WITH THE STATUTORILY ESTABLISHED CALENDAR IN FALL 2019.

INTRODUCTION

The purpose of this project is to solicit and discuss ideas to be considered for inclusion in the 2020 QAP and the Rules. The ultimate deliverables for this project are a QAP and other multifamily rules that clearly articulate TDHCA housing policy as established by the Governing Board through threshold and scoring criteria and also addresses state and federal requirements. TDHCA staff welcomes an open discussion with stakeholders in affordable housing across the state of Texas.

The process will include several meetings on the day before Board meetings, outreach efforts so that stakeholders who are not able to attend meetings will have an opportunity for input, and focused meetings with stakeholders that have specific needs and insights. Staff may involve local and regional experts in affordable housing to present findings at meetings, and staff may conduct and contribute their own research on select issues.

PROJECT GOALS AND PURPOSE

The Multifamily Finance Division (Division) staff will lead the project, including scheduling meetings, accessing necessary resources, facilitating conversations, and compiling results. The Division will provide periodic reporting to the Board so they are regularly updated on the progress of the monthly meetings and have an opportunity for input throughout the process. Staff from other TDHCA divisions may be asked to participate as needed.

Stakeholders, including the development community, advocates for various interest groups served by affordable housing, residents of TDHCA properties, and various subject matter experts, will be invited to participate in meetings, surveys, or other forms of public comment and discussion so that a clear assessment of varying needs and priorities may be compiled. That assessment, along with applicable statutory and regulatory requirements, will be used to draft amendments and changes to develop the proposed 2020 QAP. Because many stakeholders cannot travel to Austin for these periodic QAP meetings, staff will solicit feedback through more flexible means. Possible media include online polls, website forums, and focus groups. TDHCA staff also may hold regional stakeholder meetings outside of Austin.

It is anticipated that the process will continue through July 2019, and that a staff draft of the 2020 QAP will be available in late summer/early fall 2019. Specific sections of the QAP may be drafted

and made available for informal comment throughout the process, in order to provide for the most effective possible feedback on those items.

PROJECT SCOPE

The scope of the project will include the planning and development of specific topics to be considered for amendment in the 2020 QAP and Rules, and potentially later editions. While it is anticipated that the process will be completed prior to publication of the staff draft and presentation of the QAP to the Board in September 2019, this is an ever-evolving process and there may be items that will be continued into subsequent years. The chief focus of the project is the 2020 QAP, but other parts of the Rules may be included in the project as needed.

The project will, in certain matters, rely heavily on data gathered from external sources. Sources may include (but will not be limited to) Census and American Community Survey data, reputable research centers, and best practices from other organizations or states. Internal data may include TDHCA's Compliance Monitoring and Tracking System (CMTS) and data gathered from previous application rounds. Results from the Department's recently completed resident survey may also be included.

During this process, Division staff will be evaluating related topics to the QAP. This research and staff's experiences with and/or knowledge of evaluation, scoring criteria, and tenant needs will be incorporated into the project.

It is staff's intent to address those ideas that will require the most time to develop in the earlier meeting discussions so that they can adequately be considered for possible inclusion in the 2020 QAP and/or Rules.

Based on previous conversations, staff's research, and policy directions from the Governing Board, staff proposes the following topics as the initial points of departure as the Division and stakeholders begin composing the 2020 QAP and Rules:

SCHEDULE BASELINE

The initial schedule proposes to hold three meetings in Austin the day before TDHCA Governing Board meetings. Specific topics to be discussed at each meeting will be mapped out, based on input from stakeholders and staff priorities. Additional meetings may be scheduled in order to accommodate specific topics, or in locations other than Austin.

2020 QAP Planning Process - Tentative Schedule		
Title	Date	Description
1 st 2020 QAP Meeting	12/6/18	Initial planning for the 2020 QAP periodic meetings; identifying topics of interest
TDHCA Board Meeting	2/21/19	TDHCA Governing Board meeting
2 nd 2020 QAP Meeting	TBD	Location: TBD Time: TBD Subject: TBD
TDHCA Board Meeting	4/25/19	Presentation to the TDHCA Governing Board regarding progress on planning and discussion.
3 rd 2020 QAP Meeting	TBD	Location: TBD Time: TBD Subject: TBD
TDHCA Board Meeting	5/23/19	Presentation to the TDHCA Governing Board regarding progress on planning and discussion.
4 th 2020 QAP Meeting	TBD	Location: TBD Time: TBD Subject: TBD
TDHCA Board Meeting	6/27/19	Presentation to the TDHCA Governing Board regarding progress on planning and discussion.
Staff Draft of QAP	08/2019	In August, staff will post a draft of the QAP for input from stakeholders. That input will be considered as staff prepares the QAP for presentation to the Board in September.
TDHCA Board Meeting	9/5/19	Presentation and possible approval by the TDHCA Governing Board of the draft 2020 QAP
Public Comment Period	TBD	Following the September TDHCA Board Meeting, the public comment period for Chapters 10 and 11 will begin on 9/20/19 and end on 10/11/19
TDHCA Board Meeting	11/07/19	Presentation and possible approval by the TDHCA Governing Board of the final 2020 QAP
Transmittal to the Governor	By 11/15/19	On or before 11/15/19, staff will send the 2020 QAP to the Governor for his approval
Governor Approval	12/1/19	The Governor will approval, modify or reject the 2020 QAP by 12/1/19

As much as practically possible, rule changes contemplated for proposal to the Board will be presented to stakeholders after they have been thoroughly reviewed by TDHCA staff, including

Legal Services, for compliance with statutory and regulatory requirements and compliance with TDHCA Board housing policy.

In the case of proposed changes that will significantly impact the development process, TDHCA staff may suggest a phased approach to implementation so that stakeholders are able to effectively plan for implementation.

This Project Plan will change over the course of 2019, as needs or priorities are identified and addressed. Schedules regarding individual topics may expand or contract as necessary to accommodate stakeholder input and staff priorities.

COMMUNICATIONS MANAGEMENT PLAN

The Communications Management Plan sets the communications framework for this project. It will serve as a guide for communications throughout the life of the project and will be updated as communication requirements change. This plan identifies and defines the roles of stakeholders, staff and the Board as they pertain to communications. It also includes a communications matrix which maps the communication requirements of this project.

Communication Type	Description	Format	Participants/ Distribution	Deliverable
Project Meetings	Meeting to discuss scheduled topic	In Person	All	Meeting Summary
Status Report to Governing Board	Report on Project progress	In Board Materials	TDHCA staff and Board	Board report or Action Request as needed
Website	Posting of Meetings and Materials	Website	Multifamily Finance	Resource for Project participants
Online Forum	Method for gathering stakeholder input	Website	All	Input regarding specific topics to be integrated into rule making process

While informal communication is a part of every project and is necessary for successful project completion, any issues, concerns, or updates that arise from informal discussion between TDHCA staff and stakeholders will be communicated to the larger group so that the appropriate action may be taken.

COST MANAGEMENT PLAN AND OUTREACH

TDHCA has minimal resources available to rent meeting space, provide hard copy materials, or travel to areas outside Austin. Wherever possible, meeting spaces that are available without

charge will be utilized. Meeting participants will be requested to provide their own copies of materials.

As described in the Communications section, the project will provide opportunities for stakeholders that are not able to attend meetings to provide input. Division staff plan to conduct meetings in geographic areas outside of Austin as travel schedules and budgets allow.

SCHEDULE MANAGEMENT PLAN

Meeting schedules and topics will be regularly posted to the TDHCA website, via the listerv, calendar and through social media. Once the initial schedule has been established, necessary resources will be developed, reviewed and approved prior to posting. Schedules will be updated as the project evolves, and updates will be posted to the TDHCA website.

2c

BOARD REPORT ITEM
FINANCIAL ADMINISTRATION DIVISION
FEBRUARY 21, 2019

Report on the Department's 1st Quarter Investment Report in accordance with the Public Funds Investment Act (PFIA)

BACKGROUND

The Department's investment portfolio consists of two distinct parts. One part is related to bond funds under trust indentures that are not subject to the Public Funds Investment Act (PFIA), and the remaining portion is related to accounts excluded from the indentures but covered by the PFIA. The Department's total investment portfolio is \$969,107,027, of which \$932,550,891 is not subject to the PFIA. This report addresses the remaining \$36,556,136 (See Page 1 of the Internal Management Report) in investments covered by the PFIA. These investments are deposited in the General Fund, Housing Trust Fund, Compliance, and Housing Initiative accounts, which are all held at the Texas Treasury Safekeeping Trust Company (TTSTC), primarily in the form of overnight repurchase agreements. These investments are fully collateralized and secured by U.S. Government Securities. A repurchase agreement is the purchase of a security with an agreement to repurchase that security at a specific price and date, which in this case was December 3, 2018, with an effective interest rate of 2.20%. These investments safeguard principal while maintaining liquidity.

Below is a description of each fund group and its corresponding accounts.

- The **General Fund** accounts maintain funds for administrative purposes to fund expenses related to the Department's ongoing operations. These accounts contain balances related to bond residuals, fee income generated from the Mortgage Credit Certificate (MCC) Program, escrow funds, single family and multifamily bond administration fees, and balances associated with the Below Market Interest Rate (BMIR) Program.
- The **State of Texas Housing Trust Fund** accounts maintain funds related to programs set forth by the Housing Trust Fund funding plan. The Housing Trust Fund provides loans and grants to finance, acquire, rehabilitate, and develop decent and safe affordable housing.
- The **Compliance** accounts maintain funds from compliance monitoring fees and asset management fees collected from multifamily developers. The number of low income units and authority to collect these fees is outlined in the individual Land Use Restriction Agreements (LURAs) that are issued to each Developer. These fees are generated for the

purpose of offsetting expenses incurred by the Department related to the monitoring and administration of these properties.

- The **Housing Initiative** accounts maintain funds from fees collected from Developers in connection with the Department's Tax Credit Program. The majority of fees collected are application fees and commitment fees. The authority for the collection of these fees is outlined in the Department's Multifamily Rules. These fees are generated for the purpose of offsetting expenses incurred by the Department related to the administration of the Tax Credit Program.
- The **Ending Homelessness Trust Fund** account maintains funds from donations collected from individuals through the Texas Department of Motor Vehicles in connection with the Department's Ending Homelessness Program. The authority for the collection of these donations is outlined in House Bill 4102. These donations are collected for the purpose of providing grants to counties and municipalities to combat homelessness.

This report is in the format required by the Public Funds Investment Act. It shows in detail the types of investments, their maturities, their carrying (face amount) values, and fair values at the beginning and end of the quarter. The detail for investment activity is on Pages 1 and 2.

During the 1st Quarter, as it relates to the investments covered by the PFIA, the carrying value decreased by \$1,372,179 (See Page 1) for an ending balance of \$36,556,136. The decrease is described below by fund groups.

General Fund: The General Fund decreased by \$1,559,628. This consists primarily of \$418,711 received in multifamily bond administration fees and \$98,950 in MCC Fees, offset by disbursements including \$2,110,978 to fund the operating budget.

The State of Texas Housing Trust Fund: The Housing Trust Fund increased by \$1,864,959. This consists primarily of \$1,188,103 received in loan repayments and \$2,533,056 from General Revenue Appropriations, offset by disbursements including \$2,026,801 for loans, grants and escrow payments.

Compliance: Compliance funds decreased by \$2,533,083. This consists primarily of \$1,198,985 received in compliance fees, offset by disbursements of \$3,841,718 transferred to fund the operating budget.

Housing Initiative: Housing Initiative funds increased by \$852,878. This consists primarily of \$3,220,348 received in fees related to tax credit activities, offset by disbursements of \$2,559,396 transferred to fund the operating budget.

Ending Homelessness Fund: Ending Homelessness funds increased by \$2,695. This consists primarily of interest earnings on current investment balances.

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
HOUSING FINANCE DIVISION**

**PUBLIC FUNDS INVESTMENT ACT
INTERNAL MANAGEMENT REPORT (SEC. 2256.023)
QUARTER ENDING November 30, 2018**

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
HOUSING FINANCE DIVISION
PUBLIC FUNDS INVESTMENT ACT
Internal Management Report (Sec. 2256.023)
Quarter Ending November 30, 2018


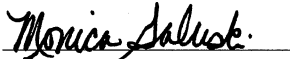
Investment Type	FAIR VALUE	CARRYING	ACCRETION / PURCHASES	AMORTIZATION/ SALES	MATURITIES	TRANSFERS	CARRYING	FAIR VALUE	CHANGE	ACCRUED	RECOGNIZED	
	(MARKET) @ 08/31/18	VALUE @ 08/31/18					VALUE @ 11/30/18	(MARKET) @ 11/30/18	IN FAIR VALUE (MARKET)	INT RECVBL @ 11/30/18		GAIN
NON-INDENTURE RELATED:												
General Fund Mortgage-Backed Securities	3,878.70	3,874.84	-	-	(2,921.62)	-	953.22	953.12	(3.96)	-	-	-
General Fund Repurchase Agreements	7,364,610.69	7,364,610.69	127,296.58	(1,684,002.48)	-	-	5,807,904.79	5,807,904.79	-	-	-	-
Housing Trust Fund Repurchase Agreements	8,558,333.87	8,558,333.87	4,260,488.74	(2,395,530.13)	-	-	10,423,292.48	10,423,292.48	-	-	-	-
Compliance Repurchase Agreements	10,136,164.05	10,136,164.05	-	(2,533,083.32)	-	-	7,603,080.73	7,603,080.73	-	-	-	-
Ending Homelessness Trust Fund Repurchase Agreements	91,811.49	91,811.49	2,694.86	-	-	-	94,506.35	94,506.35	-	-	-	-
Housing Initiatives Repurchase Agreements	11,773,520.47	11,773,520.47	1,114,051.90	(261,173.70)	-	-	12,626,398.67	12,626,398.67	-	-	-	-
NON-INDENTURE RELATED TOTAL	37,928,319.27	37,928,315.41	5,504,532.08	(6,873,789.63)	(2,921.62)	0.00	36,556,136.24	36,556,136.14	(3.96)	0.00	0.00	0.00

(b) (8) The Department is in compliance with regards to investing its funds in a manner which will provide by priority the following objectives: (1) safety of principal, (2) sufficient liquidity to meet Department cash flow needs, (3) a market rate of return for the risk assumed, and (4) conformation to all applicable state statutes governing the investment of public funds including Section 2306 of the Department's enabling legislation and specifically, Section 2256 of the Texas Government Code, the Public Funds Investment Act.

Per Section 2256.007(d) of the Texas Government Code, the Public Funds Investment Act:

David Cervantes completed 5.0 hrs. of training on the Texas Public Funds Investment Act on August 11, 2017

Monica Galuski completed 5.0 hrs. of training on the Texas Public Funds Investment Act on February 8, 2019

	Date <u>2/11/19</u>
David Cervantes Acting Director	
	Date <u>2/11/19</u>
Monica Galuski Director of Bond Finance/Chief Investment Officer	

**Texas Department of Housing and Community Affairs
Non-Indenture Related Investment Summary
For Period Ending November 30, 2018**

Investment Type	Issue	Current Interest	Current Purchase	Current Maturity	Beginning Carrying Value	Beginning Market Value	Accretions/ Purchases	Amortizations/ Sales	Maturities	Transfers	Ending Carrying Value	Ending Market Value	Change In Market Value	Recognized Gain
		Rate	Date	Date	08/31/18	08/31/18					11/30/18	11/30/18		
Repo Agmt	General Fund	2.20	11/30/18	12/03/18	629,305.33	629,305.33	18,490.40				647,795.73	647,795.73	-	0.00
Repo Agmt	General Fund	2.20	11/30/18	12/03/18	34,281.34	34,281.34	145.43				34,426.77	34,426.77	-	0.00
Repo Agmt	General Fund	2.20	11/30/18	12/03/18	689,969.43	689,969.43	93,345.02				783,314.45	783,314.45	-	0.00
Repo Agmt	General Fund	2.20	11/30/18	12/03/18	3,068,772.83	3,068,772.83		(1,207,172.51)			1,861,600.32	1,861,600.32	-	0.00
Repo Agmt	General Fund	2.20	11/30/18	12/03/18	1,274,152.35	1,274,152.35		(468,019.23)			806,133.12	806,133.12	-	0.00
Repo Agmt	General Fund	2.20	11/30/18	12/03/18	630,691.05	630,691.05	7,109.43				637,800.48	637,800.48	-	0.00
Repo Agmt	General Fund	2.20	11/30/18	12/03/18	245,911.82	245,911.82	1,229.32				247,141.14	247,141.14	-	0.00
Repo Agmt	General Fund	2.20	11/30/18	12/03/18	773,129.80	773,129.80	6,976.98				780,106.78	780,106.78	-	0.00
GNMA	General Fund				781.22	779.68			(781.22)				1.54	0.00
GNMA	General Fund				546.11	546.08			(546.11)				0.03	0.00
GNMA	General Fund	7.50	05/29/90	04/20/19	2,547.51	2,552.94			(1,594.29)		953.22	953.12	(5.53)	0.00
Repo Agmt	General Fund	2.20	11/30/18	12/03/18	18,396.74	18,396.74		(8,810.74)			9,586.00	9,586.00	-	0.00
General Fund Total					7,368,485.53	7,368,489.39	127,296.58	(1,684,002.48)	(2,921.62)	0.00	5,808,858.01	5,808,857.91	(3.96)	0.00
Repo Agmt	Housing Trust Fund	2.20	11/30/18	12/03/18	74,884.61	74,884.61	47,738.80				122,623.41	122,623.41	-	0.00
Repo Agmt	Housing Trust Fund	2.20	11/30/18	12/03/18	3,382.22	3,382.22	1,358.91				4,741.13	4,741.13	-	0.00
Repo Agmt	Housing Trust Fund	2.20	11/30/18	12/03/18	220,436.88	220,436.88	90,309.28				310,746.16	310,746.16	-	0.00
Repo Agmt	General Revenue Appn	2.20	11/30/18	12/03/18	55,969.60	55,969.60	20,006.60				75,976.20	75,976.20	-	0.00
Repo Agmt	General Revenue Appn	2.20	11/30/18	12/03/18	812,304.29	812,304.29	262,556.89				1,074,861.18	1,074,861.18	-	0.00
Repo Agmt	General Revenue Appn	2.20	11/30/18	12/03/18	197,986.92	197,986.92	675,691.59				873,678.51	873,678.51	-	0.00
Repo Agmt	General Revenue Appn	2.20	11/30/18	12/03/18	199,236.64	199,236.64	29,270.67				228,507.31	228,507.31	-	0.00
Repo Agmt	General Revenue Appn	2.20	11/30/18	12/03/18	245,787.30	245,787.30	0.00				245,787.30	245,787.30	-	0.00
Repo Agmt	Housing Trust Fund-GR	2.20	11/30/18	12/03/18	3,441,132.15	3,441,132.15		(1,521,750.13)			1,919,382.02	1,919,382.02	-	0.00
Repo Agmt	Housing Trust Fund-GR	2.20	11/30/18	12/03/18			2,183,056.00				2,183,056.00	2,183,056.00	-	0.00
Repo Agmt	Bootstrap -GR	2.20	11/30/18	12/03/18	877,936.91	877,936.91		(329,280.00)			548,656.91	548,656.91	-	0.00
Repo Agmt	Bootstrap -GR	2.20	11/30/18	12/03/18	2,429,276.35	2,429,276.35		(544,500.00)			1,884,776.35	1,884,776.35	-	0.00
Repo Agmt	Bootstrap -GR	2.20	11/30/18	12/03/18			950,500.00				950,500.00	950,500.00	-	0.00
Housing Trust Fund Total					8,558,333.87	8,558,333.87	4,260,488.74	(2,395,530.13)	0.00	0.00	10,423,292.48	10,423,292.48	0.00	0.00
Repo Agmt	Multi Family	2.20	11/30/18	12/03/18	1,112,360.38	1,112,360.38		(194,844.94)			917,515.44	917,515.44	-	0.00
Repo Agmt	Multi Family	2.20	11/30/18	12/03/18	1,039,062.49	1,039,062.49		(349,743.32)			689,319.17	689,319.17	-	0.00
Repo Agmt	Low Income Tax Credit Prog.	2.20	11/30/18	12/03/18	7,984,741.18	7,984,741.18		(1,988,495.06)			5,996,246.12	5,996,246.12	-	0.00
Compliance Total					10,136,164.05	10,136,164.05	0.00	(2,533,083.32)	0.00	0.00	7,603,080.73	7,603,080.73	0.00	0.00
Repo Agmt	Asset Management	2.20	11/30/18	12/03/18	1,282,966.19	1,282,966.19		(58,159.21)			1,224,806.98	1,224,806.98	-	0.00
Repo Agmt	Low Income Tax Credit Prog.	2.20	11/30/18	12/03/18	1,569,880.74	1,569,880.74		(203,014.49)			1,366,866.25	1,366,866.25	-	0.00
Repo Agmt	Low Income Tax Credit Prog.	2.20	11/30/18	12/03/18	8,507,199.70	8,507,199.70	1,100,594.30				9,607,794.00	9,607,794.00	-	0.00
Repo Agmt	Low Income Tax Credit Prog.	2.20	11/30/18	12/03/18	413,473.84	413,473.84	13,457.60				426,931.44	426,931.44	-	0.00
Housing Initiatives Total					11,773,520.47	11,773,520.47	1,114,051.90	(261,173.70)	0.00	0.00	12,626,398.67	12,626,398.67	0.00	0.00
Repo Agmt	Homelessness - HB4102	2.20	11/30/18	12/03/18	91,811.49	91,811.49	2,694.86				94,506.35	94,506.35	-	0.00
Ending Homelessness Trust Fund Total					91,811.49	91,811.49	2,694.86	0.00	0.00	0.00	94,506.35	94,506.35	0.00	0.00
Total Investment Summary					37,928,315.41	37,928,319.27	5,504,532.08	(6,873,789.63)	(2,921.62)	0.00	36,556,136.24	36,556,136.14	(3.96)	0.00

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BOARD REPORT ITEM
FINANCIAL ADMINISTRATION DIVISION
FEBRUARY 21, 2019

Report on the Department's Interim Balance Sheet/Statement of Net Position for the period ended November 30, 2018

Below is an unaudited condensed Statement of Net Position along with a description of the major categories of this statement.

Texas Department of Housing and Community Affairs			
Government Wide			
Condensed Statement of Net Position			
As of November 30, 2018			
	Governmental	Business-Type	
	Activities	Activities	Total
Assets			
Current Assets:			
Cash & Cash Equivalents	\$ 46,878,774	\$ 163,388,023	\$ 210,266,797
Federal Receivable	17,138	-	17,138
Legislative Appropriations	12,931,214	-	12,931,214
Interest Receivable	118,848	9,675,301	9,794,149
Loan and Contracts	22,820,597	70,923,034	93,743,631
Other Current Assets	49,319	759,537	808,856
Non-current Assets:			
Investments	-	888,870,815	888,870,815
Loans and Contracts	442,395,263	952,388,184	1,394,783,447
Capital Assets	107,301	103,658	210,959
Other Non-Current Assets	-	42,960	42,960
Total Assets	525,318,454	2,086,151,512	2,611,469,966
DEFERRED OUTFLOWS OF RESOURCES	6,226,231	11,740,041	17,966,272
Liabilities			
Current			
Accounts/Payroll Payables	555,789	1,168,552	1,724,341
Interest Payable	-	12,149,222	12,149,222
Unearned Revenue	13,247	5,945,789	5,959,036
Short-Term Debt	-	70,210,110	70,210,110
Net OPEB Liability	110,515	110,515	221,030
Other Current Liabilities	156,283	1,237,728	1,394,011
Non-current			
Net Pension Liability	28,910,839	30,784,686	59,695,525
Net OPEB Liability	21,669,626	21,669,626	43,339,252
Bonds Payable	-	1,480,114,729	1,480,114,729
Notes and Loans Payable	-	109,689,189	109,689,189
Derivative Hedging Instrument	-	4,784,394	4,784,394
Other Non-current Liabilities	357,749	100,089,594	100,447,343
Total Liabilities	51,774,048	1,837,954,134	1,889,728,182
DEFERRED INFLOWS OF RESOURCES	6,014,794	5,592,732	11,607,526
Net Position			
Invested in Capital Assets	107,301	103,658	210,959
Restricted	525,223,573	249,060,853	774,284,426
Unrestricted	(51,575,031)	5,180,176	(46,394,855)
Total Net Position	\$ 473,755,843	\$ 254,344,687	\$ 728,100,530

Texas Department of Housing and Community Affairs
Major Categories of the Statement of Net Position

Current Assets:	Governmental Activities	Business-Type Activities
Cash & Cash Equivalents	Cash primarily related to Tax Credit Assistance Program (TCAP), Neighborhood Stabilization Program (NSP) and Home Investment Partnership Program (HOME) loan repayments available for use in current and future Notices of Funding Availability (NOFAs).	Cash and cash equivalents in the form of overnight repurchase agreements (Repos) and money market funds primarily associated with Single Family, Multifamily and operating activities.
Legislative Appropriations	Balance of an agency's unexpended legislative appropriations authority on the balance sheet and the total spending authority received on the operating statement associated with Homeless Housing and Services Program (HHSP), Texas Housing Trust Fund (THTF) and Earned Federal Funds.	
Interest Receivable		Interest receivable primarily related to investments and mortgage loans.
Loans and Contracts		Loans and contracts consisting of mortgage loans related to My First Texas Home Program. Loans are funded with advances from Federal Home Loan Bank per an advances and security agreement. Loans are typically settled within 30 days.
Non-current Assets:		
Investments		Investments stated at fair value. Primarily in the form of Mortgage Backed Securities (MBSs) and Guaranteed Investment Contracts (GICs).
Loans and Contracts	Loans made from federal funds for the purpose of Single Family loans and Multifamily development loans from HOME, TCAP, National Housing Trust Fund (NHTF) and NSP activities.	Loans and contracts consisting of mortgage loans made from Single Family and Multifamily bond proceeds. In addition, loans and contracts consist of Single Family loans and Multifamily development loans from the Housing Trust Fund and other Housing Initiative Programs. Loans receivable are carried at the unpaid principal balance outstanding, net of the allowance for estimated losses.

Deferred Outflows Of Resources	The effect of changes in actuarial assumptions for pensions and Other Post-Employment Benefits (OPEB) are reported as deferred outflows of resources.	The effect of changes in actuarial assumptions for pensions and OPEB are reported as deferred outflows of resources. In addition, the Department contracted a service provider to measure its derivative effectiveness. Since the derivative instruments were deemed to be effective, the Department will be deferring the changes in fair value for these derivatives and reporting them as deferred outflow of resources.
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Liabilities/Current

Accounts/Payroll Payables	Represents the liability for the value of assets or services received at the balance sheet date for which payment is pending.	Represents the liability for the value of assets or services received at the balance sheet date for which payment is pending.
Interest Payable		Accrued interest due on bonds
Unearned Revenue		Fees such as compliance fees that are received in advance of work performed and are recognized over a period of time.
Short-Term Debt		Represents funds due to Federal Home Loan Bank of Dallas for advances used to fund the purchase of program loans. Advances occur on a daily basis and are used to purchase mortgage loans. With each MBS settlement, the advances are repaid related to the mortgage loans underlying the related MBS.
Other Current Liabilities		Primarily consist of funds due to Federal Home Loan Bank related to an advances and security agreement.

Liabilities/Non-Current

Net Pension Liability	The Department's proportionate share of the pension liability according to the report issued by the Employees Retirement System of Texas, who is the administrator of the single employer defined benefit plan.	
Net OPEB Liability	The Department's proportionate share of the OPEB liability according to the report issued by the Employees Retirement System of Texas, who is the administrator of the single employer defined benefit plan.	
Bonds Payable		Bonds payable reported at par less unamortized discount or plus unamortized premium.

Notes and Loans Payable		Notes to provide funding to nonprofit and for-profit developers of multifamily properties to construct or rehabilitate rental housing. These notes are limited obligations of the Department and are payable solely from the payments received from the assets and guarantors, which secure the notes.
Derivative Hedging Instrument		Interest rate swaps at fair value taking into account non-performance risk. At year end, the fair value of the Department's four swaps is considered to be negative indicating the Department would be obligated to pay the counterparty the fair value as of the termination date. The Department has the option to terminate prior to the maturity date.
Other Non-current Liabilities		Primarily accounts for funds due to Developers as a result of Multifamily bond proceeds. These proceeds are conduit debt issued on behalf of the Developer for the purpose of Multifamily developments and are held by the trustee.

Deferred Inflows Of Resources	The difference between expected and actual experience and the difference between projected and actual investment return related to pension and OPEB plan.
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Net Position

Restricted	Resources that have constraints placed on their use through external parties or by law through contractual provisions associated with HOME, TCAP and NSP.	Amounts restricted through bond covenants.
Unrestricted	Resources not considered restricted per accounting standards but spending authority remains under program related regulations, GAA, Government Code and Board Action. \$28.9M Pension Liability for Governmental Activities and \$30.8M for Business-Type Activities impact unrestricted Net Position. In addition, \$29.8M OPEB Liability for Governmental Activities and Business-Type Activities impact unrestricted Net Position.	

Texas Department of Housing and Community Affairs Financial Highlights

Some of the primary categories affected were a result of the following financial transactions that transpired from September 1, 2018, through November 30, 2018.

Assets Current/Non-current:	Governmental Activities	Business-Type Activities
Cash & Cash Equivalents	<ul style="list-style-type: none"> • Grants Funded - \$63.2M – (Decrease Cash) <ul style="list-style-type: none"> ▪ Emergency Solutions Grants Program (ESG) - \$1.7M ▪ Community Services Block Grant (CSBG) - \$8.1M ▪ Low Income Home Energy Assistance Program (LIHEAP) - \$49.4M ▪ Department of Energy-Weatherization Assistance Program (DOE-WAP) - \$1.5M ▪ Section 8 - \$1.5M ▪ Section 811 - \$208K ▪ Homeless Housing and Services Program (HHSP) - \$787K 	<ul style="list-style-type: none"> • Fees Received - \$7.2M – (Increase Cash & Cash Equivalents) <ul style="list-style-type: none"> ▪ Single Family Fees - \$2.3M ▪ Multifamily Fees - \$419K ▪ Tax Credit Fees - \$3.1M ▪ Compliance Fees - \$1.2M ▪ Asset Management Fees - \$139K
Loans and Contracts	<ul style="list-style-type: none"> • Mortgages Funded – \$4.8M – (Increase) <ul style="list-style-type: none"> ▪ Home Investment Partnership Program (HOME) - \$2.0M ▪ Tax Credit Assistance Program (TCAP) - \$2.2M ▪ National Housing Trust Fund (NHTF) - \$572K • Mortgage Loan Repayments - \$3.9M – (Decrease) <ul style="list-style-type: none"> ▪ HOME - \$1.8M ▪ TCAP - \$1.6M ▪ NSP - \$500K 	<ul style="list-style-type: none"> • Mortgages Funded - \$272.5M – (Increase) <ul style="list-style-type: none"> ▪ Taxable Mortgage Program (TMP)- \$262.3M ▪ Down Payment Assistance - \$9.3M ▪ Texas Housing Trust Fund (Bootstrap) - \$923K • Mortgage Loan Repayments - \$250.2M – (Decrease) <ul style="list-style-type: none"> ▪ Down Payment Assistance - \$1.1M ▪ My First Texas Home-TMP - \$229.3M ▪ Multifamily Indentures - \$18.7M ▪ Texas Housing Trust Fund - \$1.1M

**Governmental
Activities**

**Business-Type
Activities**

Liabilities

Current/Non-current:

Bonds Payable/ Notes Payable		<ul style="list-style-type: none"> • <i>Single Family Bonds Issued – \$144.0M – (Increase)</i> <ul style="list-style-type: none"> ▪ \$144.0M (Single Family 2018 Series A) • <i>Multifamily Bonds Issued – \$20.1 – (Increase)</i> <ul style="list-style-type: none"> ▪ \$20.1M (2018 Forestwood Apartments) • <i>Bonds Redeemed - \$26.4M – (Decrease)</i> <ul style="list-style-type: none"> ▪ Single Family Indenture - \$13.7M ▪ Residential Mortgage Revenue Bonds Indenture - \$3.1M ▪ Multifamily Indentures - \$9.6M
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BOARD REPORT ITEM
BOND FINANCE DIVISION
FEBRUARY 21, 2019

REPORT ITEM

Report on the Department's 1st Quarter Investment Report relating to funds held under Bond Trust Indentures

BACKGROUND

- The Department's Investment Policy excludes funds invested under a bond trust indenture for the benefit of bond holders because the trustee for each trust indenture controls the authorized investments in accordance with the requirements of that indenture. Management of assets within an indenture is the responsibility of the Trustee. This internal management report is for informational purposes only and, while not required under the Public Funds Investment Act, it is consistent with the prescribed format and detail as required by the Public Funds Investment Act. It details the types of investments, maturity dates, carrying (face amount) values, and fair market values at the beginning and end of the quarter.
- Overall, the portfolio carrying value increased by approximately \$173.9 million (see page 3), resulting in an end of quarter balance of \$932,550,891. The increase reflects one new single family bond issuance and two new multifamily bond issuances.

The portfolio consists of those investments described in the attached Bond Trust Indentures Supplemental Management Report.

	<u>Beginning Quarter</u>	<u>Ending Quarter</u>
Mortgage Backed Securities ("MBS")	78%	69%
Guaranteed Investment Contracts/Investment Agreements	4%	16%
Repurchase Agreements	7%	4%
Money Markets and Mutual Funds	6%	6%
Treasury Bills	5%	5%

The decrease in MBS is due to the repayment of principal on the underlying mortgage loans, combined with the issuance of single family bonds and the deposit of proceeds into a Guaranteed Investment Contract. The decrease in Repurchase Agreements is the due to Single Family debt service on September 1, 2018.

Portfolio activity for the quarter:

- The MBS purchases this quarter were \$62.4 million, due to the issuance of single family bonds and the investment of proceeds in MBS.
- The maturities in MBS this quarter were \$14.3 million, which represent loan repayments or payoffs. The table below shows the trend in MBS activity.

	1st Qtr FY 18	2nd Qtr FY 18	3rd Qtr FY 18	4th Qtr FY 18	1st Qtr FY 19	Total
Purchases	\$ 34,700,000	\$ 50,000,000			\$ 62,399,364	\$ 147,099,364
Sales						\$ -
Maturities	\$ 20,232,566	\$ 21,792,104	\$ 16,255,646	\$ 14,288,320	\$ 14,306,899	\$ 86,875,535
Transfers						\$ -


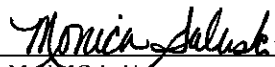
- The process of valuing investments at fair market value identifies unrealized gains and losses. These gains or losses do not impact the overall portfolio because the Department typically holds MBS investments until maturity.
- The fair market value (the amount at which a financial instrument could be exchanged in a current transaction between willing parties) decreased \$7 million (see pages 3 and 4), with fair market value being greater than the carrying value. The national average for a 30-year fixed rate mortgage, as reported by the Freddie Mac Primary Mortgage Market Survey as of November 30, 2018, was 4.81%, up from 4.52% at the end of August 2018. There are various factors that affect the fair market value of these investments, but there is a correlation between the prevailing mortgage interest rates and the change in market value.
- Given the current financial environment, this change in market value is to be expected. However, the change is cyclical and is reflective of a general movement toward higher yields in the bond market as a whole.
- The ability of the Department's investments to provide the appropriate cash flow to pay debt service and eventually retire the related bond debt is of more importance than the assessed relative value in the bond market as a whole.
- The more relevant measures of indenture parity are reported on page 5 in the Bond Trust Indenture Parity Comparison. This report shows parity (ratio of assets to liabilities) by indenture with assets greater than liabilities in a range from 100.57% to 671.49% which would indicate the Department has sufficient assets to meet its obligations.

TEXAS DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS
 BOND FINANCE DIVISION
 BOND TRUST INDENTURES
 Supplemental Management Report
 Quarter Ending November 30, 2018

INVESTMENT TYPE	FAIR VALUE	CARRYING	ACCRETION /AMORTIZATION/				CARRYING	FAIR VALUE	CHANGE	RECOGNIZED
	(MARKET)	VALUE	PURCHASES	SALES	MATURITIES	TRANSFERS	VALUE	(MARKET)	IN FAIR VALUE	
	@ 08/31/18	@ 08/31/18					@ 11/30/18	@ 11/30/18	(MARKET)	GAIN
INDENTURE RELATED:										
Mortgage-Backed Securities	603,401,300	591,309,875	62,399,364	0	(14,306,899)	0	639,402,340	644,365,283	(7,128,482)	0
Guaranteed Inv Contracts	27,987,330	27,987,330	123,373,436	(2,935,347)	0	0	148,425,419	148,425,419	0	0
Investment Agreements	467,285	467,285	1,008,318	0	0	0	1,475,603	1,475,603	0	0
Treasury-Backed Mutual Funds	44,843,431	44,843,431	22,200,691	(11,436,684)	0	0	55,607,438	55,607,438	0	0
Repurchase Agreements	49,553,677	49,553,677	11,259,231	(17,649,359)	0	0	43,163,549	43,163,549	0	0
Treasury Note	44,297,821	44,482,293	1,121,523	(1,127,274)	0	0	44,476,543	44,222,957	(69,113)	0
	<u>770,550,845</u>	<u>758,643,892</u>	<u>221,362,562</u>	<u>(33,148,664)</u>	<u>(14,306,899)</u>	<u>0</u>	<u>932,550,891</u>	<u>937,260,249</u>	<u>(7,197,595)</u>	<u>0</u>

The Department is in compliance with regards to investing its funds in a manner which will provide by priority the following objectives: (1) safety of principal, (2) sufficient liquidity to meet Department cash flow needs, (3) a market rate of return for the risk assumed, and (4) conformation to all applicable state statutes governing the investment of public funds including Section 2306 of the Department's enabling legislation and specifically, Section 2256 of the Texas Government Code, the Public Funds Investment Act.

Per Section 2256.007(d) of the Texas Government Code, the Public Funds Investment Act:
 David Cervantes completed 5.0 hrs. of training on the Texas Public Funds Investment Act on August 11, 2017
 Monica Galuski completed 5.0 hrs. of training on the Texas Public Funds Investment Act on February 8, 2019

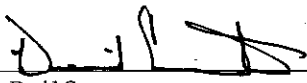

	Date <u>2/8/19</u>
David Cervantes Acting Director	
	Date <u>2/7/19</u>
Monica Galuski Director of Bond Finance/Chief Investment Officer	

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
 BOND FINANCE DIVISION
 BOND TRUST INDENTURES
 Supplemental Management Report
 Quarter Ending November 30, 2018

	FAIR VALUE (MARKET) @ 08/31/18	CARRYING VALUE @ 08/31/18	ACCRETION /AMORTIZATION/ PURCHASES	SALES	MATURITIES	TRANSFERS	CARRYING VALUE @ 11/30/18	FAIR VALUE (MARKET) @ 11/30/18	CHANGE IN FAIR VALUE (MARKET)	ACCRUED INT RECVBL @ 11/30/18	RECOGNIZED GAIN
INDENTURE RELATED:											
Single Family	398,574,031	385,762,084	154,277,795	(17,597,954)	(9,108,992)	0	513,332,933	523,979,347	(2,165,533)	0	0
RMRB	157,239,640	151,803,743	7,509,878	(2,923,902)	(4,821,494)	0	151,568,225	155,517,978	(1,486,144)	0	0
CHMRB	2,065,749	1,988,542	202,425	0	(180,691)	0	2,010,276	2,074,814	(12,669)	0	0
Taxable Mortgage Program	4,179,196	4,143,911	106,486	0	(16,331)	0	4,234,066	4,248,488	(20,863)	0	0
Multi Family	208,492,230	214,945,613	59,265,978	(12,563,958)	(242,241)	0	261,405,391	251,439,623	(3,512,386)	0	0
	770,550,845	758,643,892	221,362,562	(33,085,815)	(14,369,748)	0	932,550,891	937,260,249	(7,197,595)	0	0

The Department is in compliance with regards to investing its funds in a manner which will provide by priority the following objectives: (1) safety of principal, (2) sufficient liquidity to meet Department cash flow needs, (3) a market rate of return for the risk assumed, and (4) conformation to all applicable state statutes governing the investment of public funds including Section 2306 of the Department's enabling legislation and specifically, Section 2256 of the Texas Government Code, the Public Funds Investment Act.

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	Date <u>2/8/19</u>
David Cervantes Acting Director	
	Date <u>2/7/19</u>
Monica Galuski Director of Bond Finance/Chief Investment Officer	

Texas Department of Housing and Community Affairs
Bond Finance Division
Executive Summary
As of November 30, 2018

	Single Family Indenture Funds	Residential Mortgage Revenue Bond Indenture Funds	Collateralized Home Mortgage Revenue Bond Indenture Funds	Multi-Family Indenture Funds	Combined Totals
PARITY COMPARISON:					
PARITY ASSETS					
Cash	\$ 153,649	\$ 24,131		\$ 6,990,429	\$ 7,168,209
Investments ⁽¹⁾	\$ 167,172,265	\$ 22,154,474	\$ 300,735	\$ 259,914,521	\$ 449,541,996
Mortgage Backed Securities ⁽¹⁾	\$ 345,684,845	\$ 129,514,047	\$ 1,711,544	\$ -	\$ 476,910,436
Loans Receivable ⁽²⁾	\$ 31,327			\$ 822,806,015	\$ 822,837,342
Accrued Interest Receivable	\$ 2,020,284	\$ 483,095	\$ 10,959	\$ 6,797,957	\$ 9,312,295
TOTAL PARITY ASSETS	\$ 515,062,370	\$ 152,175,748	\$ 2,023,238	\$ 1,096,508,922	\$ 1,765,770,278
PARITY LIABILITIES					
Notes Payable	\$ 12,000,000	\$ 10,000,000		\$ 87,689,189	\$ 109,689,189
Bonds Payable ⁽¹⁾	\$ 458,294,434	\$ 118,210,000	\$ 300,000	\$ 896,251,979	\$ 1,473,056,413
Accrued Interest Payable	\$ 3,322,416	\$ 1,975,558	\$ 1,304	\$ 6,849,944	\$ 12,149,222
Other Non-Current Liabilities ⁽³⁾				\$ 99,557,331	\$ 99,557,331
TOTAL PARITY LIABILITIES	\$ 473,616,850	\$ 130,185,558	\$ 301,304	\$ 1,090,348,443	\$ 1,694,452,155
PARITY DIFFERENCE	\$ 41,445,520	\$ 21,990,190	\$ 1,721,934	\$ 6,160,479	\$ 71,318,123
PARITY	108.75%	116.89%	671.49%	100.57%	104.21%

(1) Investments, Mortgage Backed Securities and Bonds Payable reported at par value not fair value. This adjustment is consistent with indenture cashflows prepared for rating agencies.

(2) Loans Receivable include whole loans only. Special mortgage loans are excluded.

(3) Other Non-Current Liabilities include "Due to Developers" (for insurance, taxes and other operating expenses) and "Earning Due to Developers" (on investments).

Note: Based on preliminary and unaudited financial statements, subject to change in audited financial statements.

3

BOARD ACTION REQUEST
MULTIFAMILY ASSET RESOLUTION
FEBRUARY 21, 2019

Presentation, discussion, and possible action on the contract and sale of Alpine Retirement Community in Alpine, Texas

RECOMMENDED ACTION

WHEREAS, the Department owns, operates, and has marketed the 24-unit senior apartment property located at 901 N. Orange Street in Alpine, Texas, since 2007;

WHEREAS, Tex. Gov't Code §2306.175 provides for the sale or other disposition of owned property by the Department;

WHEREAS, Tex. Gov't Code §2306.174 encourages the Department to sell or dispose of any real property held as a result of foreclosure within three years or as soon thereafter as a suitable purchaser has been found; and

WHEREAS, a new reasonable offer has been made to purchase the property after a prior offer approved by this Board failed to result in a successful closing.

NOW, therefore, it is hereby

RESOLVED, that the Acting Director and his designees are authorized to execute and file of record a 15 year HOME LURA for the property located at 901 N. Orange Street, Alpine Texas,

FURTHER RESOLVED, that the Acting Director and his designees are authorize to enter into a contract with Well Empowered Health, a nonprofit corporation, for the sale of the Alpine Retirement Community, 901 N. Orange Street, Alpine, Texas, and each of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to take such actions as they or any of them may deem necessary to negotiate any remaining terms to sell this property; and,

FURTHER RESOLVED, staff is authorized to market and sell this property within authority provided by the board, if remaining terms are not agreed upon or fails to close.

BACKGROUND

The Department foreclosed on this 24-unit property in May 2007. Since that time, the Department has been operating the property and has offered it for sale. The property is located at 901 N. Orange Street in Alpine, Texas, and has seen limited buyer interest prior to this past year primarily due to its rural

location and limited cash flow potential. The property is in good physical shape and is fully occupied at rents that have been historically below market. After several years of working with the prior owner's management company, Department staff was able to procure a new management company, and begin to make modest improvements to the property's operation. Staff has been working with the new management company to gradually increase rents to be closer to market and the maximum restricted rents which has resulted in the property's growth in annual net income. Staff has determined that certain imperfections exist in the current LURA, and that before closing the Department will execute and file a new HOME LURA for 15 years to provide assurances that, combined with the Department's period of operation, the minimum HUD affordability requirement is met in full.

As a result of a refreshed marketing effort in early 2018, the property received several offers in April 2018 and those offers were brought to the Board for consideration at their meeting on May 24, 2018. The Board authorized staff to move forward with a sale to Los Robles Development Company (the Previous Buyer) after appropriate due diligence. The Previous Buyer opened title but ultimately did not move forward with the closing.

While the property was under contract the Department continued to respond to inquiries and the property was shown to two additional prospective buyers. After the contract expired, Staff notified the Previous Buyer that the contract had expired by its terms and asked the Previous Buyer as well as others who had expressed an interest to provide a new best offer letter of interest by January 14, 2019. Staff is recommending sale to the entity that provided an offer by that deadline most consistent with the prior-approved authority.

4

BOARD REPORT ITEM
TEXAS HOMEOWNERSHIP DIVISION
FEBRUARY 21, 2019

Quarterly Report on Texas Homeownership Division Activity

BACKGROUND

The Texas Homeownership Division is primarily responsible for the creation, oversight, and administration of the Department's homeownership programs, which are designed to provide affordable financing options for low-to-moderate income homebuyers. This is accomplished through the issuance of tax-exempt and taxable single family mortgage revenue bonds, and through the Department's Taxable Mortgage Program (TMP).


Currently, the Department offers the following options to homebuyers:

- **My First Texas Home Program.** Offers expanded mortgage loan opportunities to qualifying first-time homebuyers, including government and conventional 30-year fixed rate mortgage loan options. All loans originated through the program are tax-exempt eligible. Borrowers must be first-time homebuyers (cannot have had an ownership interest in a primary residence within the last three years or must qualify for a veteran or targeted area exception), and both borrower income and the purchase price of the home must be within IRS designated limits. IRS income limits are 100% of Area Median Family Income (AMFI) for households of one to two persons and 115% of AMFI for households of three or more. The IRS purchase price limit is 90% of the average area purchase price. Higher income and purchase price limits apply with respect to homes purchased in targeted areas, which are areas of severe economic distress. Income is calculated using methodology established by the IRS, and recapture tax applies for loans that are used in a tax-exempt bond issue or for loans that receive a Mortgage Credit Certificate (MCC). The program currently uses both tax-exempt mortgage revenue bond proceeds and TMP as funding sources for this option.
- **My Choice Texas Home Program.** Offers mortgage loan opportunities to qualifying first-time and non-first-time homebuyers, including government and conventional 30-year fixed rate mortgage loan options. Down payment and closing cost assistance is available with each loan. While the same income and purchase price limits described above apply, income eligibility is based on the standard credit qualifying (1003) income instead of IRS methodology. All loans are funded through TMP, so no IRS tax provisions apply.

- Texas Mortgage Credit Certificate (MCC) Program.** Makes homeownership more affordable by providing first-time homebuyers a federal income tax credit, reducing the homebuyer’s potential federal income tax liability. By having an MCC, the homebuyer has the ability to convert a portion of their annual mortgage interest into a direct income tax credit of up to \$2,000 on their U.S. individual income tax return. The credit may be applied for the life of the loan, as long as it continues to be the borrower’s primary residence. Currently, the Texas MCC option is only offered in combination with a My First Texas Home mortgage loan; these loans are referred to as Combo loans for discussion and reporting purposes.

The table below details the Department’s loan options and mortgage rates for the various options as of February 11, 2019. Down payment and closing cost assistance (DPA) is provided as a 30-year, non-amortizing, 0% interest second mortgage loan that is due on sale or refinance.

Texas Department of Housing and Community Affairs
Texas Homeownership Programs

 Rate Notice and Available Options 2/11/2019	Loans with Down Payment Assistance			Unassisted Loans	
	Government Loans (FHA, USDA, VA)	Conventional Loans Fannie Mae Preferred	Conventional Loans Fannie Mae Preferred	Government Loans (FHA, USDA, VA)	Conventional Loans Fannie Mae Preferred
Amount of DPA Provided	4 Points DPA	3 Points DPA	5 Points DPA	No DPA	No DPA
BOND PROGRAM - SUBJECT TO AVAILABILITY					
My FIRST Texas Home Tax Exempt Bond Loan	5.300%	N/A	N/A	3.990%	4.380%
TBA PROGRAM - CONTINUOUS FUNDING					
My FIRST Texas Home Bond Eligible Loans, No MCC	N/A	5.250%	5.375%	Unassisted Funds available with Bond Program only	
My FIRST Texas Home Combo Loans with MCC*	5.750%	5.375%	5.500%		
My CHOICE Texas Home Taxable Loans, No MCC	5.750%	5.375%	5.500%		
*MCC Credit Rate (Based on Loan Amount) Up to \$150,000 = 40%; \$150,001 up to \$200,000 = 35%; \$200,000 or greater = 25%					

The attached reports have been revised from their previous format to include an Aggregate Summary Report that reflects activity for each available homeownership option over the prior three calendar years. Detailed reports show activity during the past 12 months, including a map that reflects Texas counties served, demographic information on households served, homes purchased, and other relevant information.

As always, if there is additional information that you wish to have added to the quarterly reports, please let staff know.

Texas Homeownership / Bond Finance
Aggregate Summary Report as of December 31, 2018

	Month	My First Texas Home	Bond Program	My Choice	Combo (MFTH and MCC)	Stand Alone MCCs	AGGREGATE TOTAL	
		Loan Amount	Loan Amount	Loan Amount	Loan Amount	Loan Amount	Loan Amount	# Households Served
Calendar Year 2018	1/31/2018	\$49,518,433			\$31,988,642	\$25,695,000	\$107,202,075	642
	2/28/2018	39,694,156			18,551,484	18,606,044	76,851,684	483
	3/31/2018	37,707,798			20,937,493	20,511,592	79,156,883	480
	4/30/2018	40,823,301			22,654,876	36,073,836	99,552,013	584
	5/31/2018	43,224,815			29,864,325	44,729,156	117,818,296	705
	6/30/2018	40,686,899			31,715,654	36,899,222	109,301,775	645
	7/31/2018	45,715,682			32,630,425	41,553,059	119,899,166	712
	8/31/2018	47,894,502	522,379		31,963,113	43,701,139	124,081,133	713
	9/30/2018	28,665,128	9,753,696		19,058,259	34,376,135	91,853,218	541
	10/31/2018	18,810,509	45,317,386		33,191,952	43,102,859	140,422,706	816
	11/30/2018	13,507,006	46,933,554	370,160	32,521,066	33,287,562	126,619,348	730
	12/31/2018	33,984,949	23,166,920	4,940,782	29,560,190	29,922,921	121,575,762	693
	2018 TOTAL	\$440,233,178	\$125,693,935	\$5,310,942	\$334,637,479	\$408,458,525	\$1,314,334,059	7,744
Calendar Year 2017	1/31/2017	\$32,200,708			\$22,244,813	\$16,327,540	\$70,773,061	438
	2/28/2017	35,878,062			22,725,762	30,307,153	88,910,977	536
	3/31/2017	32,991,885			19,988,147	27,607,384	80,587,416	501
	4/30/2017	35,775,933			27,062,306	27,463,210	90,301,449	551
	5/31/2017	34,132,731			26,544,509	30,551,467	91,228,707	560
	6/30/2017	50,436,451			28,927,620	38,399,240	117,763,311	725
	7/31/2017	46,380,266			26,136,484	37,244,746	109,761,496	680
	8/31/2017	56,475,652			32,826,086	37,765,486	127,067,224	769
	9/30/2017	61,732,556			27,854,480	34,183,058	123,770,094	737
	10/31/2017	63,299,628			39,957,441	36,963,232	140,220,301	842
	11/30/2017	62,247,480			33,179,625	41,298,715	136,725,820	824
	12/31/2017	46,465,198			35,166,614	25,301,460	106,933,272	647
	2017 TOTAL	\$558,016,550			\$342,613,887	\$383,412,691	\$1,284,043,128	7,810
Calendar Year 2016	1/31/2016	\$7,237,057			\$4,507,231	\$21,662,071	\$33,406,359	215
	2/29/2016	6,334,351			4,457,125	18,003,836	28,795,312	195
	3/31/2016	16,218,288			6,549,190	17,985,455	40,752,933	271
	4/30/2016	10,430,161			4,337,632	17,638,354	32,406,147	213
	5/31/2016	9,573,861			5,792,505	16,691,734	32,058,100	204
	6/30/2016	9,800,877			6,521,314	19,987,159	36,309,350	228
	7/31/2016	10,933,873			4,353,173	11,087,382	26,374,428	168
	8/31/2016	17,368,246			6,644,232	21,606,070	45,618,548	290
	9/30/2016	13,136,791			4,571,475	23,394,414	41,102,680	244
	10/31/2016	10,868,479			5,695,097	17,569,266	34,132,842	220
	11/30/2016	15,001,023			6,884,463	25,296,916	47,182,402	283
	12/31/2016	19,171,756			9,259,481	31,171,608	59,602,845	363
	2016 TOTAL	\$146,074,763			\$69,572,918	\$242,094,265	\$457,741,946	2,894

TDHCA Aggregate Loan Originations Over Past 12 Months
Demographic Information
As of December 31, 2018

Original Loan Amount Distribution			
Original Loan Amount (\$)	Original Loan Amount	# of Loans	% of Loans
<= 25,000	\$ -	0	0.0%
25,001 - 50,000	\$ 149,251	3	0.0%
50,001 - 75,000	\$ 6,477,883	96	0.5%
75,001 - 100,000	\$ 39,312,016	442	3.0%
100,001 - 125,000	\$ 94,599,238	828	7.2%
125,001 - 150,000	\$ 178,113,085	1291	13.5%
150,001 - 175,000	\$ 251,539,870	1547	19.1%
175,001 - 200,000	\$ 283,468,808	1514	21.6%
200,001 - 225,000	\$ 246,059,309	1162	18.7%
225,001 - 250,000	\$ 126,692,374	538	9.6%
250,001 - 275,000	\$ 57,592,583	222	4.4%
> 275,000	\$ 30,635,616	104	1.5%
Max: \$349,319 \ Min: \$49,470 \ WAvg: \$169,698			

New Construction vs Existing Dwelling			
New Construction / Existing	Original Loan Amount	# of Loans	% of Loans
New	\$ 498,106,387	2530	37.9%
Existing	\$ 816,533,646	5217	62.1%

Property Type			
Loan Type	Original Loan Amount	# of Loans	% of Loans
FHA	\$ 1,021,088,750	6086	77.7%
HFA Preferred	\$ 208,102,867	1223	15.8%
USDA-RHS	\$ 52,116,834	268	4.0%
VA	\$ 33,331,582	170	2.5%

Property Type			
Property Type	Original Loan Amount	# of Loans	% of Loans
1 Unit Single Family Detached	\$ 1,264,618,387	7420	96.2%
Condominium	\$ 23,412,939	133	1.8%
Manufactured	\$ 13,408,366	108	1.0%
Townhouse	\$ 8,519,150	59	0.6%
Rowhouse	\$ 3,483,961	19	0.3%
Duplex	\$ 1,197,230	8	0.1%

Borrower Gender			
Gender	Original Loan Amount	# of Loans	% of Loans
Male	\$ 754,284,090	4398	57.4%
Female	\$ 560,355,943	3349	42.6%

Household Size			
Household Size	Original Loan Amount	# of Loans	% of Loans
1	\$ 399,542,329	2390	30.4%
2	\$ 298,956,068	1772	22.7%
3	\$ 272,282,144	1588	20.7%
4	\$ 199,503,426	1164	15.2%
5	\$ 99,523,832	575	7.6%
6	\$ 32,767,624	192	2.5%
7	\$ 8,143,965	44	0.6%
8+	\$ 3,920,645	22	0.3%
Max: 8 \ Min: 1 \ WAvg: 2.6			

First Time Home Buyer			
FTHB Status	Original Loan Amount	# of Loans	% of Loans
Yes	\$ 1,313,705,162	7742	99.9%
No	\$ 934,871	5	0.1%

FICO Score Distribution			
FICO Score	Original Loan Amount	# of Loans	% of Loans
<= 640	\$ 327,942,048	1950	24.9%
641 to 660	\$ 253,575,979	1545	19.3%
661 to 680	\$ 194,170,477	1161	14.8%
681 to 700	\$ 141,332,607	830	10.8%
701 to 720	\$ 117,878,143	681	9.0%
721 to 740	\$ 95,377,380	545	7.3%
741 to 760	\$ 81,467,885	460	6.2%
761 to 780	\$ 53,724,831	307	4.1%
780 to 800	\$ 35,478,860	187	2.7%
> 800	\$ 13,691,823	81	1.0%
Max: 816 \ Min: 620 \ WAvg: 678			

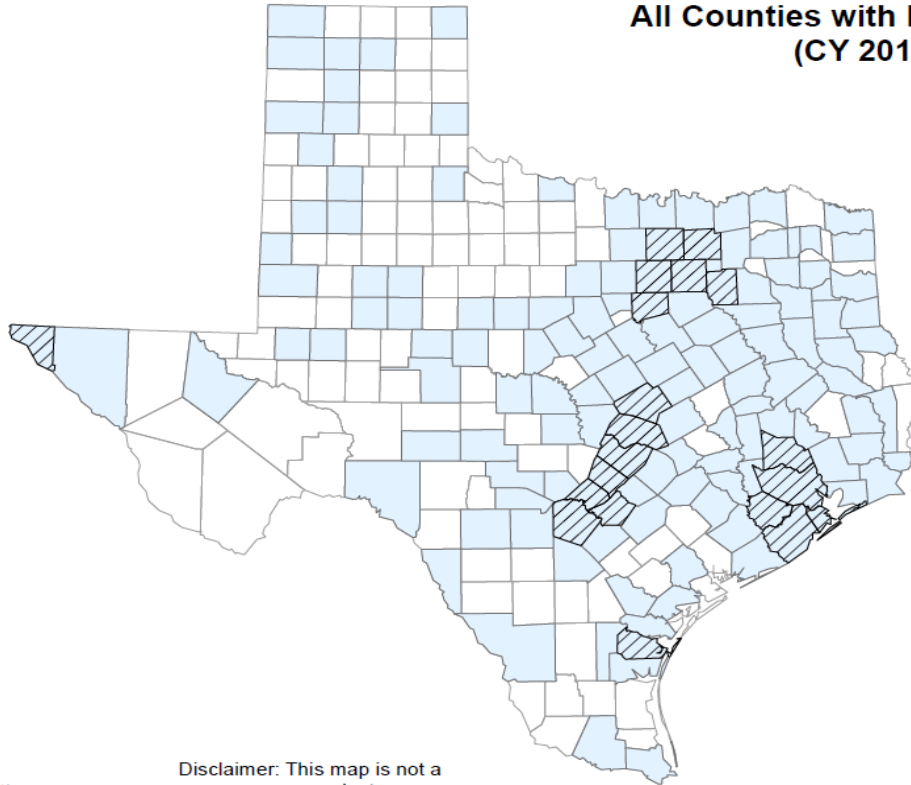
Household Income Distribution			
Household Income (\$)	Original Loan Amount	# of Loans	% of Loans
<= 20,000	\$ 3,046,440	29	0.2%
20,001 - 30,000	\$ 34,332,639	311	2.6%
30,001 - 40,000	\$ 136,082,480	1036	10.4%
40,001 - 50,000	\$ 258,353,657	1665	19.7%
50,001 - 60,000	\$ 326,642,345	1868	24.8%
60,001 - 70,000	\$ 269,646,608	1433	20.5%
70,001 - 80,000	\$ 182,694,998	924	13.9%
80,001 - 90,000	\$ 84,069,170	392	6.4%
90,001 - 100,000	\$ 18,208,351	81	0.1%
> 100,000	\$ 1,563,345	8	0.0%
Max: \$104,425 \ Min: \$15,080 \ WAvg: \$54,958			

AMFI Distribution			
AMFI	Original Loan Amount	# of Loans	% of Loans
<= 30%	\$ 10,811,555	100	0.8%
30.1% to 60%	\$ 375,406,904	2565	28.6%
60.1% to 80%	\$ 515,620,949	2927	39.2%
80.1% to 100%	\$ 409,953,887	2139	31.2%
100.1% to 115%	\$ 2,301,814	12	0.2%
> 115.1%	\$ 544,924	4	0.0%
Other			
Max: 1.23 \ Min: 0.14 \ WAvg: 0.68			

Age Distribution			
Age	Original Loan Amount	# of Loans	% of Loans
<= 20	\$ 12,114,428	84	0.9%
21 to 25	\$ 177,397,813	1096	13.5%
26 to 30	\$ 311,509,506	1835	23.7%
31 to 35	\$ 258,539,559	1488	19.7%
36 to 40	\$ 181,166,499	1028	13.8%
41 to 45	\$ 124,982,593	718	9.5%
46 to 50	\$ 96,249,613	565	7.3%
51 to 55	\$ 68,437,840	418	5.2%
56 to 60	\$ 46,508,587	277	3.5%
>61	\$ 37,733,595	238	2.9%
Not Defined			
Max: 87 \ Min: 19 \ WAvg: 36			

Aggregate Single Family Loans and/or MCCs Over Past 12 Months Geographic Distribution As of December 31, 2018

**All Counties with Loans/MCCs
(CY 2018)**



 Top 20 Counties
 All Counties with Loans /MCCs

Disclaimer: This map is not a survey product; boundaries, distances and scale are approximate only.

Date: 2/11/2019

Document Path: Q:\Maps\Homeownership\Top20analysis_18dataCY.mxd

COUNTY by Loan Volume (Top 20)			
Top Originating Counties	# of Loans	% of Loans	Total Originated
Harris	1480	18.6%	\$ 244,726,592
Travis	628	10.1%	\$ 132,127,852
Bexar	818	10.0%	\$ 131,976,154
El Paso	749	7.1%	\$ 93,283,877
Tarrant	494	6.8%	\$ 88,974,683
Dallas	507	6.6%	\$ 86,748,778
Williamson	401	6.4%	\$ 84,116,539
Hays	235	3.7%	\$ 48,571,255
Fort Bend	218	3.1%	\$ 40,631,011
Montgomery	197	2.7%	\$ 35,766,381
Collin	147	2.5%	\$ 33,338,859
Denton	113	1.9%	\$ 25,385,013
Kaufman	111	1.7%	\$ 22,298,096
Bell	141	1.4%	\$ 18,739,658
Johnson	94	1.3%	\$ 16,659,532
Brazoria	89	1.2%	\$ 16,331,424
Nueces	104	1.1%	\$ 14,625,990
Galveston	77	1.0%	\$ 12,747,013
Guadalupe	64	0.9%	\$ 12,229,033
Comal	55	0.9%	\$ 11,497,431

5

BOARD ACTION REQUEST
COMMUNITY AFFAIRS DIVISION
FEBRUARY 21, 2019

Presentation, discussion, and possible action on the 2019 Low Income Home Energy Assistance Program Comprehensive Energy Assistance Program award for Galveston County Community Action Council, Inc.

RECOMMENDED ACTION

WHEREAS, the 2019 Low Income Home Energy Assistance Program (LIHEAP) State Plan (the Plan), which included a list of the entities to be awarded funds and the proposed award amounts based on the formula contained in 10 TAC §6.303, Distribution of CEAP Funds, was approved by the Board on July 12, 2018;

WHEREAS, due to unresolved monitoring findings, the Texas Department of Housing and Community Affairs (the Department) staff did not include an award of Comprehensive Energy Assistance Program (CEAP) funds to Galveston County Community Action Council, Inc. (GCCAC) in that Plan and opted to defer the decision to make an award to GCCAC until a subsequent Board meeting;

WHEREAS, on July 26, 2018, the Board conditioned an award of \$3,281,375 in Program Year (PY) 2019 CEAP funds to GCCAC, and indicated that a failure to comply with the Board-directed conditions may constitute grounds for the initiation of proceedings to debar GCCAC and/or cause GCCAC to be ineligible for future awards as permitted by applicable state and federal laws, rules, and regulations;

WHEREAS, Department staff conducted an onsite visit in mid-December 2018 to verify whether the condition had been satisfied and determined that GCCAC had failed to fully comply with the condition and therefore recommended to the Board on January 17, 2019, that action be taken to terminate GCCAC's 2019 award;

WHEREAS, on January 17, 2019, the Board chose not to terminate, but instead extended GCCAC's time period to satisfy the condition to April 25, 2019;

WHEREAS, if GCCAC fully expends their 2018 CEAP contract before April 25, 2019, without being awarded 2019 CEAP contract funds, GCCAC may run out of CEAP funds with which to assist eligible low-income households in their service area; and

WHEREAS, the Department has the authority to issue a portion, or all, of the 2019 CEAP allocation for GCCAC, and staff recommends doing so only in part so that GCCAC does not have access to the full award until conditions identified in the Board action from January 17, 2019, are resolved, while ensuring they have the funds necessary to assist clients;

NOW, therefore, it is hereby

RESOLVED, that in order to minimize gaps in delivery of CEAP services to eligible low-income households in GCCAC's service area, an award of 25% of the service area's 2019 CEAP contract, in the amount of \$820,344, to be in effect February 21, 2019, through April 25, 2019, is awarded to GCCAC;

FURTHER RESOLVED, that in connection with such award the conditions contained herein are still in effect and imposed on GCCAC with determination in regards to the remainder of the service area's 2019 contract to take place at the Governing Board meeting on April 25, 2019; and

FURTHER RESOLVED, that the Acting Director or his designee are hereby authorized, empowered, and directed, for and on behalf of this Board to contract for the award represented herein.

BACKGROUND

The 2019 LIHEAP State Plan was approved at the Board meeting of July 12, 2018. A list of the entities to be awarded CEAP funds along with award amounts was contained in the Plan. GCCAC was not included in the list of those to be awarded 2019 CEAP funds due to outstanding monitoring findings. On July 26, 2018, the Board authorized a conditional award to GCCAC with the conditions described in the table below.

Since July 2018, as required by the condition, the Community Action Partnership (Partnership) performed an assessment and provided a report of their findings and recommendations to the Department and to GCCAC. Department staff performed an onsite monitoring visit to GCCAC in December 2018, shortly after the end of the 90-day period referenced in the condition. Although some improvement was noted by staff, several of the changes recommended by the Partnership were not satisfactorily implemented prompting Department staff to recommend termination of GCCAC's 2019 CEAP award, and all future CEAP awards to the Board on January 17, 2019.

At that Board meeting, the Board chose not to accept staff's recommendation to terminate and instead approved a motion to extend the time period in which GCCAC could satisfy the conditions to April 25, 2019, at which time a determination by the Board based on Department staff input would be made. Because GCCAC may potentially fully expend their 2018 CEAP award before April 25, 2019, and they had not yet been awarded 2019 CEAP funds, this may create a gap of time during which eligible low-income households in GCCAC's service area would not be able to receive CEAP assistance. To bridge this gap in CEAP services for the area serviced by GCCAC, Department staff recommends Board approval to award GCCAC 25% (\$820,344) of the 2019 CEAP award for the GCCAC service area.

2019 LIHEAP CEAP AWARD
February 21, 2019 – April 25, 2019

Agency	Award	EARAC Recommendation Status
GCCAC	\$820,344	This contract is recommended by EARAC subject to the Board's determination that such award is consistent with their intended direction relating to GCCAC.

6a

**TO BE POSTED
NOT LATER THAN
THE THIRD DAY
BEFORE THE
DATE OF THE
MEETING**

6b

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
FEBRUARY 21, 2019

Presentation, discussion, and possible action regarding the approval for publication in the *Texas Register* of the 2019-2 Multifamily Direct Loan Special Purpose Notice of Funding Availability (NOFA)

RECOMMENDED ACTION

WHEREAS, 24 CFR §92.301 gives the Department the ability to use its HOME funds under the Community Housing Development Organization (CHDO) set-aside for predevelopment loans;

WHEREAS, the Department has historically been unwilling to make such awards with HOME funds primarily due to the repayment liability to the U.S. Department of Housing and Urban Development (HUD) should a project not move beyond the predevelopment phase;

WHEREAS, TCAP Repayment Funds are not subject to repayment to HUD or any other federal agency and are therefore preferable to HOME funds for making predevelopment awards;

WHEREAS, the Department has \$200,000 in undedicated Tax Credit Assistance Program loan repayments (TCAP Repayment Funds or TCAP RF) available;

WHEREAS, staff recommends making these available funds in this 2019-2 Special Purpose NOFA for predevelopment activities only; and

WHEREAS, the Department will limit eligible applicants for these funds to private nonprofits that have not received funding for a multifamily development from the Department within the past 10 years (January 1, 2009, and later) with additional prioritization for nonprofits that could be certified as CHDOs and nonprofits with subject Development Sites in counties declared by the Federal Emergency Management Agency (FEMA) by March 8, 2019, to be eligible for Individual Assistance (IA) in 2017, 2018, or 2019;

NOW, therefore, it is hereby

RESOLVED, that \$200,000 in TCAP Repayment Funds will be made available for Applicants through this 2019-2 Special Purpose NOFA; and

FURTHER RESOLVED, the Acting Director and staff as designated by the Acting Director are authorized, empowered, and directed, for and on behalf of the Department to execute such documents, instruments and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

BACKGROUND

The 2019-2 Special Purpose NOFA announces the availability of Multifamily Direct Loan funds for predevelopment Applications received between March 11, 2019, and November 26, 2019. Awards under this NOFA will be made as grants subject to the restrictions in this NOFA and its fund source. The funds in the NOFA are composed of \$200,000 of the interest portion of TCAP RF accumulated November 2018 through December 2018 and TCAP RF.

This Special Purpose NOFA has been created for those Applicants seeking grant-based assistance to fund eligible activities related to preparing an application to develop affordable multifamily rental housing with Department funds. Eligible Applicants are limited to private nonprofit organizations that have not received an award of funds from TDHCA for a multifamily development from January 1, 2009, and later. Such Applicants may apply for one predevelopment grant in an amount not to exceed \$50,000.

Unless otherwise indicated, applications awarded under this Special Purpose NOFA will be subject to the applicable requirements of 10 TAC Chapter 13 – the Multifamily Direct Loan rule – and applicable sections of 10 TAC Chapter 11, the Qualified Allocation Plan. If any provisions of this NOFA are in conflict with provisions in 10 TAC Chapters 11 and 13, then the rule shall control except as specifically outlined in the NOFA.

Two priorities have been created for Applications received under this NOFA: a priority for those Applications seeking funds to construct or rehabilitate properties in counties deemed by FEMA by March 8, 2019, to be eligible for Individual Assistance in 2017, 2018, or 2019, and a priority for nonprofit organizations that can be certified as CHDOs. Applications from nonprofits with Development Sites in IA counties in 2017, 2018, or 2019, will be prioritized ahead of Applications from nonprofits that can be certified as CHDOs to the extent that an Application under each priority is received on the same date. An Application in either priority that is received through April 30, 2019, will be prioritized ahead of an Application not in either priority that had been received on an earlier date.

Applicants under this NOFA will be required to submit an Application using the 2019 Predevelopment Application, and submit required documentation referenced in the 2019 Predevelopment Application.



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MULTIFAMILY
2019-2 SPECIAL PURPOSE NOTICE OF FUNDING AVAILABILITY (NOFA):
PREDEVELOPMENT

- 1) **Summary.** The Texas Department of Housing and Community Affairs (the Department) announced the availability of \$200,000 in Multifamily TCAP-RF funding for eligible predevelopment activities for Applications to finance affordable multifamily rental housing for low-income Texans through the Department. Additional funds may be added in order to completely fund awards. Applications under this Special Purpose NOFA will be accepted starting at 8:00 a.m. Austin local time on March 11, 2019, through November 26, 2019, at 5:00 p.m. Austin local time (unless ended sooner by Board Action).

- 2) Each eligible Applicant (a private 501(c)3 or 501(c)4 nonprofit organization), including any staff or Board members of the organization, Affiliate entity, or any individual with control of the proposed Development, that has not received an award of funds from the Department for a multifamily development after January 1, 2009) may apply for a predevelopment grant in an amount of up to \$50,000. A nonprofit organization (inclusive of any Affiliate organization) may receive only one award under this NOFA.

- 3) **Availability and Use of Funds.** Except as noted herein any provisions of this NOFA are in conflict with provisions of the following rules, as applicable, for which the use of these TCAP-grant funds are subject to, the applicable rule will control, as further described in Addendum A:
 - a. **Texas Administrative Code.**
 - 10 TAC Chapter 1 (Administration)
 - 10 TAC Chapter 2 (Enforcement)
 - 10 TAC Chapter 10 (Uniform Multifamily Rules)
 - 10 TAC Chapter 11 (Qualified Allocation Plan)
 - 10 TAC Chapter 13 (Multifamily Direct Loan Rule)
 - [http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=3&ti=10&pt=1](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=3&ti=10&pt=1)

- b. **Texas Government Code.**

Tex. Gov't. Code Chapter 2306

<http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2306.htm>

c. Fair Housing.

Federal Fair Housing Act, 42 U.S.C. 3601-19

4) Eligible Costs.

- a. Costs eligible for reimbursement under this NOFA are limited to those which are necessary in order to ultimately submit an Application for Development Funding in accordance with 10 TAC Chapter 11 and/or Chapter 13. Examples of eligible costs include, but are not limited to: costs for Third-Party Reports, accounting fees, architectural and engineering fees, zoning change fees, land surveys, legal fees unrelated to Application preparation, fees related to obtaining site control (e.g. earnest money fees, extension fees), etc.
- b. All costs must be supported by a contract or similar agreement with the third party, the Applicant's internal costs of operation are not eligible. Costs for consultants and similar entities to prepare an Application are not eligible. Costs incurred prior to Application Acceptance Period are not eligible.
- c. Costs related to a Development Site that is ineligible under 10 TAC §11.101 related to Site and Development Requirements and Restrictions are ineligible costs, unless the Department's Governing Board has made a determination of eligibility. An Applicant must submit a request for pre-determination prior to or with its Application under this NOFA.
- d. Costs related to an Existing Developments that is not able to meet the minimum Development size identified in 10 TAC §11.101(b)(2) are ineligible costs, unless the Department's Governing Board has made a determination of eligibility. An Applicant must submit a waiver request outlining conformance with the Development's Underwriting Rules and Guidelines as described in 10 TAC Chapter 11, Subchapter D.

4) Restrictions on Third Party Reports. Awardees under this NOFA will be required to receive the Department's explicit written consent to allow Third Party Reports to be shared with any other public or private financing entities.

5) Priorities under this Special Purpose NOFA.

- a. **Date Received Priority.** All Applications under this NOFA will be prioritized based on the business day of receipt unless as specified otherwise herein until 5:00 pm, Austin local time on November 26, 2019 (unless earlier closed by Board action). Unless an Application qualifies for the Disaster Recovery or CHDO Priority, the earliest date of receipt will be March 13, 2019.
- b. **Disaster Recovery Priority.** Applications received under this NOFA with a Development Site in a county declared by the Federal Emergency Management Agency as of March 11, 2019, to be eligible for Individual Assistance (IA) in 2017, 2018, or 2019, will take priority over Applications with Development Sites in non-IA counties

from between March 11, 2019, and April 30, 2019. An Application that qualifies for this Priority will have a date of receipt of March 11, 2019.

- c. **CHDO Priority.** Secondary to the Disaster Recovery priority, Applications received under this 2019-2 Special Purpose NOFA from nonprofit organizations that can be certified as CHDOs 24 CFR §92.2 and the Department's rules will be prioritized over nonprofit organizations that cannot be certified as CHDOs between March 12, 2019, and April 30, 2019. An Application that qualifies for this Priority, but does not also qualify for the Disaster Recovery Priority will have a date of receipt of March 12, 2019.
- d. **All Applications.** All Applications with a date of receipt within the same Priority, will be ranked based on the greatest linear distance from the nearest Housing Tax Credit assisted Development that was awarded less than 15 years ago according to the Department's property inventory tab of the Site Demographic Characteristics Report.

6) Application Submission Requirements.

- a. **Summary.** Applications under this Special Purpose NOFA will be accepted starting at 8:00 a.m. Austin local time on March 11, 2019, through November 26, 2019, at 5:00 p.m. Austin local time (unless ended sooner by Board Action).
- b. **Fees.** Applicants are not required to remit a Predevelopment Application fee.
- c. **Required Materials for all Applications under this Special Purpose NOFA.** All Application materials including manuals, NOFAs, program guidelines, and rules will be available on the Department's website at <https://www.tdhca.state.tx.us/multifamily/nofas-rules.htm> and <https://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm>. An Application must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department. Applicant must submit the Application materials as detailed in the Multifamily Direct Loan Predevelopment Procedures Manual (Manual) in effect at the time the Application is submitted. An Application must be uploaded to the Department's secure web transfer server in accordance with 10 TAC §11.201(1)(C). Access to the ServU system is available with this request: <https://www.tdhca.state.tx.us/multifamily/docs/19-ElectronicFilingAgreement.xls>.
- d. **Required Materials for Priority Consideration under this Special Purpose NOFA.**
 - i. **Disaster Recovery Priority.** An Applicant must request consideration in the 2019 Predevelopment Application should it wish to be prioritized under the Disaster Recovery Priority of this Special Purpose NOFA.
 - ii. **Community Housing Development Organization (CHDO) Certification.** An Applicant must submit the 2019 CHDO Certification Packet with the 2019 Predevelopment Application if it wishes to be prioritized as a CHDO under this Special Purpose NOFA.

7) Post Award Requirements. Applicants are strongly encouraged to review the applicable Post Award Requirements in 10 TAC Chapter 13, as well as the Compliance Monitoring requirements in 10 TAC Chapter 10, Subchapter F.

- a. An Applicant awarded under this Special Purpose NOFA will be required to fully execute and adhere to any and all requirements under the 2019 Multifamily Predevelopment Contract and related Certifications.
- b. Awarded Applicants may be required to meet additional documentation requirements in order to draw funds, in accordance with Previous Participation results and Contractual conditions.

8) Grant Agreement. An Applicant will be required to enter into a 2019 Multifamily Predevelopment Contract with the Department. The Contract will have up to an eighteen month period to pay for eligible predevelopment costs, and up to an additional six month period to submit draw requests for reimbursement of eligible predevelopment costs. The Contract performance period will five years (unless extended). If the Applicant (or any Affiliate or assignee) receives an award of credits, bonds, grants, or loan funds for the Site is identified in the Contract before the end of the performance period, Applicant will agree to put one TCAP-RF unit on the Development. That TCAP-RF Unit must meet the requirements for HOME-Match, as identified 24 CFR Part 92 and the Department's rules.

9) Miscellaneous.

- a. This NOFA does not include text of the various applicable regulatory provisions pertinent to the TCAP-RF Program. For proper completion of the Application, the Department strongly encourages potential Applicants to review all State and Federal regulations.
- b. Applicants must comply with public notification requirements in 10 TAC §11.203.
- c. The Board may on a case by case basis, or in whole, waive procedural provisions of this NOFA where such waiver or exception to the provision(s) are warranted and documented, and where such exception is not in violation with any state or federal requirement(s) and the NOFA is open.
- d. For questions regarding this Special Purpose NOFA, please contact Andrew Sinnott, Multifamily Loan Program Administrator, at andrew.sinnott@tdhca.state.tx.us.

ADDENDUM A

Unless otherwise specified, the following is a list of relevant provisions of the Texas Administrative Code applicable to Applications proposing Predevelopment under this Special Purpose NOFA, as cited and enforceable upon approval of the TDHCA Governing Board:

Texas Administrative Code:

10 TAC Chapter 1 (Administration)

10 TAC Chapter 2 (Enforcement)

10 TAC Chapter 11 (Housing Tax Credit Program Qualified Allocation Plan)

Subchapter A – Pre-Application, Definitions, Threshold Requirements, and Competitive Scoring

§11.1 (General)

Subchapter B – Site and Development Requirements and Restrictions

§11.101(a) Site and Development Requirements and Restrictions

Subchapter C – Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules

§11.201(1)(General Requirements)

§11.202(1)(Ineligible Applicants)

§11.202(2) (Ineligible Applications)

§11.204(10)(Site Control)

§11.204(14)(Nonprofit Ownership)

§11.206 (Board Decisions)

§11.207 (Waiver of Rules)

Subchapter D – Underwriting and Loan Policy

§11.303 Market Analysis Rules and Guidelines

§11.304 Appraisal Rules and Guidelines

§11.305 Environmental Site Assessment Rules and Guidelines

§11.306 Property Condition Assessment Guidelines

Subchapter E – Fee Schedule, Appeals, and Other Provisions

§11.902 (Appeals Process)

§11.903 (Adherence to Obligations)

§11.904 (Alternative Dispute Resolution Policy)

10 TAC Chapter 13 (Multifamily Direct Loan Rule)

§13.1(Purpose)

§13.2(Definitions)

§13.3(Loan Requirements)

§13.4(Priorities)

§13.5(Award Process)

§13.11(n)(7) (Direct Loan Contract execution)

§13.11(p)(1), (5), (8), (9), and (11) (Disbursement and Draw Requests)

6c

6d

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
FEBRUARY 21, 2019

Presentation, discussion, and possible action regarding a request for waiver of rules for Residences of Long Branch, Housing Tax Credit Application #17363

RECOMMENDED ACTION

WHEREAS, Residences of Long Branch (the Development) received a 9% Housing Tax Credit award in 2017 for the construction of 76 new multifamily units in the City of Rowlett;

WHEREAS, the Development Owner was issued a Commitment Notice on September 25, 2017, with a due date of October 25, 2017;

WHEREAS, one of the conditions of the Commitment Notice required the Development Owner to provide evidence of appropriate zoning for the Development prior to the expiration of the Commitment Notice;

WHEREAS, the Development Owner was unable to secure appropriate zoning for the Development prior to the expiration of the Commitment Notice and has now requested a refund of half of the Commitment Notice fee because they were unable to proceed with their Development;

WHEREAS, the 2017 Uniform Multifamily Rule at 10 TAC §10.901(8) requires that a Development Owner return their allocation of credits prior to November 1, 2017, in order to qualify for a refund of half the fee, which the Development Owner did not do;

WHEREAS, a waiver of 10 TAC §10.207 of the 2017 Uniform Multifamily Rule would be required to obtain such a refund of the fee, and the Developer has requested such a waiver; and

WHEREAS, the waiver request does not satisfy the requirements of 10 TAC §10.207: the applicant has not shown that the need for a waiver was not reasonable foreseeable and preventable, and that it serves the policies and purposes set forth in statute.

NOW, therefore, it is hereby

RESOLVED, that the requested waiver for 17363 Residences of Long Branch is hereby denied.

BACKGROUND

Residences of Long Branch was approved for an award of 9% HTCs in 2017 for the new construction of 76 multifamily units for the general population in Rowlett, Dallas County. On September 25, 2017, the Department issued a Commitment Notice to the Development Owner with an expiration date of October 25, 2017. In a letter dated October 18, 2017, the Development Owner informed the Department that the Rowlett City Council had not approved their request for a zoning change and requested an extension to the commitment notice expiration date from October 25, 2017, to November 24, 2017, "in order to give Rowlett city council the opportunity to approve the zoning request." The request for an extension would require a waiver of then 10 TAC §10.402(a) of the Uniform Multifamily rules related to commitments for 9% HTC developments:

(a) Commitment. For Competitive HTC Developments, the Department shall issue a Commitment to the Development Owner which shall confirm that the Board has approved the Application and state the Department's commitment to make a Housing Credit Allocation to the Development Owner in a specified amount, subject to the feasibility determination described in Subchapter D of this chapter (relating to Underwriting and Loan Policy) and the determination that the Development satisfies the requirements of this chapter and other applicable Department rules. The Commitment shall expire on the date specified therein, which shall be thirty (30) calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Commitment, pays the required fee specified in §10.901 of this Chapter (relating to Fee Schedule), and satisfies any conditions set forth therein by the Department. **The Commitment expiration date may not be extended.** (emphasis added)

The request was heard by the Governing Board at its meeting of November 9, 2017. The request was denied by the Board.

The Development Owner now requests a refund of half of the Commitment Notice Fee paid pursuant to the 2017 Uniform Multifamily Rule at 10 TAC §10.901(8). Per the rule:

(8) Housing Tax Credit Commitment Fee. No later than the expiration date in the Commitment, a fee equal to 4 percent of the annual Housing Credit Allocation amount must be submitted. If the Development Owner has paid the fee and returns the credits by November 1 of the current Application Round, then a refund of 50 percent of the Commitment Fee may be issued upon request.

The Development Owner did not return the credits by November 1, 2017, and staff is therefore unable to approve such a request. The only means by which a refund could be provided to the Development Owner is through a waiver of the rule that requires the November 1 credit return.

First, the Development Owner has not established how the events that led to the request for refund were not reasonably foreseeable or preventable, as required by 10 TAC §10.207. The Owner was aware on October 18, 2017, that the required zoning would not be approved prior to the Commitment

expiration date, as is required by rule. They requested an extension to the expiration date with knowledge that the date could not be extended by operation of the rule, and with knowledge that the earliest date their appeal could be heard was the November 6, 2017 Board meeting. The Development Owner made a series of choices regarding the Commitment and the Commitment Fee, which led to the current circumstance. The Owner did not request waiver of the November 1 deadline in their request to extend the Commitment deadline. Accordingly, the events that led to the request for waiver appear to have been foreseeable and preventable

Further, the waiver does not appear to better serve the policies and purposes articulated in Tex. Gov't Code ch. 2306, as required by 10 TAC §11.207(2): the fees in dispute are charged to support the cost of the work associated with the review and activity that occurs on an application. The work involved in the handling of this Development was performed by staff. The ultimate inability of the applicant to obtain zoning did not lessen the Department's work. Finally, staff is concerned that allowing refunds well after the year of an award because a Development is not ultimately able to proceed means there is no end-point for closing the books on a round – something explicitly, and understandably, accomplished by the current rule.

17363

Information regarding November 9, 2017,
meeting of the TDHCA Governing Board

- Board Item
- Meeting Transcript (applicable section)

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
NOVEMBER 9, 2017

Presentation, discussion, and possible action regarding a waiver of the extension prohibition in 10 TAC §10.402(a) and treatment of an extension under 10 TAC §10.405(c) of the Uniform Multifamily Rules

RECOMMENDED ACTION

WHEREAS, Pedcor Investments (the “Applicant”) submitted Application 17363 Residences of Long Branch for Competitive Low Income Housing Tax Credits (“9% HTC”) for the new construction of 76 multifamily units in Rowlett;

WHEREAS, on September 25, 2017, the Department issued to the Applicant a commitment notice with an expiration date of October 25, 2017;

WHEREAS, pursuant to 10 TAC §10.402(a) related to commitments for 9% HTC and tax exempt bond developments, evidence of final approval of any zoning that is required or was proposed or needed to be changed pursuant to the Development plan must have been received by the Department prior to expiration of the commitment notice;

WHEREAS, the Applicant advised the Department that the Applicant would be unable to provide final approval of zoning prior to expiration of the commitment and has requested a waiver of 10 TAC §10.402(a) in order to extend the date of the commitment notice via 10 TAC §10.207(a);

WHEREAS, because extension of the commitment expiration date is prohibited in 10 TAC §10.402(a), such extension is not addressed in 10 TAC §10.405(c) related to extensions in the housing tax credit program; and

WHEREAS, staff has determined that should a waiver of 10 TAC §10.402(a) be granted, the waiver should be subject to the requirements of 10 TAC §10.405(c), including the requirements to submit an extension fee as described in 10 TAC §10.901 and completion of a point deduction evaluation in accordance with Tex. Gov't Code, §2306.6710(b)(2), and §11.9(f);

NOW, therefore, it is hereby

RESOLVED, if the Board finds that the commitment deadline in 10 TAC §10.402(a) can be waived, then the Board finds that the Applicant has/has not satisfied the waiver standard under 10 TAC §10.207(a)(2);

FURTHER RESOLVED, if the Board determines the waiver standard has been satisfied, then the Board finds that the commitment deadline is extended to November 10, 2017;

FURTHER RESOLVED, that the requested waiver for 17363 Residences of Long Branch is presented to the Board for its consideration at this meeting, and the Executive Director and his designees are each authorized, directed, and empowered to take all necessary action to effectuate the Board's determination.

BACKGROUND

Residences of Long Branch was approved for an award of 9% HTC in 2017 for the new construction of 76 multifamily units for the general population in Rowlett, Dallas County. On September 25, 2017, the Department issued to the Applicant a commitment notice with an expiration date of October 25, 2017. In a letter dated October 18, 2017, the Applicant informed the Department that the Rowlett City Council had not approved their request for a zoning change and requested an extension to the commitment notice expiration date from October 25, 2017, to November 24, 2017, "in order to give Rowlett city council the opportunity to approve the zoning request."

The waiver of 10 TAC §10.402(a) related to commitments for 9% HTC developments would remove the prohibition against extending the expiration date for a commitment notice:

(a) Commitment. For Competitive HTC Developments, the Department shall issue a Commitment to the Development Owner which shall confirm that the Board has approved the Application and state the Department's commitment to make a Housing Credit Allocation to the Development Owner in a specified amount, subject to the feasibility determination described in Subchapter D of this chapter (relating to Underwriting and Loan Policy) and the determination that the Development satisfies the requirements of this chapter and other applicable Department rules. The Commitment shall expire on the date specified therein, which shall be thirty (30) calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Commitment, pays the required fee specified in §10.901 of this Chapter (relating to Fee Schedule), and satisfies any conditions set forth therein by the Department. **The Commitment expiration date may not be extended.** (emphasis added)

The waiver of 10 TAC §10.402(a) would allow staff to apply the requirements of 10 TAC §10.405(c) related to amendments and extensions for HTC awardees to this award:

(c) HTC Extensions. Extensions must be requested if the original deadline associated with Carryover, the 10 Percent Test (including submission and expenditure deadlines), construction status reports, or cost certification requirements will not be met. Extension requests submitted at least thirty (30) calendar days in advance of the applicable deadline will not be required to submit an extension fee as described in §10.901 of this chapter. **Any extension request submitted fewer than thirty (30) days in advance of the applicable deadline or after the applicable deadline will not be processed unless accompanied by the applicable fee.** Extension requests will be approved by the Executive Director or Designee, unless, at staff's discretion it warrants Board approval due to extenuating circumstances stated in the request. The extension request must specify a requested extension date and the reason why such an extension is required. **If the Development Owner is requesting an extension to the Carryover submission or 10 percent Test**

deadline(s), a point deduction evaluation will be completed in accordance with Tex. Gov't Code, §2306.6710(b)(2), and §11.9(f) of this title (relating to Competitive HTC Selection Criteria). Therefore, the Development Owner must clearly describe in their request for an extension how the need for the extension was beyond the reasonable control of the Applicant/Development Owner and could not have been reasonably anticipated. Carryover extension requests will not be granted an extended deadline later than December 1st of the year the Commitment was issued. (emphasis added)

First, the Board must determine whether the phrase in 10 TAC §10.402(a) “[t]he Commitment expiration date may not be extended,” disqualifies the use of the waiver rule, 10 TAC §10.207, by the exception of waiver rule where “otherwise specified” in rule:

(a) General Waiver Process. This waiver section, **unless otherwise specified**, is applicable to Subchapter A of this chapter (relating to General Information and Definitions), Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions), Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules for Applications), Subchapter D of this chapter (relating to Underwriting and Loan Policy), Subchapter E of this chapter (relating to Post Award and Asset Management Requirements), Subchapter F of this chapter (relating to Compliance Monitoring) Subchapter G of this chapter (relating to Fee Schedule, Appeals, and Other Provisions), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), and Chapter 13 (relating to Multifamily Direct Loan Program Rules). (emphasis added)

If the Board finds that the waiver rule may be used, then pursuant to 10 TAC §10.207(a), the waiver request must establish how the waiver is necessary to address circumstances beyond the Applicant's control and how, if the waiver is not granted, the Department will not fulfill some specific requirement of law. To establish how the waiver is necessary to address circumstances beyond the Applicant's control, the Applicant describes in its request its attempts to secure approval of its requested zoning change from the Rowlett City Council. After being denied by the council on June 6, 2017, the request was not approved at a meeting on September 5, 2017. The item was not placed on the October 4 or October 17 council meeting agendas, as the Applicant had requested. Per documentation provided by the Applicant, the council has placed the item on the agenda for a meeting on November 7, 2017.

To establish how, if the waiver is not granted, the Department will not fulfill some specific requirement of law, the Applicant attests that “by not granting the waiver the Department is not fully satisfying what is called its highest priority in Texas Government Code §2306.002, namely to “provide assistance to individuals and families of low and very low income who are not assisted by private enterprise or other governmental programs so that they may obtain affordable housing or other services and programs offered by the Department.” According to the Applicant, “the families of Rowlett currently have no access to the developments produced by HTC program or to affordable housing options, and we believe that granting this waiver could provide them such an option.”

Regarding the Applicant's statements on the basis of the request, staff believes that the Applicant has established that a waiver would be necessary to address circumstances beyond the Applicant's control. Further, allowing the City of Rowlett time to make a determination on the zoning request may be seen as appropriate in this instance if the city can address the issue immediately. In making this determination, staff cites Tex. Gov't Code §2306.001, the literal beginning of the Department's statutory charge which states:

The purposes of the department are to:

- (1) assist local governments in:
 - (A) providing essential public services for their residents; and
 - (B) overcoming financial, social, and environmental problems;
- (2) provide for the housing needs of individuals and families of low, very low, and extremely low income and families of moderate income;
- (3) contribute to the preservation, development, and redevelopment of neighborhoods and communities, including cooperation in the preservation of government-assisted housing occupied by individuals and families of very low and extremely low income; ...

Staff recommends that should the Rowlett City Council approve the requested zoning change at its November 7, 2017, meeting, the Applicant's request for a waiver should be considered by the Board. If the council does not approve the requested zoning change at its November 7 meeting, staff recommends that the Board uphold the requirements of 10 TAC §10.402(a) and not grant an extension of the expiration date for the commitment notice.



October 18, 2017

Tim Irvine
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: Extension of Expiration of Housing Tax Credit Commitment for Residences of Long Branch (TDHCA # 17363)

Dear Mr. Irvine:

Please accept this letter as a request to extend the expiration date of the Housing Tax Credit Commitment for Residences of Long Branch. First, I would like to acknowledge that 10 TAC §10.402(a) states that "The Commitment expiration date may not be extended." Therefore, we are first seeking a waiver of that rule pursuant to 10 TAC §10.207 related to Waiver of Rule for Applications. This rule allows for waiver requests to be submitted for Competitive Housing Tax Credit ("HTC") Applications subsequent to an award. The HTC award for Residences of Long Branch was approved by the Governing Board on July 27, 2017. Secondly, we are requesting that the expiration date of the Commitment be extended 30 days to November 24, 2017. The details regarding the circumstances that led to this request will follow, but in order to satisfy the requirement of the waiver request, we point not just to Chapter 2306 of the Texas Government Code but to Fair Housing law. We believe that the Texas Department of Housing and Community Affairs (the "Department") has the opportunity to affirmatively further fair housing by granting this waiver and the subsequent extension of the expiration date, and so we believe the Department is compelled to take such action.

As background, on January 3, 2017, I attended a city council workshop in Rowlett as a representative of Pedcor Investments, A Limited Liability Company ("Pedcor") in order to present a proposal for Residences of Long Branch and seek support so that the HTC application would be eligible for enough points to make it competitive for an award. The council was presented with six separate proposals that evening, and at the end of the work session they indicated support for three of them, one of which was Residences of Long Branch. On February 7, 2017, the city council passed a resolution supporting the application, along with resolutions for two others. The site for Residences of Long Branch was not appropriately zoned for multifamily development, and so Pedcor submitted to the city a zoning application for the 8-acre site on February 27, 2017. On March 1, Pedcor submitted the HTC application to the Department.

The City of Rowlett Planning and Zoning Commission ("P&Z") then conducted a public hearing on May 9, 2017. At the end of some discussion the commission recommended that council approve the zoning change with a couple of conditions related to fencing and ingress/egress. Pedcor then went before city council on June 6, presenting the application with the recommended revisions from the commission. The zoning request was denied, and council stated the reason for denial as its approval jeopardizing the ability for a competing HTC application, The Pointe at Rowlett, to be awarded credits.

Pedcor then worked with city staff to submit a new zoning application, one that was significantly different from the previous one so that it could be considered again by P&Z and city council. That application, which included an 18-acre site with both the multifamily piece and a commercial piece, and which included some additional road infrastructure and restrictions on the commercial portion, was submitted to the city on June 20, 2017. On August 22, 2017, P&Z enthusiastically recommended the application be approved by council, with the commissioners voicing strong support for the application.

Meanwhile, the competing application, The Pointe at Rowlett, was recommended for denial by P&Z, recommended to be sent back to P&Z by council, and again recommended for denial by P&Z a second time. You may recall an email I sent on July 23 detailing some of the comments made by that applicant during this process.

At a city council meeting on September 5, public hearings for both Residences of Long Branch and The Pointe at Rowlett were held. The Pedcor application was first, and after a presentation and some discussion, one council member made a motion to approve the zoning change. However, the motion died for a lack of second. Afterward, the other application was unanimously denied after a long hearing.

Because the motion regarding Residences of Long Branch died for lack of second, technically no formal action was taken on the application. It was not denied. Therefore, the city attorney determined it perfectly legal under Rowlett's Council Rules of Procedure (and Roberts Rules of Order), and even appropriate under the Development Code, to consider the item again at the next council meeting. However, the item was not placed on the next two meeting agendas, which were October 4 and October 17, despite several requests from Pedcor and from Inclusive Communities Housing Development Corporation.

We pleaded with council one last time in person at the October 17 meeting, but as of now the item still is not on an agenda for a meeting that will take place before the current Commitment expiration date of October 25, 2017. However, city staff has indicated that they plan to place the item on an agenda for a meeting on November 7, 2017. Therefore, we are asking for an extension of the expiration of the Commitment deadline, in order to give Rowlett city council the opportunity to approve the zoning request.

We believe that the granting of this waiver will satisfy Chapter 2306 of the Texas Government Code by "[providing] for the housing needs of individuals and families of low, very low, and extremely low income and families of moderate income." While we appreciate that another application will likely be awarded credits if Residences of Long Branch is unable to satisfy the conditions of the HTC Commitment, we note that the next application in line for an award is in Denton. While we do not dispute the worthiness of that application for an award on its own merits, the City of Denton already has several affordable housing developments. Rowlett has only one, and it is restricted for the elderly. We would argue that by not granting the waiver the Department is not fully satisfying what is called its highest priority in Texas Government Code §2306.002, namely to "provide assistance to individuals and families of low and very low income who are not assisted by private enterprise or other governmental programs so that they may obtain affordable housing or other services and programs offered by the Department." The families of Rowlett currently have no access to the developments produced by HTC program or to affordable housing options, and we believe that granting this waiver could provide them such an option. Most importantly, we believe that granting this waiver and the subsequent extension of the expiration date is required in order to affirmatively further fair housing law.

Should you not be able to grant this waiver and/or extension, we request that an item be placed on the next agenda for the meeting of the Governing Board that would allow them to consider approving them.

Sincerely,



Jean Marie Latsha
Vice President - Development



**Community Development
Department**

COURTESY NOTICE OF CONSIDERATION OF A ZONING REQUEST

TO: Property Owner

RE: Application for a Rezoning from C-1 Limited Commercial/Retail to PD Planned Development with C-1 base zoning

LOCATION: The subject property is located at 4217 Rowlett Road, being an 18.22 +/- acre tract of land out of the Thomas Collins Survey, Abstract Number 332, City of Rowlett, Dallas County, Texas. A location map depicting a 500-ft notification area is attached for reference.

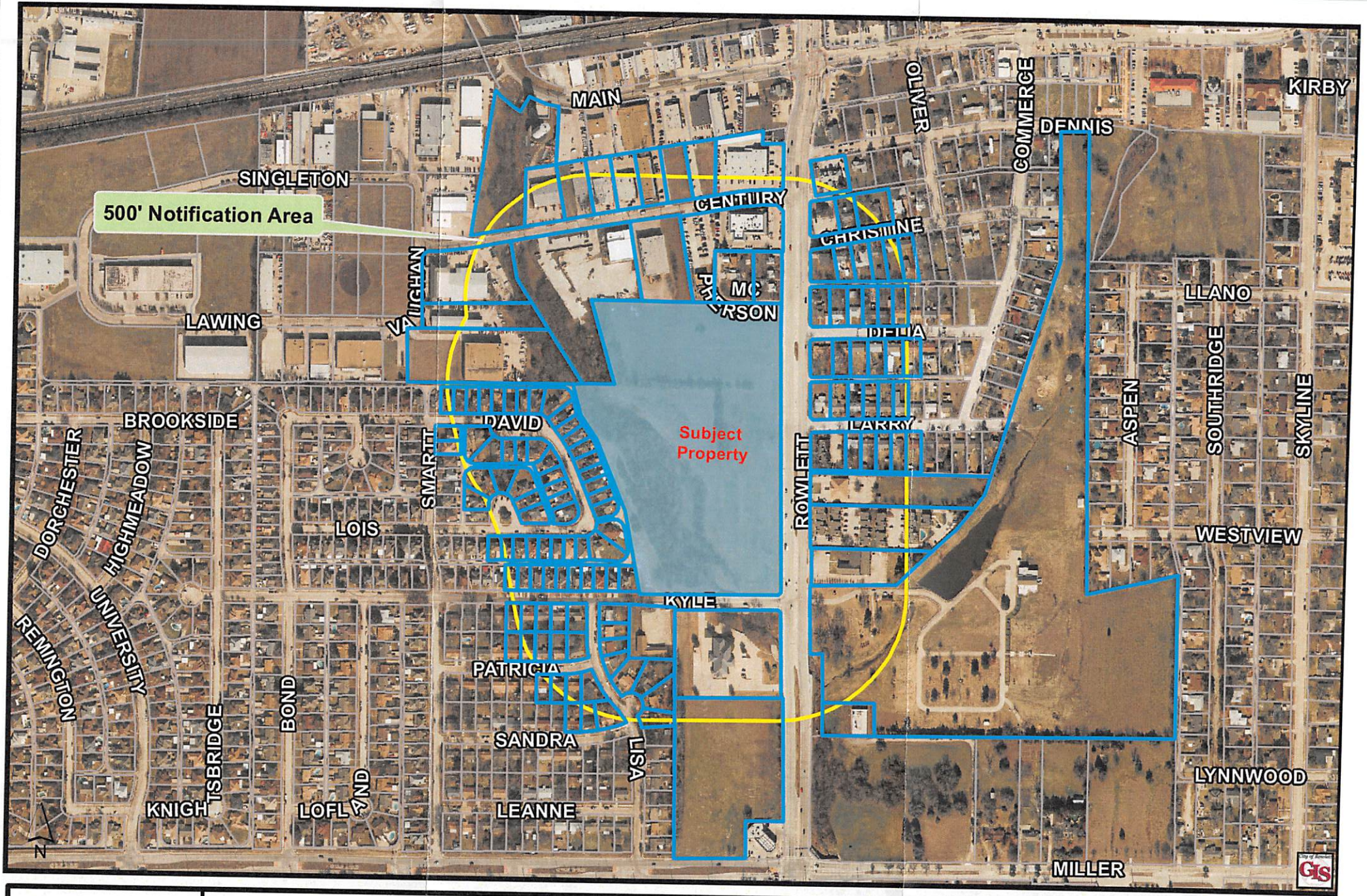
EXPLANATION OF REQUEST: The applicant requests a rezoning to Planned Development to allow Multi-Family Dwelling Units on up to 8.5 acres with C-1 uses elsewhere, and to modify building materials, dimensional requirements, building design requirements, and landscape buffers.

The Rowlett City Council will consider this request at 7:30 pm on November 7, 2017. The meeting will be held at the Municipal Center, 4000 Main Street, Rowlett, Texas.

Pursuant to Section 77-805.B.5. of the Rowlett Development Code, the City Council must take final action, or refer an item back to Planning and Zoning Commission, within 90 days of a public hearing. A public hearing on this matter was held on September 5, 2017, however, no final action was taken. As with any item on the agenda, the City Council will hear public comment on the request at the meeting.

If you have any questions concerning this request,
please contact the Planning Division
Phone 972-412-6239
FAX 972-412-6228
tfelts@rowlett.com

City of Rowlett
Community Development Department
3901 Main Street
Rowlett, TX 75088



4217 ROWLETT RD

REZONING
500 FT NOTICE
LOCATION MAP

Antonio is going to get served, Family Violence, SAMMinistries, the Food Bank, Haven for Hope, and St. Vincent de Paul, and I think this decision is probably the best one that we could come up with. So I'm happy.

MR. GOODWIN: Thank you.

Any questions? Do I hear a motion on staff's recommendation?

MR. VASQUEZ: Move to approve staff's recommendation.

MR. GOODWIN: Second?

MS. RESÉNDIZ: Second.

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

(No response.)

MR. GOODWIN: All in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: Opposed?

(No response.)

MR. GOODWIN: Moving on to Multifamily Finance, we'll do 4(a).

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

Item 4(a) is presentation, discussion and

possible action regarding a waiver of the extension prohibition in 10 TAC 10.402(a) and treatment of an extension under 10 TAC 10.405(c) of the Uniform Multifamily Rules. Application 17363 for Residences of Long Branch received an award of 9 percent credits for the new construction of 76 units in Rowlett this past July. On September 25 we issued the commitment notice which had an expiration of October 25. The request before you today is for waiver of the statement in rule regarding commitments that says the commitment expiration date may not be extended.

Evidence of final approval of any necessary zoning change is part of the documentation required prior to expiration of the commitment notice, along with evidence that any other underwriting conditions have been met. The applicant has not provided any of the commitment notice documentation, nor have they paid the required fee. They also have not submitted the carryover package and agreement that was due on November 1, by rule, stating that because they did not have a valid tax credit commitment at the time, they believe if granted the requested waiver and extension, they would receive a later carryover deadline. The carryover deadline is in rule and it's not dependent on other dates unless an allocation is

made late in the year.

The applicant was not able to provide final approval of zoning prior to expiration of the commitment and has requested a waiver of the requirement to produce that evidence and extend the date of the commitment notice. In a letter dated October 18, the applicant states that the Rowlett City Council had not approved their request for a zoning change and requested an extension to the commitment notice expiration from October 25, to November 24, saying this was necessary in order to give Rowlett City Council the opportunity to approve the zoning request. The Rowlett City Council approved the requested zoning change at its November 7 meeting.

So first, the Board must determine whether the phrase "the commitment expiration date may not be extended" disqualifies the use of the waiver rule in this instance which says, "This waiver section, unless otherwise specified is applicable to" and then it lists all of the rule subchapters. So we have the commitment rule that says it may not be extended, we have the rule that says unless otherwise specified.

Second, if the Board finds that the waiver rule may be used, then the waiver request itself must establish how the waiver is necessary to address circumstances

beyond the applicant's control, and how, if the waiver is not granted, the Department will not fulfill some specific requirement of law. The applicant describes attempts to secure approval of the necessary zoning change from the Rowlett City Council, and states that by not granting the waiver, the Department is not fully satisfying its highest priority in statute, namely, to provide assistance to individuals and families of low and very low income who are not assisted by private enterprise or other governmental programs so that they may obtain affordable housing or other services and programs offered by the Department. According to the applicant, the families of Rowlett currently have no access to developments produced through the Tax Credit Program or to other affordable housing options.

If the Board determines that the commitment deadline can be waived, then the waiver standard would have to have been satisfied. If that occurs, staff recommends that the commitment deadline be extended to November 10. Staff recommends that should a waiver be granted, it be subject to the requirements of the waiver rule, including payment of the extension fee and completion of a point deduction of valuation.

I think it's important to note that there is

another application in line right behind this one that's ready to go. That would be Palladium Denton, application 17081, which would be a total of 150 units, 93 of those will be tax credit units, 57 of them are market units. These two applications have the same score, and it came down to the opportunity index tiebreaker so the opportunity index items beyond what they needed to get to seven points. The Rowlett application had six of those items, and the Denton application had three of those items.

MR. GOODWIN: Does staff have a recommendation?

MS. HOLLOWAY: We do not.

MR. GOODWIN: Okay.

MS. HOLLOWAY: The statement in the commitment rule is very clear that the expiration date cannot be extended, and we believe that the waiver rule is very clear under that unless otherwise specified, that otherwise specified, it cannot be extended.

MR. GOODWIN: Questions?

MR. BRADEN: To the Chair, does general counsel want to make a comment on whether or not this can be waived?

MR. ECCLES: Well, I mean, there's clearly a question before this Board as to its interpretation of

these rules. As Marni set out, the commitment deadline rule is contained in 10 TAC 10.402(a) and the last sentence says, "The commitment expiration date may not be extended." So we have that statement. Does that statement activate the first sentence in 10 TAC 10.207, Waiver of Rules for Applications, which says, "This waiver section, unless otherwise specified, is applicable to the Multifamily Rules."

Is the commitment expiration date may not be extended, that specification that the waiver rule is not applicable to it? I'd like to hear counsel or the applicant's thoughts on that, but ultimately, it comes down to this Board's interpretation of its own rules based on that conflict.

And that's, of course, the preliminary question before you get to if you believe that the waiver rule is still applicable, then you have to have the waiver rule satisfied. So I don't know if you want to break it down into those two rules or just have them address both of them at the same time. I think it might be a little bit more helpful to the Board to take it as a threshold matter before going into the next one. You can certainly discuss both, but I think breaking it down along those lines might be helpful.

MS. HOLLOWAY: It's definitely a two-part sort of decision.

MR. GOODWIN: So the first part, obviously, is the commitment extendable.

MS. HOLLOWAY: Can it be extended.

MR. GOODWIN: If it can't be extended, we don't have to discuss the second part. If the Board decides it cannot be extended, the second part becomes immaterial. If we decide it should be and can be extended with our language, then does it qualify.

MR. IRVINE: And Marni can clarify or correct me, but I actually view it as a three-part issue because there are other items that were required to have been addressed that have not been addressed, so those need to come on.

MS. HOLLOWAY: The balance of the commitment package and the carryover agreement.

MR. VASQUEZ: Excuse me. I was going to ask if you could clarify, it's not just one item or one deadline that was missed, there are multiple items or multiple deadlines that were missed?

MS. HOLLOWAY: After an award we issue a commitment notice, which the request for extension is on that commitment notice. The commitment notice carries

this requirement and for meeting any REA conditions, if those have been imposed as of the commitment deadline. There's a commitment fee that's due, there's a commitment notice to be executed and returned to us with a package of information. We have not received that from this applicant at all.

The carryover agreement is the agreement that's actually the official here are your credits going over into the next year, and this is something that goes back to Section 42. The requirement in the QAP in the calendar, it's in the calendar in the QAP, is that that carryover agreement is returned to us with that package of information, which includes corporate status and things like that, on November 1, and we have not received that.

MR. VASQUEZ: So there are at least two different deadlines for submissions that were missed.

MS. HOLLOWAY: Yes.

MS. HOLLOWAY: Okay.

MR. GOODWIN: Any other questions?

(No response.)

MR. GOODWIN: Jean, I think you want to address this, your transaction.

MS. LATSHA: Yes. Good morning.

MR. GOODWIN: And let's try to keep, first and

foremost, we'll give a full hearing to the other two issues, but let's try to keep the first and initial comments to extending the commitment.

MS. LATSHA: Absolutely. I'm Jean Latsha, with Pedcor Investments.

Honestly, I was prepared more to talk to the other issues which is really just the worthiness of the application itself, and I will start by saying, too, that our zoning was approved on Tuesday night at about 9:30 at night on Tuesday, and so let's take that into account here.

So, as Marni explained, what happens is an applicant is issued a commitment and the rule with respect to -- and I'll take this at this point, too -- the rule with respect to the November 1 deadline, the carryover deadline, it states for applications -- and I'm doing this kind of from memory, but it says for applications that have received a commitment, then the carryover deadline is November 1. Well, as of October 25, when this originally issued commitment expired, that rule kind of didn't apply to us because there's no commitment to initiate that November 1 deadline.

It makes sense: you get the commitment, you have 30 days to satisfy the conditions of commitment, one

of which is zoning. So, no, we did not submit a commitment package because we knew it was not complete, it was impossible for it to be complete because we didn't have zoning in place. So that commitment went away, so the November 1 deadline, in my estimation and interpretation of that rule, also went away. It does not apply when the first sentence says for applications that have a commitment. We had no commitment, so there's no November 1 deadline.

So what happened instead, in practical terms, in this case would be another commitment or a revised commitment, however it is that you want to phrase it, would be issued and it would say this commitment is dated November 9, it's due back to the Department on November 10, and it would also state in that commitment notice, it would give you a carryover deadline. So the commitment notices that we all got, all the awardees got, said you're dated, let's say, September 15, you have until October 15 to satisfy the conditions of this document, the commitment, and then you have a November 1 deadline for your carryover.

So again, in a practical sense, when you get some credits returned or whatever happens, like right now staff could be issuing commitments that are dated today

that have maybe a 30-day or shorter deadline to satisfy commitment, and then would have also in there a carryover deadline that would be really after that. It made no sense to submit any documentation knowing that we absolutely could not satisfy the complete condition of commitment or carryover, we had no zoning. That happened Tuesday night.

Today we are ready. We have with us the folks that have to execute those documents. Our executive vice president is here, our senior vice president is here, one of the principals is here, we have our checks in hand, including, as staff recommended in their report, an extension fee check. I have to admit that wasn't something -- I wasn't sure if staff would be recommending that or not, since like they stated, there's not really a provision in the rule for an extension of a tax credit commitment, so it was difficult to know what to do when requesting that extension.

With respect to the waiver rule, my interpretation of that, when it says unless otherwise specified, would be if there was something in the rule that said this cannot be waived. The fact is the rule says commitments cannot be extended. I'm asking for a waiver of that sentence. That's exactly what the waiver

rule does, it takes a rule and it turns it on its head.

So I do think that this Board has the authority to allow staff to issue another commitment, revised commitment, whatever it is, with whatever deadlines they feel appropriate. I can guarantee that we can meet those deadlines.

And I have to say going through this process for the last year and working in this city and finally getting them to a place where they actually are accepting affordable housing after years and at least ten developers trying to do what we're doing here and finally being in a position to be able to do it. I don't want to blow it up to be something bigger than it is, but it honestly felt historic on Tuesday night, and so I hope that you can find that you do have the authority to allow us to move forward with this.

MR. GOODWIN: Okay. Other comments?

MR. PALMER: I'm Barry Palmer with Coats Rose, and I represent Palladium. They have the project in Denton that is next in line.

And we believe that this project does not qualify for a waiver. I mean, the rules say specifically you cannot extend this deadline, and then in the waiver section it says you can grant a waiver unless it's

specified otherwise. And so I don't see how you can get any more clear than that, that no, you can't grant an extension of this deadline, you can get a waiver unless the rules say something to the contrary, and that's what we have here.

And I'd like to address a little bit of what Ms. Latsha said about the carryover. If her position is that they don't have a valid commitment notice anymore, then what happens then is the Department goes to the next people in line. They don't grant new commitment notices to someone who didn't satisfy the requirements of their first commitment notice. If the commitment notice expired by its terms, then that means you go to the next deal in line, it doesn't mean you get a new notice and then you get to meet carryover sometime later after that notice.

They received their allocation at the July meeting, they got their commitment notice in the same time frame as everyone who got awarded in July, and so they should be held to the same carryover requirements as all the other applications, not getting some extension because they didn't meet their commitment notice requirements.

This is a competitive program. Developers spend a lot of money and a lot of time applying this program and they just ask to be treated fairly, to have

the same rules apply to everyone, and when you have a rule saying that there's not going to be any extension of the commitment notice, we have that rule for a reason, and that reason is because if they don't meet their requirements -- you've got to meet carryover by 12/31, so if they can't meet their commitment notice and carryover requirements, you've got to go to the next person in line and then they have less time because you've only got until 12/31 to meet it. So that's why we have that deadline.

And as far as granting a waiver, I don't think that they meet either of the requirements for a waiver, even if this project qualified for a waiver. To say that it's outside your control because you couldn't get zoning, well, that's never been the standard that we've held people to as being outside your control. If that's the case, any time that you've got to get a third party approval it's going to be outside your control? What about city council resolutions of support are due on March 1, or letters of support from the state rep due on March 1, are we going to give extensions of those deadlines because the developer couldn't get it in time? Well, it was outside my control, I couldn't get city council to meet until a week after your deadline and so I need an extension. I mean, how can we run the program that way if

we're going to give extensions for these type of major deadlines just because they couldn't get an approval in time.

Everyone knew when they put pre-applications in in January that you were going to have to have your zoning in place by your commitment notice deadline. I mean, Ms. Latsha knew that very well, having run this program, that she was required to have zoning by the commitment notice deadline. All the other developers knew that, and those who were awarded satisfied that requirement. So to give an extension to that deadline, saying it's outside my control to get zoning nine months after the time that I filed my pre-application, that just seems to set too low a standard, in my view, of what something is that's outside your control.

And as far as the second part, if you don't grant this waiver, you're not going to be fulfilling one of your specific statutory missions, well, all of the projects on the waiting list are good projects who serve citizens that aren't being served in their respective area. So there's nothing different about this project than Denton. They may not have family projects in Rowlett but there are projects certainly very close to Rowlett, and our developer will speak to some of that.

So number one, this project doesn't qualify for a waiver, and number two, it doesn't meet either of the two requirements to be granted a waiver. So I would request that the Board not grant this waiver, that you follow the rules which say we will not extend the commitment notice deadline.

MR. GOODWIN: Any questions for Barry?

MR. ECCLES: Mr. Palmer, what about Ms. Latsha's point that the commitment rule 10.402 says the commitment expiration date may not be extended refers to the requirements for seeing an extension but it doesn't disqualify from waiver. Can you think of a rule that states this rule may not be waived, as opposed to extended, or do you believe that the extension prohibition itself effectively is may not be waived.

MR. PALMER: Exactly. Unless specifically noted otherwise, that's what we have here, a case where it's specifically noted. And I'm not sure if there's any other place in the QAP that says this deadline will not be extended. This may be the only thing that can't be waived, except for the March 1 application deadline. I mean, these are two deadlines that have never been waived, this has never been done before, extending the commitment notice deadline, the commitment acceptance deadline has

never been extended before. So to do it under these circumstances really will just create bad precedent for the future. I mean, how are you going to say to a developer next year I need an extension for my city council resolution of support because it was outside my control. Well, no, we're not going to do it. Well, you just did it last fall on a commitment notice because they couldn't get zoning in time.

MR. GOODWIN: Is that a true statement that it's never been done before, to your knowledge, Tim or Beau?

MR. IRVINE: I'm not aware that it's ever been extended.

MR. GOODWIN: Okay. Any additional questions or comments for Mr. Palmer?

(No response.)

MR. GOODWIN: Thank you, Barry.

Other speakers? I see other people.

MR. COMBS: Ryan Combs, with Palladium USA. I appreciate you taking the time to discuss this today.

We do have the application that's first in line on the waiting list, and our application, as Marni said, scored the same as their application. I have absolutely no doubt that Jean's deal in Rowlett is needed. I mean,

the reality is all of North Texas is underserved. We had 100,000 new jobs move into North Texas two years ago, 80,000 new jobs last year and 80,000 new jobs this year. The housing shortage in all of North Texas is dramatic, and specifically the housing stock for affordable housing is needed everywhere, Rowlett, Denton, all over North Texas. And so I've got no doubt that it's needed in Rowlett, but it's very equally as needed in Denton.

We have been working with the City of Denton, we are at an incredible location, right at 288, and I'll spare you all the details of that, but the city has unanimously supported our development. Affordable housing is incredibly needed.

I will tell you that I did go look --

MR. GOODWIN: I hate to interrupt you, but the topic here is extension, not your project.

MR. COMBS: So the extension. All of us in this room in a competitive process, we look at these rules and we need to be able to rely on the rules. We're now over \$100,000 hard on our contract. All of us watch ahead of us, especially when you're on the waiting list you watch to see because we're all having to now float our land contracts almost a year, and so we're well over \$100,000 into floating our land, keeping our site control,

and we've done that because we've watched and we know that the rule says the commitment cannot be extended, it's never been extended before. We have to rely on those things, and so the impact down the line on everybody when rules are just broken in favor of one applicant, it has a big ripple through the whole industry.

I do have some other things, but I may wait to say that. Thank you.

MR. GOODWIN: Okay. Any questions for Ryan? Other comments?

(No response.)

MR. GOODWIN: Jean, did you want to re-speak?

MS. LATSHA: Thank you. It is true that this has not been done before and that it is rather unprecedented, but I would argue still that if we're talking about these three words "unless otherwise specified," I think you could even look at that another way and say this waiver section applies to all of these sections of the rule. Right? What if you were to read that to say unless otherwise specified, and there is a section of the rule here, a rule that's not listed here that says a waiver can be applied in this instance.

And I know that it's important, the words in these rules are important. I've been on the other side

where I've written them and I have a great respect for them, and I certainly don't want this Board or this staff to think that any of this comes from any sort of disrespect for this rule.

This is an incredibly unique situation. I don't find that this would be an act that would set precedent. A zoning case that takes nine months is not typical. This is exactly why even our statute calls for applicants to submit evidence that they have requested the appropriate zoning on March 1, because we all know that once we get to September, that should be plenty of time to get zoning done, unless you are talking about a city that, like I said, has an amazing history of thwarting efforts to provide affordable housing for its citizens, and it's, in a sense, not that surprising that it would take this city nine months instead of four or five months to finally get there.

There are 70-some-odd cities with 60,000 people in them or more in Texas. There are only four or five that size or larger that don't have any units that are not age-restricted. This is one of those five. And that is why I understand that there is another applicant in line but this application much more fully fulfills the policy objectives of this Department. And I, again, think that

the authority is there.

MR. GOODWIN: Okay. Any other questions for Jean?

(No response.)

MR. GOODWIN: Anyone else want to speak?

MR. PALMER: Everyone thinks that their project and application is special and unique, they spend a lot of time and a lot of effort working on it, but the next project on the waiting list is special and unique also, and while there may not be family deals in the city of Rowlett itself, within five miles of the proposed site there are ten family deals in the area, so there's plenty of family affordable housing, even if it's outside the city limits of Rowlett. There's nothing in the record to treat Rowlett any different or anything special over Denton.

The rules are the rules and the rules say you will not get an extension of the commitment notice date.

MR. GOODWIN: Any questions?

(No response.)

MR. GOODWIN: I'll entertain a motion from a Board member.

MR. BRADEN: I find Mr. Palmer's argument to be persuasive, and so I would make a motion that the

applicant's request for a waiver be denied.

MR. GOODWIN: Do I hear a second?

MR. VASQUEZ: Second.

MR. GOODWIN: I hear a motion and it's seconded. Any further discussion?

(No response.)

MR. GOODWIN: All in favor say aye.

(A chorus of ayes.)

MR. GOODWIN: All opposed?

(No response.)

MR. GOODWIN: That waiver is denied. I think we don't have to discuss the second and third parts because of that.

Marni.

MS. HOLLOWAY: The applicant for item 4(b) has requested that we take it out of order.

MR. GOODWIN: I think they're here.

MS. HOLLOWAY: They're all here?

MR. GOODWIN: Okay.

MS. HOLLOWAY: All right. 4(b) is presentation, discussion and possible action on a determination regarding eligibility under 10 TAC 10.101(a)(4) related to undesirable neighborhood characteristics for Villa Americana, application 17411, in

17363

Applicant's Request



February 6, 2019

Sharon D. Gamble, MSW, PMP
Competitive Housing Tax Credit Program Administrator
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, Texas 78701

Re: Waiver Request for Application # 17363

Dear Ms. Gamble:

Please accept this letter as a request for a waiver of 10 TAC §11.901(6) related to Housing Tax Credit Commitment Fee. The rule states, "If the Development Owner has paid the [Housing Tax Credit Commitment] fee and returns the credits by November 1 of the current Application Round, then a refund of 50 percent of the Commitment Fee may be issued upon request." We are asking for a waiver of the November 1 deadline to return the credits and to be entitled to the refund.

TDHCA issued a Housing Tax Credit Program Commitment to the above reference application on September 25, 2017. That Commitment required a number of items be completed, including the payment of a Commitment Fee of \$60,000 by October 25, 2017, or the Commitment would expire. The Applicant ("Pedcor") paid the fee and submitted some documentation to TDHCA in order to satisfy the requirements. However, one of the requirements, namely evidence of final approval of zoning, was not available and so the Commitment expired.

Pedcor did request an extension of the Commitment expiration date, but it was denied by the Governing Board. Therefore, credits were never allocated to Application #17363, and so there were no credits to "return." In addition, circumstances surrounding the timing of request for the extension of the Commitment expiration were difficult, since the request was not heard by the Governing Board until after November 1. Therefore, Pedcor was also not in a position to rescind the check before November 1 without further jeopardizing the chance for such extension. In the end, although there was never an allocation of credits to Application #17363, the check for the \$60,000 fee was still processed.

Subsequently, those 2017 credits were awarded to another Applicant, and another Commitment Fee was presumably paid. TDHCA never processed a Carryover Allocation Agreement for Application #17363; as of the denial of the extension request, nothing more was required of TDHCA regarding that application. Therefore, because TDHCA was paid to allocate the credits, in part by Pedcor and in part by the actual awardee of the credits, we believe it is appropriate to recoup at least a portion of the excess fee that was paid. In addition, the granting of this waiver better serves the policies and purposes articulated in Texas Government Code §2306.6716, which states that the Department "shall refund the balance of any fees collected for an application...that is not fully processed by the department."

In 2018, Pedcor was awarded credits for the same Development, this time as Application #18363. The \$60,000 Commitment Fee was paid (again), and the credits were allocated. The excess Commitment fee paid in 2017 was realized only recently, as Pedcor prepares to close on the financing for Residences of Long Branch.

We greatly appreciate any consideration for a waiver and refund of this fee. Please let me know if you have any questions or need anything further.

Sincerely,

Jean Latsha

Jean Marie Latsha
Vice President - Development