

# **BOARD BOOK OF NOVEMBER 5, 2020**



**Leslie Bingham, Vice-Chair**

**Paul Braden, Member**

**Sharon Thomason, Member**

**Leo Vasquez III, Member**

Texas Department of Housing and Community Affairs

PROGRAMMATIC IMPACT

Fiscal Year 2019 (September 1, 2018, through August 31, 2019)

Owner Financing and Down Payment	
<ul style="list-style-type: none"> <li>30-year, fixed interest rate mortgage loans</li> <li>Mortgage credit certificates</li> <li>Down payment, closing cost assistance</li> <li>Homebuyer education</li> </ul>	
Programs:	
<ul style="list-style-type: none"> <li>Homebuyer Assistance Program (HBA)*</li> <li>Single Family Homeownership</li> </ul>	
Expended Funds:	\$1,693,834,604
Total Households Served:	9,605

Energy Related Assistance	
<ul style="list-style-type: none"> <li>Utility bill payment assistance</li> <li>Energy consumption education</li> <li>Weatherization for energy efficiency</li> </ul>	
Programs:	
<ul style="list-style-type: none"> <li>Comprehensive Energy Assistance Program (CEAP)</li> <li>Weatherization Assistance Program (WAP)</li> </ul>	
Expended Funds:	\$147,270,662
Total Households Served:	162,668

Multifamily New Construction	
<ul style="list-style-type: none"> <li>Affordable rental units financed and developed</li> </ul>	
Programs:	
<ul style="list-style-type: none"> <li>9% Housing Tax Credits (HTC)</li> <li>4% Housing Tax Credits (HTC)</li> <li>Multifamily Bonds</li> <li>Multifamily Direct Loan Program*</li> </ul>	
Expended Funds:	\$108,945,178
Total Households Served:	7,062

Homelessness Services	
<ul style="list-style-type: none"> <li>Shelter building rehabilitation, conversion, operations</li> <li>Essential services e.g., health services, transportation, job training, employment services</li> </ul>	
Programs:	
<ul style="list-style-type: none"> <li>Emergency Solutions Grant Program (ESG)</li> <li>Homeless Housing and Services Program (HHSP)</li> </ul>	
Expended Funds:	\$12,162,959
Total Individuals Served:	71,350

Multifamily Rehab Construction	
<ul style="list-style-type: none"> <li>Affordable rental units financed and rehabilitated</li> </ul>	
Programs:	
<ul style="list-style-type: none"> <li>9% Housing Tax Credits (HTC)</li> <li>4% Housing Tax Credits (HTC)</li> <li>Multifamily Bonds</li> </ul>	
Expended Funds:	\$56,792,063
Total Households Served:	2,503

Supportive Services	
Provides administrative support for essential services for low income individuals through Community Action Agencies	
Program:	
<ul style="list-style-type: none"> <li>Community Services Block Grant Program (CSBG)</li> </ul>	
Expended Funds:	\$31,103,729
Total Individuals Served:	561,906

Owner Rehabilitation Assistance	
<ul style="list-style-type: none"> <li>Home rehabilitation, reconstruction</li> <li>Manufactured housing unit replacement</li> <li>Accessibility modifications e.g., ramp, grab bar installation</li> </ul>	
Programs:	
<ul style="list-style-type: none"> <li>Homeowner Rehabilitation Assistance Program (HRA)*</li> <li>Amy Young Barrier Removal Program</li> </ul>	
Expended Funds:	\$11,384,025
Total Households Served:	251

Rental Assistance	
<ul style="list-style-type: none"> <li>Short, long term rent payment help</li> <li>Assistance linked with services</li> <li>Transitional assistance</li> <li>Security, utility deposits</li> </ul>	
Programs:	
<ul style="list-style-type: none"> <li>Tenant-Based Rental Assistance (TBRA)*</li> <li>Section 8 Housing Choice Vouchers</li> <li>Section 811</li> </ul>	
Expended Funds:	\$11,021,909
Total Households Served:	1,932

Single Family Development	
<ul style="list-style-type: none"> <li>Single family development, reconstruction, rehabilitation</li> <li>Do-it-yourself, "sweat equity" construction, rehabilitation</li> <li>Contract for Deed refinance</li> </ul>	
Programs:	
<ul style="list-style-type: none"> <li>Single Family Development Program (SFD)*</li> <li>Contract for Deed (CFD)</li> </ul>	
Expended Funds:	\$3,769,888
Total Households Served:	85

Total Expended Funds:	\$2,076,285,016
Total Households Served:	817,362
All FY2019 data as reported in TDHCA's 2020 State Low Income Housing Plan and Annual Report (SLIHP).	
Note: Some households may have been served by more than one TDHCA program.	

\* Administered through the federally funded HOME Investment Partnerships Program

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
GOVERNING BOARD MEETING

A G E N D A  
9:00 AM  
November 5, 2020

**Meeting Location:** In light of the March 13, 2020, disaster declaration by the Office of the Governor, and the subsequent waivers of portions of Tex. Gov't Code, Ch. 551\*, this meeting of the TDHCA Governing Board will be accessible to the public via the telephone and web link information, below. In order to engage in two-way communication during the meeting, persons must first register (at no cost) to attend the webinar via the link provided. Anyone who calls into the meeting without registering online will not be able to ask questions or provide comments, but the meeting will still be audible. A recording of the meeting will be made available to the public as soon as possible following the meeting.

**Governing Board Webinar registration:**

<https://attendee.gotowebinar.com/register/3294713391175995661>

Dial-in number: +1 (415) 655-0052, access code 615-164-369 (persons who use the dial-in number and access code without registering online will only be able to hear the Board meeting and will not be able to ask questions or provide comments). Note, this meeting will be proceeding as a videoconference under Tex. Gov't Code §551.127, as modified by waiver.

If the GoToWebinar terminates prior to adjournment of the meeting (i.e. if the webinar session "crashes") the meeting will be recessed. A new link to the meeting will be posted immediately on the TDHCA Board meetings web page (<https://www.tdhca.state.tx.us/board/meetings.htm>) along with the time the meeting will resume. The time indicated to resume the meeting will be within six hours of the interruption of the webinar. Please note that in this contingency, the original meeting link will no longer function, and only the new link (posted on the TDHCA Board meetings web page) will work to return to the meeting.

CALL TO ORDER

ROLL CALL

CERTIFICATION OF QUORUM

Leslie Bingham, Vice Chair

*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.*

\* The list of Open Meeting laws subject to temporary suspension effective March 16, 2020, is available at: <https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2020/Press/Open%20Meeting%20Laws%20Subject%20to%20Temporary%20Suspension.pdf>

## 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:

#### ASSET MANAGEMENT

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

02005	Brenham Oaks	Brenham
19344	Patriot Place	El Paso

**Rosalio Banuelos**  
Director of Asset  
Management

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

02070	Woodview Apartments	Wichita Falls
02174	Gateway Village Seniors	Beaumont
05236	Clifton Manor Apartments I and II	Clifton
05237	Bel Aire Manor Apartments	Brady
05238	Hamilton Manor Apartments	Hamilton
08195	St James Village Apartments	Houston
11120	La Promesa Apartments	Odessa

#### MULTIFAMILY FINANCE

- c) Presentation, discussion, and possible action regarding the issuance of Determination Notices for 4% Housing Tax Credit Applications

20486	Old Manor Senior	Austin ETJ
20489	Horizon Pointe	San Antonio ETJ

**Teresa Morales**  
Director of  
Multifamily Bonds

- d) Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits and an Award of Direct Loan Funds (#20462, Sunland Country Apartments, Harlingen)

- e) Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits and an Award of Direct Loan Funds (#20463, Trinity Oaks, Sulphur Springs)

- f) Presentation, discussion, and possible action regarding a waiver of 10 TAC §11.101(b)(1)(C) of the Qualified Allocation Plan for Cavile Place in Fort Worth, Tarrant County

**Marni Holloway**  
Director of  
Multifamily Finance

- g) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 13, concerning the Multifamily Direct Loan Rule, and an order adopting the new 10 TAC Chapter 13 concerning the Multifamily Direct Loan Rule, and directing its publication in the *Texas Register*

#### LEGAL

- h) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning related properties Twentyfive25 f/k/a The Grove at Trinity Mills (Bond # MF009, CMTS 2529), Solaire f/k/a Heritage Square (Bond # MF011, CMTS 2562), The Finley f/k/a The Highlands (Bond # MF012, CMTS 2535), 600 East f/k/a Stone Ridge (Bond # MF014, CMTS # 2519)

**Jeff Pender**  
Deputy General Counsel

- i) Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning related properties Mitay Inc Scattered Site (HTC 92009 / CMTS 1026), 2512 Thorne (HTC 70046 / CMTS 2344), and 1213 Pecan (HTC 70083 / CMTS 912)

**BOND FINANCE**

- j) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 12, concerning the Multifamily Housing Revenue Bond Rules, and an order adopting new 10 TAC Chapter 12 concerning the Multifamily Housing Revenue Bond Rules, and directing its publication in the *Texas Register*

**Teresa Morales**  
Director of  
Multifamily Bonds

**SINGLE FAMILY & HOMELESS PROGRAMS**

- k) Presentation, discussion, and possible action on Orders repealing all sections of 10 TAC Chapter 23, Single Family HOME Program, and Orders adopting new 10 TAC Chapter 23, Single Family HOME Program, concerning HOME single family activities, and directing their publication in the *Texas Register*

**Abigail Versyp**  
Director of Single Family &  
Homeless Programs

**RULES**

- l) Presentation, Discussion and Possible Action on the statutory four-year rule review and readoption of 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.406 Fidelity Bond Requirement, §1.407 Inventory Report, and §1.408 Travel; and directing their publication for adoption in the *Texas Register*
- m) Presentation, discussion, and possible action on an order adopting the repeal, and new rule, for 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.401 Definitions, §1.402 Cost Principles and Administrative Requirements, §1.403 Single Audit Requirements, §1.404 Purchase and Procurement Standards, §1.405 Bonding Requirements, §1.409 Records Retention, §1.410 Determination of Alien Status for Program Beneficiaries; and an order and directing their publication for adoption in the *Texas Register*

**Brooke Boston**  
Deputy Director  
of Programs

**COMMUNITY AFFAIRS**

- n) Presentation, Discussion, and Possible Action on the 2021 Section 8 Payment Standards for the Housing Choice Voucher Program (HCVP)

**Michael De Young**  
Director of  
Community Affairs

**CONSENT AGENDA REPORT ITEMS**

**ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:**

- a) Outreach and Activities Report (October-November)
- b) Report on Activities Related to the Department's Response to COVID-19 Pandemic
- c) Report on the Department's 4th Quarter Investment Report in accordance with the Public Funds Investment Act
- d) Report on the Department's 4th Quarter Investment Report relating to funds held under Bond Trust Indentures

**Michael Lyttle**  
Director of  
External Affairs

**Brooke Boston**  
Deputy Director  
of Programs

**Joe Guevara**  
Director of Financial  
Administration

**Monica Galuski**  
Director of  
Bond Finance

**ACTION ITEMS**

**ITEM 3: RULES**

Presentation, discussion, and possible action on repeal of and proposed new 10 TAC Chapter 2 Enforcement, Subchapter A General, Subchapter C Administrative

**Patricia Murphy**  
Director  
of Compliance

Penalties, and Subchapter D Debarment to be published in the *Texas Register* for public comment

**ITEM 4: MULTIFAMILY FINANCE**

Presentation, discussion, and possible action on an order approving and recommending to the Governor the repeal of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and an order approving and recommending to the Governor in accordance with Tex. Gov't Code §2306.6724(b) the new 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and, upon action by the Governor, directing its publication in the *Texas Register*

**Marni Holloway**  
Director of  
Multifamily 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):

**Leslie Bingham**  
Vice 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](http://www.tdhca.state.tx.us) or contact Michael Lyttle, 512-475-4542, TDHCA, 221 East 11<sup>th</sup> 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 Nancy Dennis, at 512-475-3959 or Relay Texas at 1-800-735-2989, at least five 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 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.

1a



**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**NOVEMBER 5, 2020**

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application for Brenham Oaks (HTC #02005)

**RECOMMENDED ACTION**

**WHEREAS**, Brenham Oaks (the Development) received an award of 9% Housing Tax Credits (HTCs) in 2002 for the construction of 76 units of multifamily housing in Brenham, Washington County;

**WHEREAS**, Brenham Oaks Apartments, L.P. (the Development Owner or Owner) is requesting approval for a reduction of the site area from 7.76071 acres at the time of Application to the current reduced size of 6.723 acres due to a 0.8841 acre portion of the original site that was transferred to the City of Brenham (the City) in 2007 for the development of a public road, which resulted in an increase of the residential density of the Development of 13.15%;

**WHEREAS**, Board approval is required for a modification of the residential density of at least five percent as directed in Tex. Gov't Code §2306.6712(d)(6) and 10 TAC §10.405(a)(4)(F), and the Owner has complied with the amendment requirements therein; and

**WHEREAS**, the requested change does not materially alter the Development in a negative manner, was not reasonably foreseeable or preventable by the Owner at the time of Application, and would not have adversely affected the selection of the Application;

**NOW, therefore, it is hereby**

**RESOLVED**, that the requested material amendment to the Application for Brenham Oaks is approved as presented at this meeting, and the Executive Director and his designees are each hereby authorized, directed, and empowered to take all necessary action to effectuate the foregoing.

## **BACKGROUND**

Brenham Oaks was awarded 9% Housing Tax Credits (HTCs) in 2002 for the construction of 76 multifamily housing units in Brenham, Washington County. Construction of the Development was completed in 2002. However, in a letter dated October 6, 2020, J. Steve Ford, representative of the Development Owner, requested approval for a change in the Development site area from what was represented at the time of Application.

At Application, the site area was identified as 7.7481 acres, but ultimately, 7.6071 acres were reflected in the Land Use Restriction Agreement (LURA) for the Development. In 2007, the Owner transferred 0.8841 acre of the site to the City of Brenham for development of a public road named Stringer Street as part of an area master plan. This reduced the Development site area to 6.723 acres and increased the residential density by 13.15%. Board approval is required for a modification of the residential density of at least five percent as directed in Tex. Gov't Code §2306.6712(d)(6) and 10 TAC §10.405(a)(4)(F).

The Owner reports all of the buildings, parking areas, driveways, and all other improvements utilized in connection with the operation of the Development are located on the 6.723 acre site.

Staff has reviewed the Application against this amendment request and has concluded that the change described above would not have affected the award. A review of the Application indicates that an extension of the road was anticipated, but there was no indication of an anticipated transfer of land to the City.

Staff recommends approval of the requested material amendment to the Application. Upon approval of this amendment, the LURA for the Development will be amended to release the acreage transferred to the City.

**BREHAM OAKS APARTMENTS, L.P.**  
**2475 Stringer Street**  
**Brenham, Washington County, Texas**

October 6, 2020

**VIA ELECTRONIC DELIVERY**

Mr. Jonathan Chilson  
Asset Manager  
Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78701-2410

Re: Brenham Oaks Apartments (the "**Apartment Complex**")  
Brenham Oaks Apartments, L.P. (the "**Partnership**")  
TDHCA File No.02005

Dear Mr. Chilson:

The Partnership is the current owner of the Apartment Complex, and KF Brenham Oaks GP, LLC, a Texas limited liability company, is the general partner (the "**General Partner**") of the Partnership. The Apartment Complex is subject to the terms of the Declaration of Land Use Restrictive Covenants for Low-Income Housing Credits (the "**LURA**") dated as of December 31, 2002, recorded in the Official Public Records of Washington County, Texas as Volume 1089, Page 791. This letter constitutes a request for a material HTC Application amendment and a corresponding LURA amendment in order to remove a portion of the land from the encumbrance of the LURA.

**Background Information**

The land that is subject to the terms of the LURA originally consisted of Lot 1, Block II and Reserve A containing 7.6071 acres and was recorded prior to the construction of the roadway. All of the buildings, parking areas, driveways, and all other improvements utilized in connection with the operation of the Apartment Complex are located on Lot 1, Block II, which is 6.723 acres (the "**Apartment Property**"). Reserve A, which is the remaining 0.8841 acres of land subject to the LURA, was subsequently transferred to the City of Brenham for the development of a public road commonly known as "Stringer Street" (the "**Stringer Street Property**") as part of an area master plan. The Stringer Street Property was conveyed to the City of Brenham pursuant to the General Warranty Deed (the "**Conveyance Deed**") recorded in the Real Property Records of Washington County, Texas as Volume 1243, Page 326.

Attached hereto as Exhibit A is a survey showing the boundaries of the Stringer Street Property crosshatched in red and the Apartment Property to its east; and attached hereto as Exhibit B is a copy of the recorded Conveyance Deed.

**Amendment to Application – Change to Development Site Acreage**

The transfer of the Stringer Street Property to the City of Brenham resulted in a change to the Development Site acreage described in the HTC Application for the Apartment Complex, and results in a modification to the residential density of more than 5%. Therefore, given that the Stringer Street Property is separately owned and is no longer a part of the Apartment Property, and that the Stringer Street Property is now a public street, and that the Apartment Complex benefited by the access to and use of the public street, the Partnership respectfully requests that the HTC Application for the Apartment Complex be amended to reflect such modification.

**Release of Portion of Stringer Street Property from the LURA**

Upon the Department's review and the Board's approval of the amendment to the HTC Application reflecting the modification in residential density, the Partnership respectfully requests that the Stringer Street Property be released from the LURA, and that the legal description currently attached to the LURA be revised as set forth in Exhibit C attached hereto and be inserted in lieu thereof.

**Application & LURA Amendment**

The modification to the site plan that will not impact the Apartment Complex, the ingress/egress to the Apartment Complex, or the tenants of the Apartments Complex in any way. There is no financial impact to the tenants of the Apartment Complex, the Partnership, or the management and maintenance of the Apartment Complex. The public street located on the Stringer Street Property will continue to provide ingress/egress to the Apartment Complex. Therefore, the Partnership and the New Owner respectfully request that the HTC Application be amended to reflect the change in Development Site Acreage and residential density, and that the Stringer Street Property be removed from the restrictions enforced under the LURA as those restrictions are no longer needed for the operation and use of the Apartment Complex. The fee in the amount of \$2,500 will be delivered simultaneously with the electronic filing of this amendment request.

[Remainder of page intentionally left blank.]

Thank you very much for your assistance. Please do not hesitate to contact us if you require any additional information.

Sincerely,

**BRENHAM OAKS APARTMENTS, L.P.,**  
a Texas limited partnership

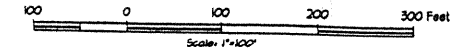
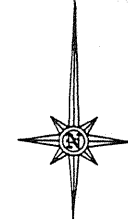
By: KF Brenham Oaks GP, LLC,  
a Texas limited liability company,  
its general partner

By: KF Residential Investor, L.L.C.,  
a Delaware limited liability company,  
its sole member

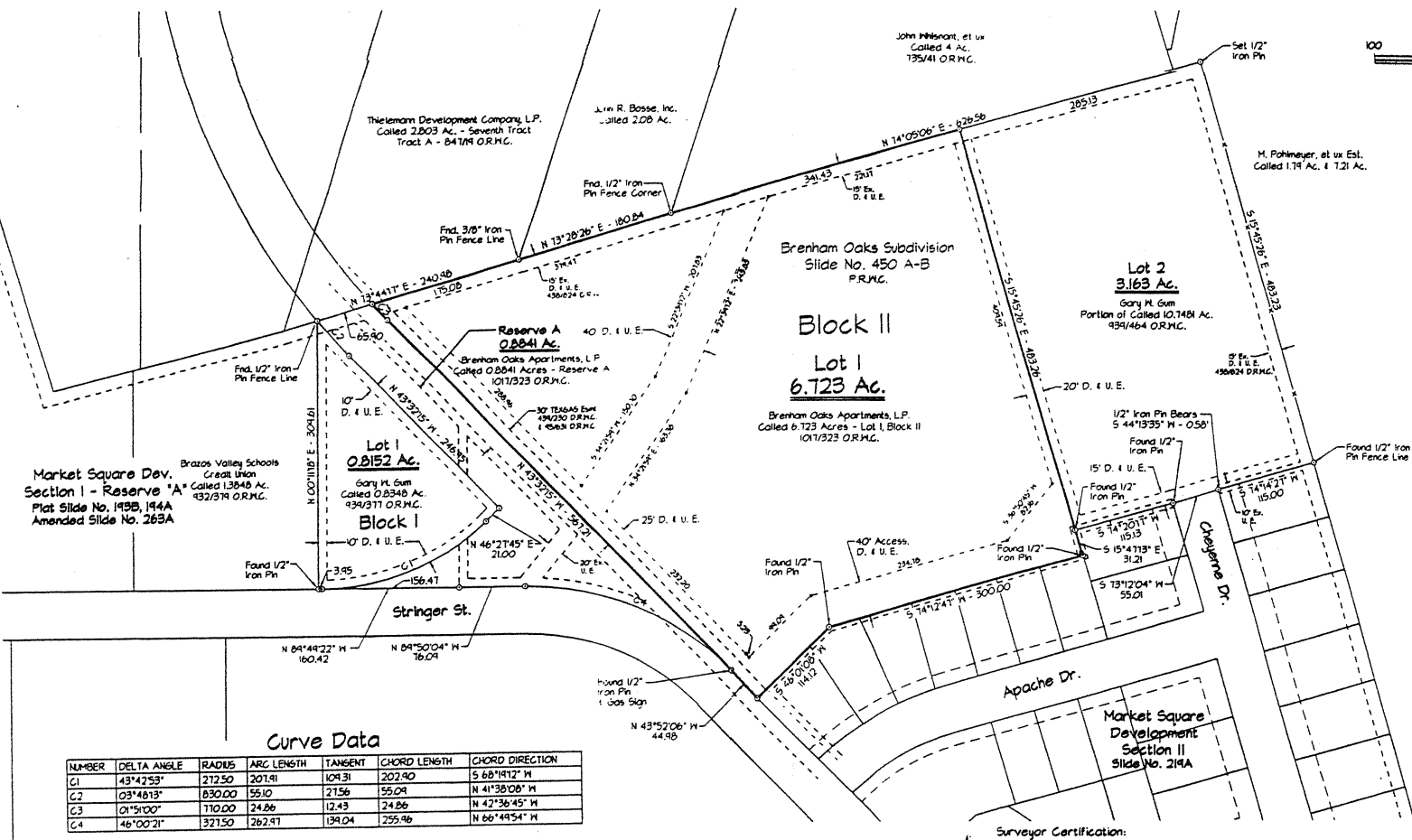
By: Encore Residential, L.L.C.,  
a Texas limited liability company,  
its manager

By:   
\_\_\_\_\_  
J. Steve Ford, Manager





**City of Brenham  
M. N. Combs Survey  
A-124  
Washington County, Texas**



**Curve Data**

NUMBER	DELTA ANGLE	RADIUS	ARC LENGTH	TANGENT	CHORD LENGTH	CHORD DIRECTION
C1	43°42'53"	272.50	201.91	104.31	207.80	S 68°14'12" W
C2	03°48'13"	630.00	55.10	21.56	55.09	N 41°38'00" W
C3	01°51'00"	110.00	24.86	12.43	24.86	N 42°36'45" W
C4	46°00'21"	321.50	262.97	134.04	235.46	N 66°44'54" W

○ indicates Set 1/2" Iron Pin Unless Otherwise Noted

**Note:**  
This tract may be subject to easements in favor of Texas Power & Light Company as recorded in: Volume 89, Page 109; Volume 104, Page 84; Volume 115, Page 266. There is no apparent physical evidence of these easements on the subject tract.

**Building Setback Lines:**  
Building setback lines and yard requirements shall be according to zone and use as set forth in the City of Brenham Zoning Ordinance.

**Flood Hazard Statement:**  
It has been determined that the subject property does not lie within the 100-Year Flood Boundary as indicated by Flood Boundary and Floodway Map compiled by Federal Emergency Management Agency F.I.A., Community-Panel No. 480 648 0002B, dated August 17, 1981, City of Brenham, Washington County, Texas.

**Surveyor Certification:**  
To: Boston Capital Corporate Tax Credit Fund XVII, BCCC, Inc., 556A Affordable Housing Mortgage Fund, LLC, and Service Title Company.  
I, John E. Pledger, III, Registered Professional Land Surveyor, do hereby certify that the plat and/or description shown hereon accurately represents the results of an on the ground survey made under my direction and supervision on 2/27/02, and all corners are as shown hereon. There are no conflicts, or protrusions apparent on the ground except as shown.

This tract is subject to all underground easements, the existence of which may arise by virtue of unrecorded grant or use.

This survey was performed in connection with the transaction described in the G.F. Number 020213K of Service Title Company.

Use of this survey for any other purposes or by other parties shall be at their own risk and the undersigned surveyor is not responsible for any loss resulting therefrom.

*John E. Pledger, III*  
John E. Pledger, III February 27, 2002  
Registered Professional Land Surveyor No. 2183



**Brenham Oaks Apartments, L.P.,  
A Texas Limited Partnership  
Lot 1, Block II, Brenham Oaks Subdivision**

**Pledger and Associates  
Reue Land Surveyors**

1500 South Bay Street  
P.O. Box 1726 Brenham, Texas 77823  
Tele: (879)836-6621 Fax: (879)836-6666

Surveyor	John E. Pledger, III	County	Washington	Computations	M.A.M.
R.P.L.S. No.	2183	Survey	M.N. Combs A-124	Drafting	M.A.M.
Date	11/02/01	City	Brenham	Work Order	37201-251
Update		Field Crew		Drawing No.	2 of 2

**EXHIBIT B**  
**SPECIAL WARRANTY DEED**

(attached)



GENERAL WARRANTY DEED: BRENHAM OAKS APARTMENTS, L.P. TO THE CITY OF BRENHAM, WASHINGTON COUNTY, TEXAS

2542

THE STATE OF TEXAS                   §  
  §   KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF WASHINGTON           §

That BRENHAM OAKS APARTMENTS, L.P., a Texas limited partnership, of Brenham, County of Washington, State of Texas, hereinafter called Grantor, for and in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS, cash to Grantor in hand paid by the CITY OF BRENHAM, County of Washington, State of Texas, hereinafter called Grantee, and other good and valuable consideration, the receipt of which is hereby acknowledged, and for which no lien, express or implied, is retained or shall exist;

BRENHAM OAKS APARTMENTS, L.P. HAS GRANTED, SOLD AND CONVEYED, and by these presents does GRANT, SELL AND CONVEY unto the said CITY OF BRENHAM, a Texas municipal corporation, of P.O. Box 1059, Brenham, Washington County, Texas the following described property:

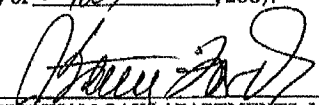
Reserve "A", 0.88141 acre, Brenham Oaks Subdivision as recorded in plat cabinet file slide numbers 450A and 450B, Plat Records of Washington County, Texas.

This conveyance is made by Grantor and accepted by Grantee subject to the following exception(s) from conveyance and warranty, but only to the extent the same are valid and subsisting and relate to the property:

Easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded instruments, other than liens and conveyances that affect the property; taxes for the current year, the payment of which Grantee assumes.

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said CITY OF BRENHAM, its successors and assigns, forever; and Grantor does hereby bind itself and its assigns to WARRANT AND FOREVER DEFEND, all and singular, the premises unto the said CITY OF BRENHAM, its successors and assigns, against every person whomever lawfully claiming or to claim the same or any part thereof.

WITNESS MY HAND, this the 2 day of May, 2007.

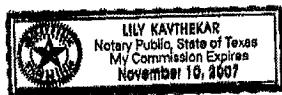
  
BRENHAM OAKS APARTMENTS, L.P.  
Brenham Oaks Development, L. L. C.  
Its General Partner  
By: J. Steve Ford, Manager

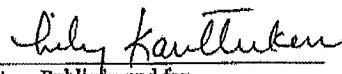
THE STATE OF TEXAS

COUNTY OF HARRIS

BEFORE ME, the undersigned authority, a Notary Public in and for said county and state, on this day personally appeared J. STEVE FORD, Manager of Brenham Oaks Development, L.L.C., General Partner of Brenham Oaks Apartment, L.P., known 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.

GIVEN under my hand and seal of office this the 2<sup>nd</sup> day of May, 2007.



  
Notary Public in and for  
The State of Texas

STATE OF TEXAS  
COUNTY OF WASHINGTON

I hereby certify that this instrument was FILED on the date and at the time affixed hereon by me and was duly RECORDED in the volume and page of the OFFICIAL RECORDS of Washington County, Texas, as stipulated hereon by me on

MAY 09 2007



  
Beth Rothenel, County Clerk  
Washington County, Texas

FILED FOR RECORD  
WASHINGTON COUNTY TEXAS  
2007 MAY - 9 AM 11:37  
BETH A. ROTHENEL  
WASHINGTON COUNTY CLERK

**EXHIBIT C**  
**REVISED LEGAL DESCRIPTION**

Lot 1, Block II, containing 6.723 acres of land, of the Brenham Oaks Subdivision, located in the City of Brenham, Washington County, Texas, according to the map or plat thereof, recorded in Plat Cabinet File Nos. 450A and 450B, Plat Records of Washington County, Texas.

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**NOVEMBER 5, 2020**

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application for Patriot Place (HTC #19344)

**RECOMMENDED ACTION**

**WHEREAS**, Patriot Place (the Development) received an award of 9% Housing Tax Credits (HTCs) in 2019 for the construction of 110 new multifamily units in the City of El Paso, El Paso County;

**WHEREAS**, EP Patriot Place, LP (the Development Owner or Owner) requests approval for changes to the site plan and building design for the Development, including a reduction in the number of residential buildings from 11 to seven buildings and utilizing plans used in a previous development in place of those submitted at application;

**WHEREAS**, this results in a modification of the building configuration, elevations, and heights as well as changes in square footage for the units and common areas;

**WHEREAS**, Board approval is required for a significant modification of the site plan and for a significant modification of the architectural design of the Development, as directed in Tex. Gov't Code §2306.6712(d)(1) and (5) and 10 TAC §10.405(a)(4)(A) and (E), and the Owner has complied with the amendment requirements therein;

**WHEREAS**, Board approval of this amendment does not constitute a waiver of any of the rules or statutes applicable to the 2019 9% HTC Application, including but not limited to the accessibility requirements stated in Chapter 1, Subchapter B; and


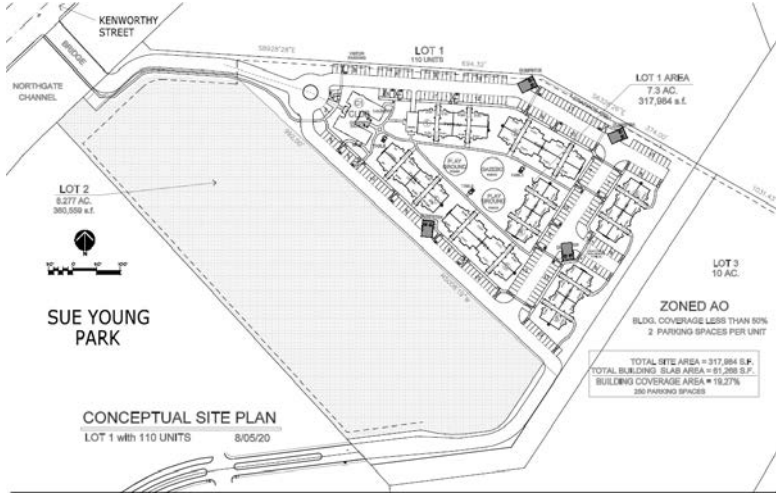
**WHEREAS**, the requested changes do not negatively affect the Development, impact the viability of the transaction, impact the scoring of the Application, or affect the amount of the tax credits awarded;

**NOW, therefore, it is hereby**

**RESOLVED**, that the requested amendment for Patriot Place is approved as presented at this meeting, and the Executive Director and his designees are each hereby authorized, directed, and empowered to take all necessary action to effectuate the foregoing.

## BACKGROUND

Patriot Place received a 9% HTC award in 2019 to construct 110 units in the City of El Paso, El Paso County. In a letter dated September 21, 2020, Sarah Anderson, the representative for the Development Owner, requested approval for a material amendment to the original design of the Development. The request seeks approval for, among other changes, a reduction in the number of residential buildings from eleven buildings to seven buildings, which represents a significant modification to the site plan.

Material Alterations as defined in Tex. Gov't Code §2306.6712(d)(1) and (5) and 10 TAC §10.405(a)(4)(A) and (E)																									
Original Site Plan at Application	Site Plan at Amendment																								
<p><u>Residential Buildings: 11</u></p>	<p><u>Residential Buildings: 7</u></p>																								
 <p><b>PARKING TABULATION</b></p> <table border="1" style="font-size: small; border-collapse: collapse;"> <thead> <tr> <th>UNIT TYPES</th> <th>MINIMUM</th> <th>MAXIMUM</th> </tr> </thead> <tbody> <tr> <td>1-BEDROOM</td> <td>2</td> <td>10</td> </tr> <tr> <td>2-BEDROOM</td> <td>2</td> <td>12</td> </tr> <tr> <td>3-BEDROOM</td> <td>2</td> <td>20</td> </tr> <tr> <td>4-BEDROOM</td> <td>2</td> <td>25</td> </tr> <tr> <td>TOTAL MINIMUM REQ.</td> <td>8</td> <td>57</td> </tr> <tr> <td>TOTAL MAXIMUM REQ.</td> <td>8</td> <td>112</td> </tr> <tr> <td>PARKING PROVIDED</td> <td>230</td> <td>230</td> </tr> </tbody> </table>	UNIT TYPES	MINIMUM	MAXIMUM	1-BEDROOM	2	10	2-BEDROOM	2	12	3-BEDROOM	2	20	4-BEDROOM	2	25	TOTAL MINIMUM REQ.	8	57	TOTAL MAXIMUM REQ.	8	112	PARKING PROVIDED	230	230	 <p><b>CONCEPTUAL SITE PLAN</b> LOT 1 with 110 UNITS 8/05/20</p> <p><b>ZONED AO</b> BLDG. COVERAGE LESS THAN 50% 3 PARKING SPACES PER UNIT</p> <p>TOTAL SITE AREA = 317,884 S.F. TOTAL BUILDING SLAB AREA = 81,288 S.F. BUILDING COVERAGE AREA = 18.27% 230 PARKING SPACES</p>
UNIT TYPES	MINIMUM	MAXIMUM																							
1-BEDROOM	2	10																							
2-BEDROOM	2	12																							
3-BEDROOM	2	20																							
4-BEDROOM	2	25																							
TOTAL MINIMUM REQ.	8	57																							
TOTAL MAXIMUM REQ.	8	112																							
PARKING PROVIDED	230	230																							

The Owner’s representative explained that these changes are necessary due to construction costs related to engineering challenges to the site, in addition to material and labor cost increases from the time of application. Additional engineering requirements to land in proximity to Range Dam were not identified by the original project engineer who drafted the Engineering Report submitted with the Application. These changes were unforeseen at the time of application.

It was further explained that while the initial Engineering Report made note of the Range Dam, it did not identify any engineering requirements regarding grading or elevations as a result of its proximity. Once complete engineering and building plans were undertaken, the project engineer identified rainfall guidelines that are to be used to analyze the Range Dam’s Probable Maximum

Flood (PMF) elevation, and this calculation triggered the need to elevate a large portion of the site above the PMF elevation of 3,937 feet.

In addition, the Owner indicated that the changes needed to satisfy the PMF elevation requirements also contribute to higher than expected construction costs. Therefore, architectural plans from a previous development will be used in place of those submitted at application, and the number of buildings will be reduced from eleven to seven. Staff has confirmed that these changes do not modify the number of units, the bedroom mix, or materially alter the square footage of the units.

The Owner is also proposing an increase in the area of the clubhouse, increasing the total common area from an underwritten 2,239 to 5,227 square feet. According to the Owner, it was determined that the size submitted at Application was undersized for the Development.

While the Owner did not identify changes to the parking that was proposed at Application, it was noted that total parking increased from the 228 spaces included at application. With the revised design, it appears that the Owner will add spaces, bringing the total to 250.

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

<b>Material and Minor Alterations under 10 TAC §10.405(a)(3)(A)</b>	
Application	Amendment
Development Site: 7.30 acres Total Units: 110 Density: 15.1 units / acres <b>Residential Buildings: 11</b> <b>Residential Net Rentable SF: 87,892</b> <b>Common Area SF: 2,239</b>  Total Parking: 228 spaces  1 BR / 1 BA units at 662 and 730 sq ft: 56 total 2 BR / 2 BA units at 850 and 1133 sq ft: 38 total 3 BR / 2 BA units at 1088 and 1430 sq ft: 16 total	Development Site: 7.30 acres Total Units: 110 Density: 15.1 units / acres <b>Residential Buildings: 7 (-4 buildings)</b> <b>Residential Net Rentable SF: 89,550 (+1.89%)</b> <b>Common Area SF: 5,227 (+133%)</b>  Total Parking: 250 spaces (+22 spaces)  1 BR / 1 BA units at 683 sq ft: 56 2 BR / 2 BA units at 873 sq ft: 38 3 BR / 2 BA units at 1133 sq ft: 16

Revised financial exhibits were also submitted as part of the amendment request, including an updated Rent Schedule, Annual Operating Expenses schedule, Development Cost Schedule, Summary of Sources and Uses, new term sheets, and a revised equity letter. Staff re-evaluated the transaction and has concluded that the Development remains feasible. In summary, total development costs increased by \$758K or 3.6%. PNC replaced Hunt Mortgage Group as the lender, providing permanent financing of \$3.672M (increase of approximately \$372K) at a more favorable interest rate of 3.99% instead of 5.5%. Total debt service decreased by \$18K or 8.38%,

and there was an increase in the Debt Coverage Ratio (DCR) from 1.15 to 1.46, excluding the repayment for the two related party non-amortizing notes. If these loans are amortized, this mitigates the high DCR. Also, an updated term sheet from RBC Capital Markets indicates equity proceeds at \$39K less than those included at application.

Staff has reviewed the original application and scoring documentation against this amendment request and has concluded that none of the changes would have resulted in selection or threshold criteria changes that would have affected the selection of the Application in the competitive round. Additionally, the proposed changes have no impact on the recommended credit amount.

Staff recommends approval of the amendment request as presented.

September 21, 2020

Karen Treadwell  
TDHCA Asset Management Division  
PO Box 13921  
Austin, TX 78711

RE: Application Amendment for 19344 Patriot Place Apartments

Dear Ms. Treadwell:

This letter is a formal request for an amendment to HTC 19344 Patriot Place Apartments located in El Paso, for changes to the site plan and building design for the development. These changes are necessary due to increased costs related to engineering challenges to the site, in addition to material/labor cost increases from the time of application. These changes were unforeseen at the time of Application because of additional engineering requirements to land in proximity to Range Dam that were not identified by the original project engineer who drafted the Applications' Engineering Report. The good cause for these changes is to follow local flood control requirements. The amendment fee check has been mailed directly to TDHCA.

#### **Engineering Issues**

While the initial Engineering Report submitted to TDHCA made note of the Range Dam, it did not identify any engineering requirements regarding grading or elevations as a result of its proximity. Once full engineering and building plans were undertaken, the project engineer identified rainfall guidelines that are to be used to analyze the Range Dam's Probable Maximum Flood (PMF) elevation – this calculation triggered the need to elevate a large portion of the site to be above the PMF elevation of 3937. Attachment A is a memo from the Engineer explaining the issue and calculation. Attachment B shows an example of the grading that is now required for the site to meet this new calculation.

#### **Change in Site Plan, Number of Buildings, and Building Heights**

Please see attached revised site, building, unit plans – Attachment C. Due to higher than expected construction costs, we had to value engineer the development which resulted in a reduction in the number of buildings from eleven to seven, and all buildings now being two story only. In another cost control measure we are looking to use plans that have been used for a previous development which resulted in changes to the aesthetics to the buildings as seen in the building elevations.

There were minor changes in unit sizes – none result in a reduction of more than 3%:

	Application	Amendment
One Bedroom	682	670 (-1.7%)
Two Bedroom	850	873 (+2.7)
Three Bedroom	1088	1133 (+4%)



The size of the Clubhouse was increased from 2,775 sq ft to 5,227 sq ft as it was determined that the size submitted at Application was undersized for the development.

**Change in Development Financing**

Revised application and financing forms are attached that correspond with the changes proposed in this amendment – Please see Attachment D.

**Conclusion**

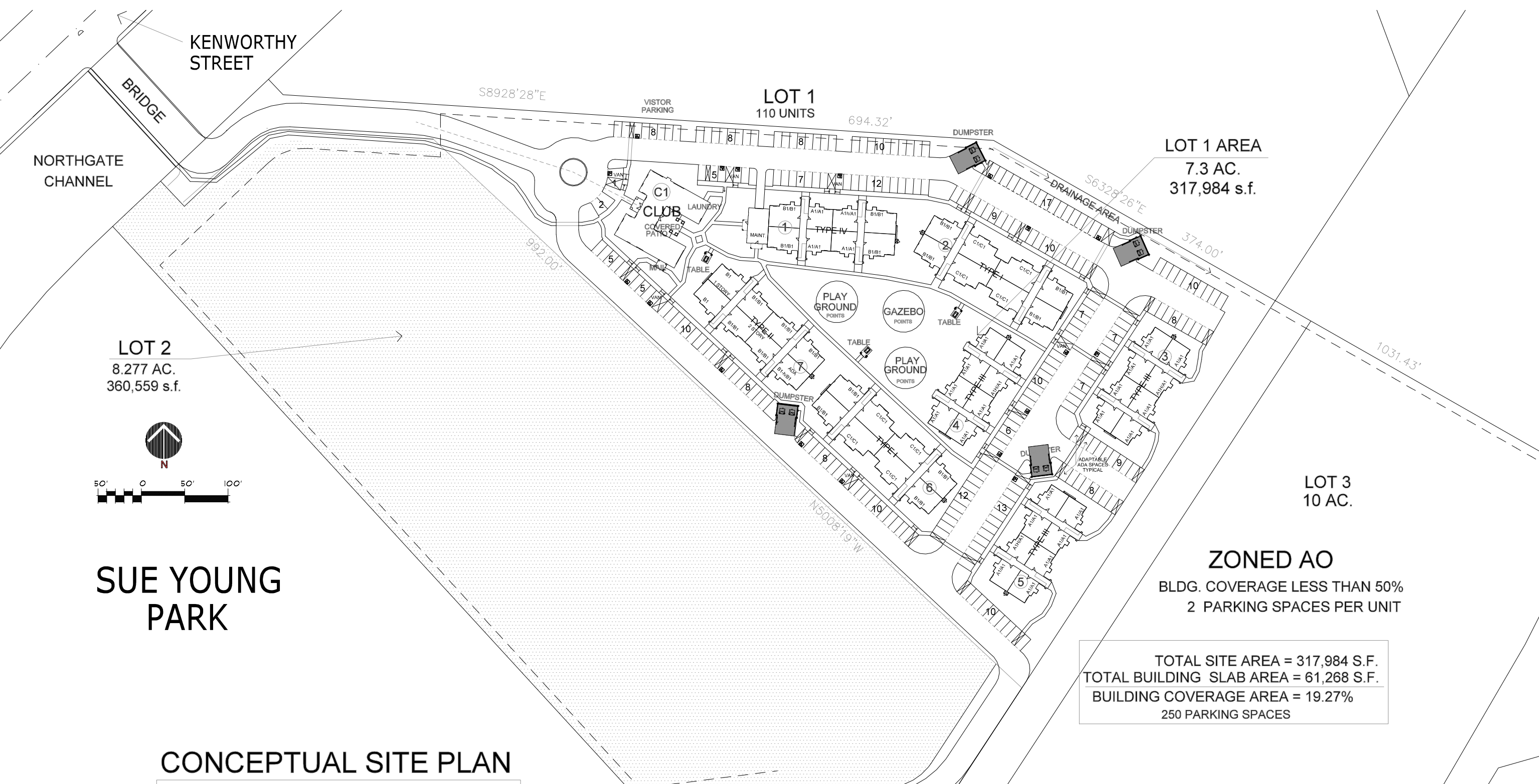
The above outlined changes have not been implemented/are being requested prior to implementation, and were due to circumstances beyond the control of the Developer and should not result in penalty points or sanctions to future applications for the Developer. They will not adversely impact the future residents and in fact will be of benefit to them.

We respectfully request that this amendment be taken to the November Board meeting so that this development can close by the end of November.

Sincerely,

A handwritten signature in cursive script that reads "Sarah Anderson".

Sarah Anderson  
512-554-4721  
sarah@sarahandersonconsulting.com



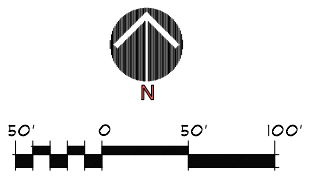
**LOT 1 AREA**  
7.3 AC.  
317,984 s.f.

**LOT 2**  
8.277 AC.  
360,559 s.f.

**LOT 3**  
10 AC.

**ZONED AO**  
BLDG. COVERAGE LESS THAN 50%  
2 PARKING SPACES PER UNIT

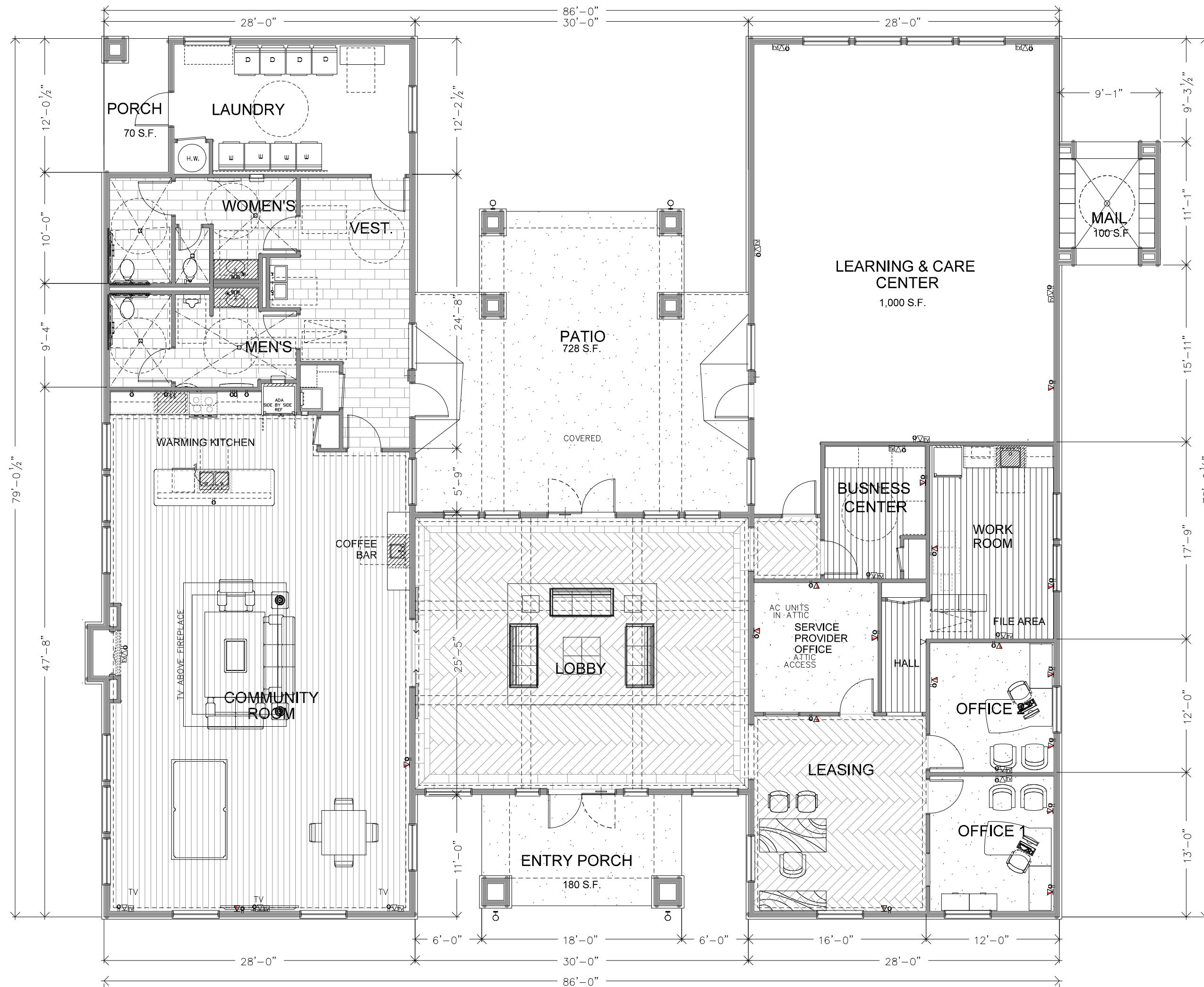
TOTAL SITE AREA = 317,984 S.F.  
TOTAL BUILDING SLAB AREA = 61,268 S.F.  
BUILDING COVERAGE AREA = 19.27%  
250 PARKING SPACES



**SUE YOUNG PARK**

**CONCEPTUAL SITE PLAN**

LOT 1 with 110 UNITS      8/05/20



# CLUB / OFFICE FLOOR PLAN

TOTAL BUILDING AREA = 6,205 S.F.

CLUB AREA = 5,227 SQ.FT.

PORCH/PATIO AREA = 978 S.F.

SCALE : 1/4"=1'-0"

1b

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**NOVEMBER 5, 2020**

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement for Woodview Apartments (HTC #02070)

**RECOMMENDED ACTION**

**WHEREAS**, Woodview Apartments (the Development) received a 9% Housing Tax Credit (HTC) award in 2002 to construct 104 multifamily units in Wichita Falls, Wichita 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, and this provision is reflected in the Land Use Restriction Agreement (LURA) for the Development;

**WHEREAS**, in 2015, the 84th Texas Legislature, Regular Session, 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, 26 U.S.C. §42(i)(7)(A), Internal Revenue Code of 1986;

**WHEREAS**, PC Woodview, LLC (the Development Owner or Owner) requests to amend the 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 Woodview Apartments is approved as presented to this meeting, and the Executive Director and his designees are hereby authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

## **BACKGROUND**

Woodview Apartments received a 9% HTC award in 2002 to construct 104 multifamily units in Wichita Falls, Wichita County. In a letter dated September 18, 2020, Jeff Danley, representative for the Development Owner, requested approval to amend the HTC LURA related to the ROFR provision.

In 2002, the Housing Tax Credit application allotted five points to the Development 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 Wichita County on November 23, 2004.

The additional use restrictions in the current HTC LURA 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 Partnerships Program at 24 CFR Part 92), to a qualified nonprofit organization (as defined in Internal Revenue Code §42(h)(5)(C)), a tenant organization or to the Department, if at any time after the 15<sup>th</sup> year of the Compliance Period the Owner decides to sell the property. The property is currently in the 17<sup>th</sup> year of the 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, Regular Session, 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 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 10 TAC §10.405(b). The Development Owner held a telephonic public hearing on the matter on October 7, 2020. There were no attendees, and therefore, no public comment was received regarding the requested amendment.

Staff recommends approval of the material LURA amendment as presented herein.

**WOODVIEW APARTMENTS**  
1601 32nd Street  
Wichita Falls, Wichita County, Texas 76302

September 18, 2020

**VIA ELECTRONIC DELIVERY**

Ms. Karen Treadwell  
Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78701-2410

Re: TDHCA File No. 02070; Woodview Apartments (the "**Property**")

Dear Ms. Treadwell:

The undersigned, being the current owner of the Property (the "**Owner**"), is submitting this letter to request a material LURA amendment in order to modify the two-year Right of First Refusal ("**ROFR**") period.

**Request to Amend ROFR Period**

In 2015, Texas Government Code Section 2306.6726 was amended to allow for a 180-day ROFR period. Currently, the LURA for this Property requires a two-year ROFR period. Section 10.405(b)(2)(E) of the Rules allows for a LURA amendment in order to conform a ROFR to the provisions in Section 2306.6726. Therefore the Owner, 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 Owner, is delivering a fee in the amount of \$2,500.00. In addition, the Owner commits to hold a public hearing, as required by the Rules, and to notify all residents, investors, and lenders. The 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. With that, the Owner requests staff recommendation in support of this request to be considered at the next available TDHCA Board meeting.

Thank you very much for your assistance. Please do not hesitate to contact us if you require any additional information.

Sincerely,

**PC WOODVIEW, LLC,**  
a Delaware limited liability company

By: PCMFM, LLC,  
a Utah limited liability company,  
its Administrative Manager

By:   
\_\_\_\_\_  
Jeff Danley, Manager



**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**NOVEMBER 5, 2020**

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement for Gateway Village Seniors (HTC #02174)

**RECOMMENDED ACTION**

**WHEREAS**, Gateway Village Seniors (the Development) received a 9% Housing Tax Credit (HTC) award in 2002 to construct 116 multifamily units in Beaumont, Jefferson 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, and this provision is reflected in the Land Use Restriction Agreement (LURA) for the Development;

**WHEREAS**, in 2015, the 84th Texas Legislature, Regular Session, 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, 26 U.S.C. §42(i)(7)(A), Internal Revenue Code of 1986;

**WHEREAS**, PC Gateway LLC (the Development Owner or Owner) requests to amend the 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 Gateway Village Seniors is approved as presented to this meeting, and the Executive Director and his designees are hereby authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

## **BACKGROUND**

Gateway Village Seniors received a 9% HTC award in 2002 to construct 116 multifamily units in Beaumont, Jefferson County. In a letter dated September 18, 2020, Jeff Danley, representative for the Development Owner, requested approval to amend the HTC LURA related to the ROFR provision.

In 2002, the Housing Tax Credit application allotted five points to the Development 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 Jefferson County on December 22, 2004, later amended and recorded in Jefferson County on February 28, 2005.

The additional use restrictions in the current HTC LURA 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 Partnerships Program at 24 CFR Part 92), to a qualified nonprofit organization (as defined in Internal Revenue Code §42(h)(5)(C)), a tenant organization or to the Department, if at any time after the 15<sup>th</sup> year of the Compliance Period the Owner decides to sell the property. The property is currently in the 16<sup>th</sup> year of the 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, Regular Session, 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 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 10 TAC §10.405(b). The Development Owner held a telephonic public hearing on the matter on October 7, 2020. No public comment was received regarding the requested amendment.

Staff recommends approval of the material LURA amendment as presented herein.

**GATEWAY APARTMENTS**  
2825 12th Street  
Beaumont, Jefferson County, Texas 77701

September 18, 2020

**VIA ELECTRONIC DELIVERY**

Ms. Karen Treadwell  
Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78701-2410

Re: TDHCA File No. 02070; Gateway Apartments (the "**Property**")

Dear Ms. Treadwell:

The undersigned, being the current owner of the Property (the "**Owner**"), is submitting this letter to request a material LURA amendment in order to modify the two-year Right of First Refusal ("**ROFR**") period.

**Request to Amend ROFR Period**

In 2015, Texas Government Code Section 2306.6726 was amended to allow for a 180-day ROFR period. Currently, the LURA for this Property requires a two-year ROFR period. Section 10.405(b)(2)(E) of the Rules allows for a LURA amendment in order to conform a ROFR to the provisions in Section 2306.6726. Therefore the Owner, 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 Owner, is delivering a fee in the amount of \$2,500.00. In addition, the Owner commits to hold a public hearing, as required by the Rules, and to notify all residents, investors, and lenders. The 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. With that, the Owner requests staff recommendation in support of this request to be considered at the next available TDHCA Board meeting.

Thank you very much for your assistance. Please do not hesitate to contact us if you require any additional information.

Sincerely,

**PC GATEWAY, LLC,**  
a Delaware limited liability company

By: PCMFM, LLC,  
a Utah limited liability company,  
its Administrative Manager

By:   
\_\_\_\_\_  
Jeff Danley, Manager

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**NOVEMBER 5, 2020**

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement for Clifton Manor Apartments I and II (HTC #05236)

**RECOMMENDED ACTION**

**WHEREAS**, Clifton Manor Apartments I and II (the Development) received a 9% Housing Tax Credit (HTC) award in 2005 to rehabilitate 40 multifamily units in Clifton, Bosque 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, and this provision is reflected in the Land Use Restriction Agreement (LURA) for the Development;

**WHEREAS**, in 2015, the 84<sup>th</sup> Texas Legislature, Regular Session, 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, 26 U.S.C. §42(i)(7)(A), Internal Revenue Code of 1986;

**WHEREAS**, Clifton-Charger Properties, LP (the Development Owner or Owner) requests to amend the 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 Clifton Manor Apartments I and II is approved as presented to this meeting, and the Executive Director and his designees are hereby, authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

## **BACKGROUND**

Clifton Manor Apartments I and II received a 9% HTC award in 2005 to rehabilitate 40 multifamily units in Clifton, Bosque County. In a letter dated September 15, 2020, Bonita Williams, representative for the Development Owner, requested approval to amend the HTC LURA related to the ROFR provision.

In 2005, the Housing Tax Credit application allotted one point to the Development 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 Credits recorded in Bosque County on June 15, 2007.

The additional use restrictions in the current HTC LURA 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 or to the Department, if at any time after the 15<sup>th</sup> year of the Compliance Period the Owner decides to sell the property. The Development is currently in the 15<sup>th</sup> year of the 40-year Extended Use Period. 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, Regular Session, 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 as amended, an entity controlled by an entity described by, §42(i)(7)(A) of the Internal Revenue Code of 1986. The Department's 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 10 TAC §10.405(b). The Development Owner held a public hearing on the matter on September 24, 2020. An attendee list and meeting minutes with resident comments were provided. The attendee list was signed by three staff members, including two Owner representatives and the on-site manager, and eight residents. The meeting minutes indicate no negative public comment was received regarding the requested amendment.

Staff recommends approval of the material LURA amendment as presented herein.



## **Clifton Manor Apartments**

115 S. Avenue P  
Clifton, TX 76634  
(254) 675-3616



September 15, 2020

Jonathan Chilson  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> St.  
Austin TX 78701

RE: Clifton Manor Apartments File #05236 CMTS #4300  
Request to Amend the Right of First Refusal Period

Dear Mr. Chilson,

The undersigned, being the Managing General Partner of Clifton-Charger Properties LP (the Partnership) and the current owner of Clifton Manor Apartments (the Property) requests an amendment to the Land Use Restriction Agreement (LURA) to modify the two year Right of First Refusal (ROFR) period.

### **Request to Amend the ROFR Period**

In 2015, Texas Government Code §2306.6726 was amended to allow for a 180-day ROFR period. Currently the LURA for the Property requires a two-year ROFR period. The owner desires to exercise its rights under Texas Government Code §2306.6726 to amend the LURA to allow for a 180-day ROFR period.

The Partnership is delivering a fee in the amount of \$2500. The Partnership commits to hold a public hearing and to notify all residents, lenders, and investors. The Partnership will provide the Department with minutes and a sign-in sheet following the public meeting. We respectfully request staff recommendation in support of this request and to be considered at the next TDHCA board meeting.

Kind regards,

Clifton-Charger Properties LP  
By: Charger Affiliates LLC, its General Partner

A handwritten signature in black ink that reads "Bonita Williams".

Bonita Williams  
Managing Member

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**NOVEMBER 5, 2020**

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement for Bel Aire Manor Apartments (HTC #05237)

**RECOMMENDED ACTION**

**WHEREAS**, Bel Aire Manor Apartments (the Development) received a 9% Housing Tax Credit (HTC) award in 2005 to acquire and rehabilitate 16 multifamily units for the elderly population in Brady, McCulloch 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, and this provision is reflected in the Land Use Restriction Agreement (LURA) for the Development;

**WHEREAS**, in 2015, the 84<sup>th</sup> Texas Legislature, Regular Session, 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, 26 U.S.C. §42(i)(7)(A), Internal Revenue Code of 1986;

**WHEREAS**, Brady-Charger Properties, LP (the Development Owner or Owner) requests to amend the 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 Bel Aire Manor Apartments is approved as presented to this meeting, and the Executive Director and his designees are hereby authorized, empowered, and directed to take all necessary action to effectuate the foregoing.



## **BACKGROUND**

Bel Aire Manor Apartments received a 9% HTC award in 2005 for the acquisition and rehabilitation of 16 multifamily units for the elderly population in Brady, McCulloch County. In a letter dated September 15, 2020, Bonita Williams, representative for the Development Owner, requested approval to amend the HTC LURA related to the ROFR provision.

In 2005, the Housing Tax Credit application allotted one point to the Development 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 for Low-Income Housing Credits recorded in McCulloch County on June 20, 2007.

The additional use restrictions in the current HTC LURA 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 or to the Department, if at any time after the 15<sup>th</sup> year of the Compliance Period the Owner decides to sell the property. The Development is currently in the 15<sup>th</sup> 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 84<sup>th</sup> Texas Legislature, Regular Session, 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 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 10 TAC §10.405(b). The Development Owner held a public hearing on the matter on September 23, 2020. No public comment was received regarding the requested amendment.

Staff recommends approval of the material LURA amendment as presented herein.



## **Bel Aire Manor Apartments**

300 Otte Street  
Brady, TX 76825  
(325) 597-7879



September 15, 2020

Dee Patience  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> St.  
Austin TX 78701

RE: Bel Aire Manor Apartments File #05237 CMTS #4301  
Request to Amend the Right of First Refusal Period

Dear Ms. Patience,

The undersigned, being the Managing General Partner of Brady-Charger Properties LP (the Partnership) and the current owner of Bel Aire Manor Apartments (the Property) requests an amendment to the Land Use Restriction Agreement (LURA) to modify the two year Right of First Refusal (ROFR) period.

### **Request to Amend the ROFR Period**

In 2015, Texas Government Code §2306.6726 was amended to allow for a 180-day ROFR period. Currently the LURA for the Property requires a two-year ROFR period. The owner desires to exercise its rights under Texas Government Code §2306.6726 to amend the LURA to allow for a 180-day ROFR period.

The Partnership is delivering a fee in the amount of \$2500. The Partnership commits to hold a public hearing and to notify all residents, lenders, and investors. The Partnership will provide the Department with minutes and a sign-in sheet following the public meeting. We respectfully request staff recommendation in support of this request and to be considered at the next TDHCA board meeting.

Kind regards,

Brady-Charger Properties LP  
By: Charger Affiliates LLC, its General Partner

A handwritten signature in black ink that reads "Bonita Williams".

Bonita Williams  
Managing Member

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**NOVEMBER 5, 2020**

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement for Hamilton Manor Apartments (HTC #05238)

**RECOMMENDED ACTION**

**WHEREAS**, Hamilton Manor Apartments (the Development) received a 9% Housing Tax Credit (HTC) award in 2005 to rehabilitate 18 multifamily units in Hamilton, Hamilton 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, and this provision is reflected in the Land Use Restriction Agreement (LURA) for the Development;

**WHEREAS**, in 2015, the 84<sup>th</sup> Texas Legislature, Regular Session, 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, 26 U.S.C. §42(i)(7)(A), Internal Revenue Code of 1986;

**WHEREAS**, Hamilton-Charger Properties, LP (the Development Owner or Owner) requests to amend the 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 Hamilton Manor Apartments is approved as presented to this meeting, and the Executive Director and his designees are hereby, authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

## **BACKGROUND**

Hamilton Manor Apartments received a 9% HTC award in 2005 to rehabilitate 18 multifamily units in Hamilton, Hamilton County. In a letter dated September 15, 2020, Bonita Williams, representative for the Development Owner, requested approval to amend the HTC LURA related to the ROFR provision.

In 2005, the Housing Tax Credit application allotted one point to the Development 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 Credits recorded in Hamilton County on June 22, 2007.

The additional use restrictions in the current HTC LURA 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 or to the Department, if at any time after the 15<sup>th</sup> year of the Compliance Period the Owner decides to sell the property. The Development is currently in the 15<sup>th</sup> year of the 40-year Extended Use Period. 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, Regular Session, 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 as amended, an entity controlled by an entity described by, §42(i)(7)(A) of the Internal Revenue Code of 1986. The Department's 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 10 TAC §10.405(b). The Development Owner held a public hearing on the matter on September 24, 2020. An attendee list and meeting minutes were provided. The attendee list was signed by two Owner representatives, the on-site manager, and three residents. The meeting minutes indicate no public comment was received regarding the requested amendment.

Staff recommends approval of the material LURA amendment as presented herein.



## **Hamilton Manor Apartments**

702 S. College St.  
Hamilton, TX 76531  
(254) 386-4855



September 15, 2020

Jonathan Chilson  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> St.  
Austin TX 78701

RE: Hamilton Manor Apartments File #05238 CMTS #4302  
Request to Amend the Right of First Refusal Period

Dear Mr. Chilson,

The undersigned, being the Managing General Partner of Hamilton-Charger Properties LP (the Partnership) and the current owner of Hamilton Manor Apartments (the Property) requests an amendment to the Land Use Restriction Agreement (LURA) to modify the two year Right of First Refusal (ROFR) period.

### **Request to Amend the ROFR Period**

In 2015, Texas Government Code §2306.6726 was amended to allow for a 180-day ROFR period. Currently the LURA for the Property requires a two-year ROFR period. The owner desires to exercise its rights under Texas Government Code §2306.6726 to amend the LURA to allow for a 180-day ROFR period.

The Partnership is delivering a fee in the amount of \$2500. The Partnership commits to hold a public hearing and to notify all residents, lenders, and investors. The Partnership will provide the Department with minutes and a sign-in sheet following the public meeting. We respectfully request staff recommendation in support of this request and to be considered at the next TDHCA board meeting.

Kind regards,

Hamilton-Charger Properties LP  
By: Charger Affiliates LLC, its General Partner

A handwritten signature in cursive script that reads "Bonita Williams".

Bonita Williams  
Managing Member

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**NOVEMBER 5, 2020**

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement for St. James Village Apartments (HTC #08195)

**RECOMMENDED ACTION**

**WHEREAS**, St. James village Apartments (the Development) received a 9% Housing Tax Credit (HTC) award in 2008 to acquire and rehabilitate 150 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, and this provision is reflected in the Land Use Restriction Agreement (LURA) for the Development;

**WHEREAS**, in 2015, the 84<sup>th</sup> Texas Legislature, Regular Session, 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, 26 U.S.C. §42(i)(7)(A), Internal Revenue Code of 1986;

**WHEREAS**, Houston Leased Housing Associates I, Limited Partnership (the Development Owner or Owner) requests to amend the 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 St. James Village Apartments is approved as presented to this meeting, and the Executive Director and his designees are hereby authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

## **BACKGROUND**

St. James Village Apartments received a 9% HTC award in 2008 for the acquisition and rehabilitation of 150 multifamily units for in Houston, Harris County. In a letter dated August 20, 2020, Bryan Krizek, representative for the Development Owner, requested approval to amend the HTC LURA related to the ROFR provision.

In 2008, the Housing Tax Credit application allotted one point to the Development 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 for Low-Income Housing Credits recorded in Harris County on December 17, 2010.

The additional use restrictions in the current HTC LURA 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 or to the Department, if at any time after the 15<sup>th</sup> year of the Compliance Period the Owner decides to sell the property. The Development is currently in the 11<sup>th</sup> year of the Compliance Period. 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, Regular Session, 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 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 10 TAC §10.405(b). The Development Owner held a telephonic public hearing on the matter on September 11, 2020. There were no attendees, and therefore, no public comment was received regarding the requested amendment.

Staff recommends approval of the material LURA amendment as presented herein.

**ST. JAMES VILLAGE**  
3815 Fuqua St. W.  
Houston, Harris County, Texas 77045

August 20, 2020

**VIA HAND DELIVERY**

Ms. Lucy Trevino  
Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78701-2410

Re: TDHCA File No. 08195; St. James Village (the "**Property**")

Dear Ms. Trevino:

The undersigned, being the General Partner (herein so called) of Houston Leased Housing Associates I, Limited Partnership, a Texas limited partnership and the current owner of the Property (the "**Partnership**"), is submitting this letter to request a material LURA amendment in order to modify the two-year Right of First Refusal ("**ROFR**") period.

**Request to Amend ROFR Period**

In 2015, Texas Government Code Section 2306.6726 was amended to allow for a 180-day ROFR period. Currently, the LURA for this Property requires a two-year ROFR period. Section 10.405(b)(2)(E) of the Rules allows for a LURA amendment in order to conform a ROFR to the provisions in Section 2306.6726. Therefore, the General Partner, acting on behalf of 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 \$2,500.00. In addition, the Partnership commits to hold a public hearing, as required by the Rules, and to notify all residents, investors, and lenders. 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 next available TDHCA Board meeting.



Thank you very much for your assistance. Please do not hesitate to contact us if you require any additional information.

Sincerely,

**HOUSTON LEASED HOUSING ASSOCIATES I, LIMITED  
PARTNERSHIP,**  
a Texas limited partnership

By: Houston Leased Housing Associates GP I, LLC  
a Texas limited liability company,  
its general partner

By:   
Name: Bryan Krizek  
Title: Manager

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**NOVEMBER 5, 2020**

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement for La Promesa Apartments (HTC #11120)

**RECOMMENDED ACTION**

**WHEREAS**, La Promesa Apartments (the Development) received a 9% Housing Tax Credit (HTC) award in 2011 to acquire and rehabilitate 136 multifamily units in Odessa, Ector 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, and this provision is reflected in the Land Use Restriction Agreement (LURA) for the Development;

**WHEREAS**, in 2015, the 84<sup>th</sup> Texas Legislature, Regular Session, 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, 26 U.S.C. §42(i)(7)(A), Internal Revenue Code of 1986;

**WHEREAS**, Odessa Leased Housing Associates I, Limited Partnership (the Development Owner or Owner) requests to amend the 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 La Promesa Apartments is approved as presented to this meeting, and the Executive Director and his designees are hereby authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

## **BACKGROUND**

La Promesa Apartments received a 9% HTC award in 2011 for the acquisition and rehabilitation of 136 multifamily units in Odessa, Ector County. In a letter dated July 31, 2020, Paul R. Sween, representative for the Development Owner, requested approval to amend the HTC LURA related to the ROFR provision.

In 2011, the Housing Tax Credit application allotted one point to the Development 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 for Low-Income Housing Tax Credits recorded in Ector County on December 13, 2013.

The additional use restrictions in the current HTC LURA 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 or to the Department, if at any time after the 15<sup>th</sup> year of the Compliance Period the Owner decides to sell the property. The Development is currently in the eight year of the Compliance Period. 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, Regular Session, 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 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 10 TAC §10.405(b). The Development Owner held a telephonic public hearing on the matter on August 24, 2020. No public comment was received regarding the requested amendment.

Staff recommends approval of the material LURA amendment as presented herein.

**LA PROMESA**  
4590 N Texas St.  
Odessa, Ector County, Texas 79762

July 31, 2020

**VIA HAND DELIVERY**

Ms. Dee Patience  
Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78701-2410

Re: TDHCA File No. 11120 & 92041; La Promesa (the "**Property**")

Dear Ms. Patience:

The undersigned, being the General Partner (herein so called) of Odessa Leased Housing Associates I, Limited Partnership, a Texas limited partnership and the current owner of the Property (the "**Partnership**"), is submitting this letter to request a material LURA amendment in order to modify the two-year Right of First Refusal ("**ROFR**") period.

**Request to Amend ROFR Period**

In 2015, Texas Government Code Section 2306.6726 was amended to allow for a 180-day ROFR period. Currently, the LURA for this Property requires a two-year ROFR period. Section 10.405(b)(2)(E) of the Rules allows for a LURA amendment in order to conform a ROFR to the provisions in Section 2306.6726. Therefore, the General Partner, acting on behalf of 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 \$2,500.00. In addition, the Partnership commits to hold a public hearing, as required by the Rules, and to notify all residents, investors, and lenders. 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 next available TDHCA Board meeting.

Thank you very much for your assistance. Please do not hesitate to contact us if you require any additional information.

Sincerely,

**ODESSA LEASED HOUSING ASSOCIATES I, LIMITED  
PARTNERSHIP,**  
a Texas limited partnership

By: Donna Leased Housing Associates GP I, LLC,  
a Texas limited liability company,  
its general partner

By: 

Name: Paul R. Sween

Title: Manager

1c

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**NOVEMBER 5, 2020**

Presentation, discussion, and possible action regarding the issuance of Determination Notices for 4% Housing Tax Credit Applications

**RECOMMENDED ACTION**

**WHEREAS**, two applications as further detailed below were submitted to the Department for consideration of a Determination Notice of 4% Housing Tax Credits;

**WHEREAS**, the Executive Award and Review Advisory Committee (EARAC) considered the program requirements, underwriting requirements and compliance history associated with each application listed herein;

**WHEREAS**, in accordance with 10 TAC §1.301(d)(1), the compliance history is designated a Category 3 for Horizon Pointe (#20489);

**WHEREAS**, the application for Horizon Pointe was recommended by EARAC to be approved with conditions as stated in Exhibit A herein; and

**WHEREAS**, EARAC recommends each of the two applications for an award of 4% Housing Tax Credits, in the specific amounts noted herein, and subject to any underwriting conditions as noted in the Real Estate Analysis Report and any compliance conditions as reflected in Exhibit A, as applicable;

**NOW, therefore, it is hereby**

**RESOLVED**, that the issuance of Determination Notices in the respective amounts for each of the applications listed herein, subject to underwriting conditions as found in the Real Estate Analysis report posted to the Department's website, and subject to any EARAC conditions as reflected in Exhibit A, is hereby approved in the form presented at this meeting.

**BACKGROUND**

The 4% Housing Tax Credit (HTC) program is considered a non-competitive program in that there is not a specific ceiling amount of HTCs that can be issued each year. Rather, the ceiling amount of HTCs that can possibly be issued is limited by the amount of Private Activity Bond volume cap available. The Texas Bond Review Board (BRB) administers the Private Activity Bond program for the State of Texas, and for the 2020 calendar year, the state received approximately \$3 billion in Private Activity Bond authority, of

which approximately \$800 million is reserved for multifamily housing until August 15<sup>th</sup> of each year. After such date, there may be more Private Activity Bond volume cap that goes towards multifamily housing. The collapse occurred on August 17, 2020 (given that the 15<sup>th</sup> was a weekend), and there was approximately \$1.5 billion in applications requesting volume cap, with approximately \$1.3 billion of those requests being for multifamily. There was approximately \$370 million in unreserved volume cap that collapsed, leaving approximately \$900 million unreserved and waiting for volume cap to be released through currently reserved applications that were withdrawn. As of the date of posting, approximately \$296M in multifamily requests remain unreserved, and on the waiting list for volume cap to be released. The last day to issue a reservation for the 2020 program year is November 15<sup>th</sup>.

Individual projects receive a Certification of Reservation (Reservation) from the BRB that allows for a statutory 180-day closing timeline. For those projects seeking 4% HTCs (as the majority of them do), they must complete the Department's review process, the bond issuer's process, and the Attorney General's process in order to close within the prescribed timeframe. The Department accepts applications on a monthly basis throughout the year. The year from which the Reservation is issued is what determines the QAP to which the application must adhere. Included in this Board presentation as Exhibit B is a list of the 4% HTC applications staff has processed thus far for 2020. The list reflects all applications received and includes a column that denotes the applications' status, specifically, those that have already closed, have been approved by the Board, are active and currently under review, and those that are pre-applications that will utilize the Department as the bond issuer and an HTC application will be forthcoming.

The Reservations from the BRB for the developments described herein were issued under the Priority 3 designation unless noted otherwise, which does not have a prescribed restriction on the percentage of Area Median Family Income (AMFI) that must be served (beyond the federal requirement). The AMFI levels proposed to be served for each of the projects are indicated below in their respective summaries.

#### 20486 Old Manor Senior

The development proposes the new construction of 207 units to be located at 8721 Eastern Heights Boulevard in the extraterritorial jurisdiction of Austin, Travis County. The elderly population will be served and all of the units will be rent and income restricted at 60% of AMFI. The Travis County Housing Finance Corporation is serving as the bond issuer.

Recommended HTC Amount: \$1,632,397

#### 20489 Horizon Pointe

The Horizon Pointe development involves the new construction of 312 units for the general population at Interstate Highway 10 and Woodlake Parkway, which is located within the City of San Antonio and partially within its extraterritorial jurisdiction in Bexar County. Las Varas Public Facility Corporation is serving as the bond issuer. The income averaging minimum set-aside has been elected and the



application reflects that 20 units will be rent and income restricted at 30% of AMFI, 35 units will be rent and income restricted at 40% of AMFI, 106 units will be rent and income restricted at 50% of AMFI, and the remaining 151 units will be rent and income restricted at 70% of AMFI.

*School:* The site is located within the attendance zone of Henry Metzger Middle School, and thus would typically require a Neighborhood Risk Factor report, pursuant to 10 TAC §11.101(a)(3) of the QAP. However, in response to the COVID-19 pandemic, at the Board meeting of April 23, 2020, the Board granted a waiver regarding the requirement for mitigation relating to school performance for the remainder of the 2020 program year. This waiver is applicable to those 4% HTC applications submitted under the 2020 QAP that receive a Reservation from the Bond Review Board in the 2020 calendar year.

*Previous Participation:* The Previous Participation review for the applicant resulted in a Category 3 designation. EARAC recommended the award be approved, subject to specific conditions as noted in Exhibit A.

Recommended HTC Amount: \$2,045,672

**EXHIBIT A**  
**Previous Participation Results**

Application Number	Development Name	Category	PPR Conditions
20486	Old Manor Senior	1	N/A
20489	Horizon Pointe	3	<ol style="list-style-type: none"> <li>1. The San Antonio Housing Authority (SAHA) or the management company contracted by the Applicant is required to prepare or update its internal procedures to improve compliance outcomes no later than February 1, 2021 and provide copies of such new or updated procedures to the Department within 30 calendar days of that date.</li> <li>2. SAHA is required to designate a person or persons to receive Compliance correspondence and ensure that this person or persons will provide timely responses to the Department for and on behalf of the proposed Development and all other Development subject to TDHCA LURAs over which the Owner has the power to exercise Control.</li> <li>3. SAHA agrees to establish an email distribution group in CMTS, to be kept in place until no later than January 21, 2022, and include agreed upon employee positions and/or designated Applicant members.</li> <li>4. SAHA is required to ensure that each Person subject to previous participation review for the Combined Portfolio will correct all applicable issues of non-compliance identified with associated Development 05414 (ID 4219) Rosemont at Highland Park on or before October 31, 2020, and provide the Department with evidence of such correction within 30 calendar days of that date.</li> </ol>

# 20486 Old Manor Senior - Application Summary

REAL ESTATE ANALYSIS DIVISION

October 28, 2020

PROPERTY IDENTIFICATION	
Application #	20486
Development	Old Manor Senior
City / County	Austin / Travis
Region/Area	7 / Urban
Population	Elderly Limitation
Set-Aside	General
Activity	New Construction

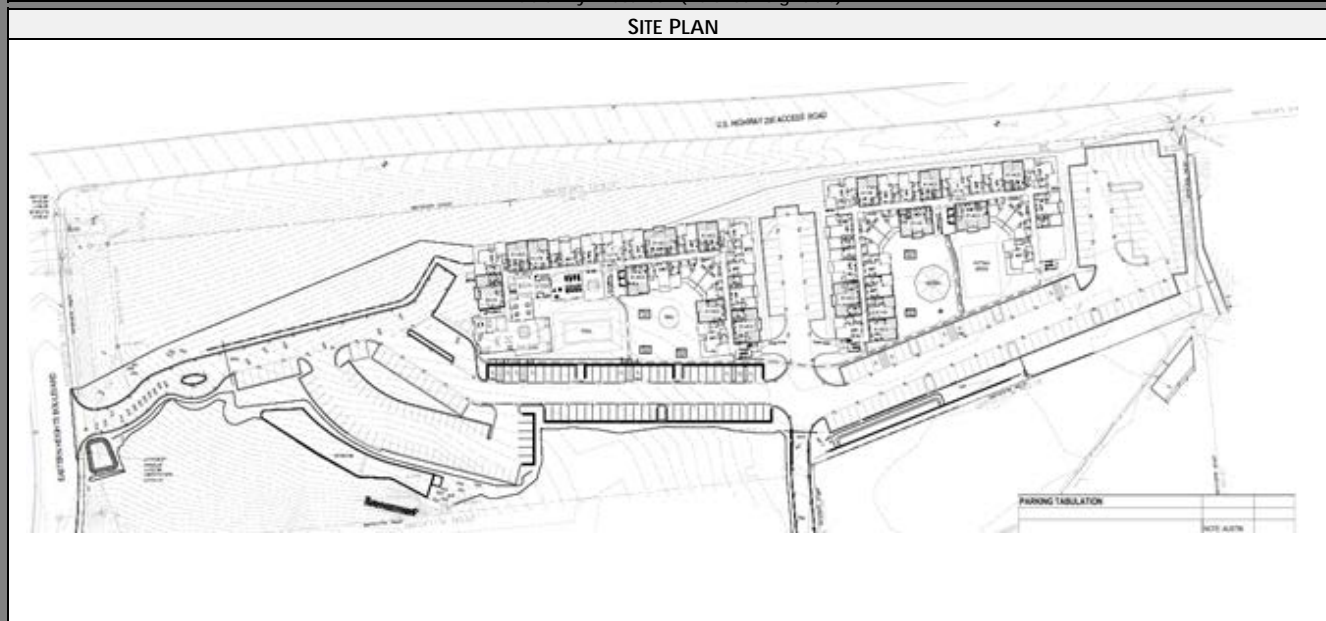
RECOMMENDATION				
TDHCA Program	Request	Recommended		
LIHTC (4% Credit)	\$1,632,397	\$1,632,397	\$7,886/Unit	\$0.91

KEY PRINCIPALS / SPONSOR		
TCC Hill Country Dev. Corp.: GP, 22.5% Developer		
ECG Manor SLP, LLC: SLP, 77.5% Developer		
Related Parties	Contractor - No	Seller - No



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	-	0%
1	125	60%	40%	-	0%
2	82	40%	50%	-	0%
3	-	0%	60%	207	100%
4	-	0%	MR	-	✓
<b>TOTAL</b>	<b>207</b>	<b>100%</b>	<b>TOTAL</b>	<b>207</b>	<b>100%</b>

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	✓ 1.23	Expense Ratio	✓ 35.3%
Breakeven Occ.	✓ 81.5%	Breakeven Rent	\$987
Average Rent	\$1,123	B/E Rent Margin	✓ \$136
Property Taxes	Exempt	Exemption/PILOT	100%
Total Expense	\$4,473/unit	Controllable	\$3,250/unit



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)	✓	0.0%	
Highest Unit Capture Rate	✓	0%	0 BR/30%
Dominant Unit Cap. Rate	✓	0%	0 BR/30%
Premiums (↑60% Rents)	#DIV/0!	#DIV/0!	
Rent Assisted Units	N/A		

DEVELOPMENT COST SUMMARY			
Costs Underwritten		Applicant's Costs	
Avg. Unit Size	849 SF	Density	23.3/acre
Acquisition		\$11K/unit	\$2,300K
Building Cost	\$113.12/SF	\$96K/unit	\$19,877K
Hard Cost		\$118K/unit	\$24,467K
Total Cost		\$218K/unit	\$45,117K
Developer Fee	\$5,071K	(60% Deferred)	Paid Year: 8
Contractor Fee	\$3,388K	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	
Citibank Tax Exempt - Tranche A	30/35	3.55%	\$27,231,607	1.23						Boston Financial	\$14,854,804	
										Deferred Developer Fee	\$3,030,372	
<b>TOTAL DEBT (Must Pay)</b>			<b>\$27,231,607</b>		<b>CASH FLOW DEBT / GRANTS</b>				<b>\$0</b>	<b>TOTAL EQUITY SOURCES</b>		<b>\$17,885,176</b>
										<b>TOTAL DEBT SOURCES</b>		<b>\$27,231,607</b>
										<b>TOTAL CAPITALIZATION</b>		<b>\$45,116,783</b>

**CONDITIONS**

1 Receipt and acceptance by Cost Certification:

- a: Executed ground lease with Travis County Housing Finance Corp. clearly specifying all terms and conditions, including who will retain ownership of land and improvements at the end of the lease.
- b: Architect certification that all noise assessment recommendations were implemented and the Development is compliant with HUD noise guidelines.

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	Travis County Housing Finance Corporation
Expiration Date	1/9/2021
Bond Amount	\$30,000,000
BRB Priority	Priority 3
Bond Structure	Private Placement
% Financed with Tax-Exempt Bonds	82.8%
RISK PROFILE	
STRENGTHS/MITIGATING FACTORS	
<ul style="list-style-type: none"> <li>▫ Low expense ratio</li> <li>▫ Overall feasibility indicators</li> <li>▫ Low capture rate at 60% AMGI</li> </ul>	
WEAKNESSES/RISKS	
<ul style="list-style-type: none"> <li>▫ Developer's lack of LIHTC experience</li> <li>▫ Topography of site</li> </ul>	
AREA MAP	



# 20489 Horizon Pointe - Application Summary

REAL ESTATE ANALYSIS DIVISION  
October 28, 2020

PROPERTY IDENTIFICATION	
Application #	20489
Development	Horizon Pointe
City / County	San Antonio / Bexar
Region/Area	9 / Urban
Population	General
Set-Aside	Income Averaging
Activity	New Construction

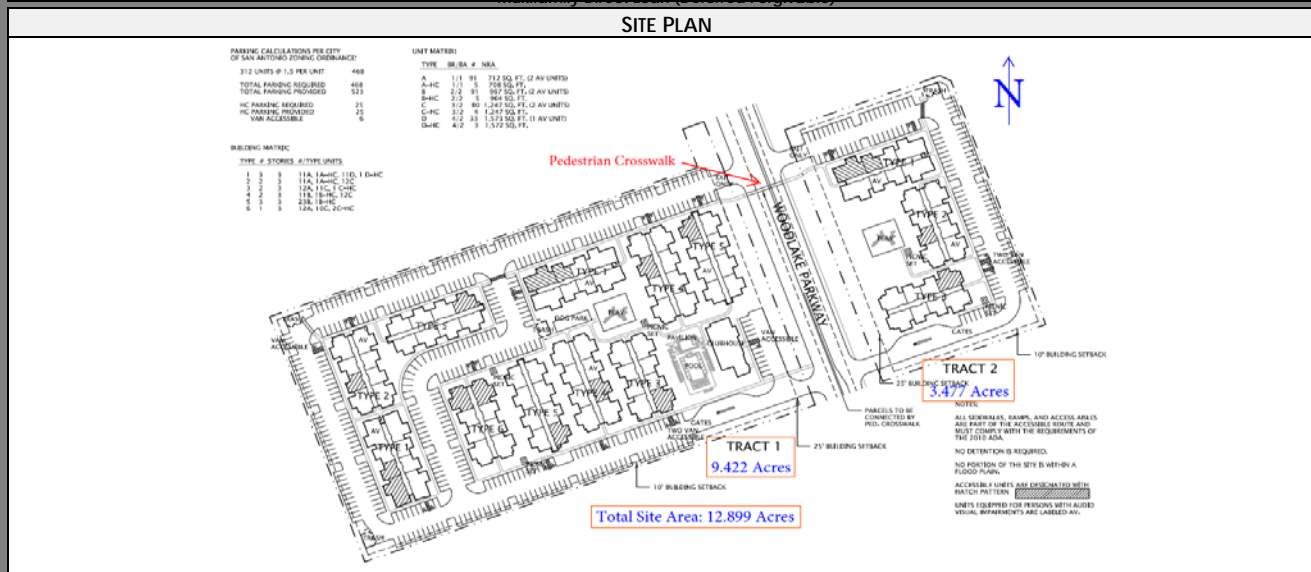
RECOMMENDATION			
TDHCA Program	Request	Recommended	
LIHTC (4% Credit)	\$2,045,672	\$2,045,672	\$6,557/Unit \$0.88

KEY PRINCIPALS / SPONSOR		
<ul style="list-style-type: none"> <li>Integrated Development Group, LLC / Joey L. Guerra Jr. (75% of Developer Fee)</li> <li>San Antonio Housing Facility Corporation (25% of Developer Fee)</li> </ul>		
Related Parties	Contractor - No	Seller - Yes



UNIT DISTRIBUTION			INCOME AVERAGING		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	20%	-	0%
1	96	31%	30%	20	6%
2	96	31%	40%	35	11%
3	84	27%	50%	106	34%
4	36	12%	60%	-	0%
			70%	151	48%
			80%	-	0%
			MR	-	0%
<b>TOTAL</b>	<b>312</b>	<b>100%</b>	<b>TOTAL</b>	<b>312</b>	<b>100%</b>

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten	Applicant's Pro Forma		
Debt Coverage	1.18	Expense Ratio	41.8%
Breakeven Occ.	84.4%	Breakeven Rent	\$776
Average Rent	\$852	B/E Rent Margin	\$76
Property Taxes	Exempt	Exemption/PILOT	100%
Total Expense	\$4,000/unit	Controllable	\$2,890/unit



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (15% Maximum)	3.6%		
Highest Unit Capture Rate	12%	1 BR/70%	55
Dominant Unit Cap. Rate	12%	1 BR/70%	55
Premiums (↑60% Rents)	N/A	N/A	
Rent Assisted Units	N/A		

DEVELOPMENT COST SUMMARY			
Costs Underwritten		Applicant's Costs	
Avg. Unit Size	1,020 SF	Density	24.2/acre
Acquisition	\$01K/unit	\$367K	
Building Cost	\$78.70/SF	\$80K/unit	\$25,048K
Hard Cost	\$102K/unit \$31,873K		
Total Cost	\$162K/unit \$50,663K		
Developer Fee	\$6,355K	(42% Deferred)	Paid Year: 8
Contractor Fee	\$4,427K	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
Orix Real Estate Capital, LLC	18/40	3.87%	\$30,003,918	1.18						Affordable Housing Partners, Inc.	\$17,998,317
										Integrated Development Group (IDG)	\$2,660,584
<b>TOTAL DEBT (Must Pay)</b>			<b>\$30,003,918</b>		<b>CASH FLOW DEBT / GRANTS</b>			<b>\$0</b>		<b>TOTAL EQUITY SOURCES</b>	<b>\$20,658,901</b>
										<b>TOTAL DEBT SOURCES</b>	<b>\$30,003,918</b>
										<b>TOTAL CAPITALIZATION</b>	<b>\$50,662,819</b>

**CONDITIONS**

1 Receipt and acceptance by Cost Certification:  
a: Evidence that the property qualifies for 100% property tax exemption.  
b: Architect certification that a noise assessment was completed, and that all recommendations were implemented and the Development is compliant with HUD noise guidelines.  
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**

<b>Issuer</b>	Las Varas Public Facility Corporation
<b>Expiration Date</b>	12/15/2020
<b>Bond Amount</b>	\$35,000,000
<b>BRB Priority</b>	3
<b>Bond Structure</b>	Private Placement
<b>% Financed with Tax-Exempt Bonds</b>	<b>76.6%</b>

**RISK PROFILE**

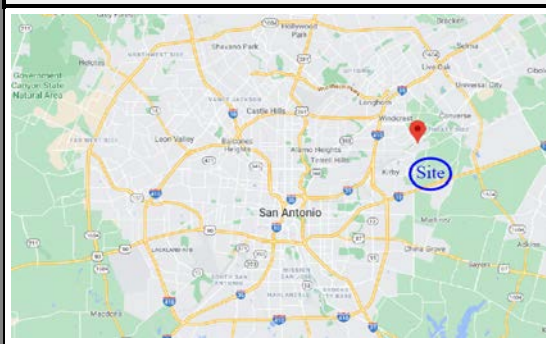
**STRENGTHS/MITIGATING FACTORS**

- Gross capture rate of 3.6% with unit capture rate only ranging from 2% to 12%
- Breakeven occupancy occurs with 49 units vacant (underwritten at 23)
- Attractively designed new construction in a growing residential area should enhance marketability
- SAHFC's experience with construction and management of similar HTC properties in San Antonio

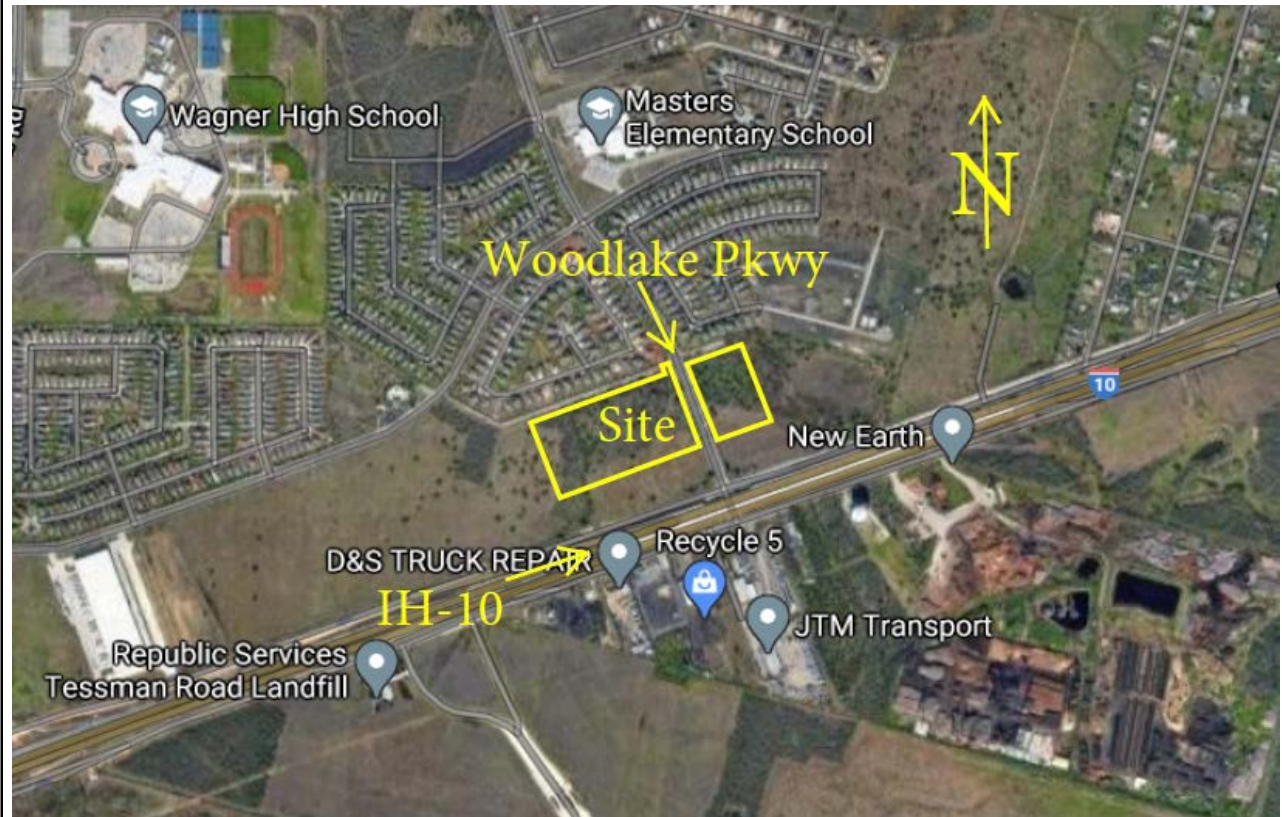
**WEAKNESSES/RISKS**

- Feasibility relies on full property tax exemption
- Mix includes 36 four-bedroom units (11.5%) with no market comparables to measure demand
- Interest rate sensitivity

**AREA MAP**



**AERIAL PHOTOGRAPH(S)**





## 4% (Non-Competitive) Housing Tax Credit Program 2020 Application Status Log

TDHCA #	Previous TDHCA #	Development Name	Development City	Board Meeting Date (MM/DD/YYYY)	Application Status	Total Units	Total Low-Income Units	Bond Reservation Amount	Requested HTC Amount	Recommend HTC Amount
20451	19440	Ventura at Parmer Lane	Austin ETJ	10/10/2019	Closed	216	216	\$ 34,000,000	\$ 2,189,841	\$ 2,189,841
20600		Oaks on Clark	San Antonio	4/23/2020	Closed	80	80	\$ 12,000,000	\$ 607,290	\$ 597,284
20605	19608	Reserve at San Marcos	San Marcos	3/26/2020	Closed	376	320	\$ 41,000,000	\$ 1,857,733	\$ 1,857,733
20448	18458; 19431	Scharbauer Flats	Midland	2/20/2020	Closed	300	300	\$ 40,000,000	\$ 2,895,615	\$ 2,895,615
20410		Traders Flats	San Antonio	5/21/2020	Closed	324	324	\$ 38,000,000	\$ 1,863,629	\$ 1,863,629
20465	19428	Riverstone	San Marcos	11/7/2019	Closed	336	336	\$ 50,000,000	\$ 2,349,942	\$ 2,349,942
20414		The Arbor at Wayforest	Houston	3/26/2020	Closed	192	192	\$ 20,000,000	\$ 1,262,807	\$ 1,262,807
20420		Pan American	San Antonio	4/23/2020	Closed	100	100	\$ 15,000,000	\$ 674,355	\$ 674,355
20429	19452	Las Palmas	La Feria	1/16/2020	Closed	36	35	\$39,120,000 (portfolio)	\$ 87,983	\$ 87,983
20422	19445	Brush Country Cottages	Dilley	1/16/2020	Closed	28	28	-	\$ 89,069	\$ 89,069
20423	19446	Chula Vista	San Diego	1/16/2020	Closed	44	44	-	\$ 149,982	\$ 149,982
20424	19447	Cielo Lindo	Edcouch	1/16/2020	Closed	34	34	-	\$ 101,022	\$ 101,022
20425	19448	La Estancia	Sebastian	1/16/2020	Closed	32	32	-	\$ 101,210	\$ 101,210
20426	19449	La Posada I & II	Ela	1/16/2020	Closed	74	74	-	\$ 208,076	\$ 208,076
20427	19450	La Reina	La Villa	1/16/2020	Closed	30	30	-	\$ 65,586	\$ 65,586
20428	19451	La Sombra	Donna	1/16/2020	Closed	50	50	-	\$ 118,354	\$ 118,354
20430	19453	Leuty Avenue	Justin	1/16/2020	Closed	24	24	-	\$ 80,261	\$ 80,261
20432	19455	Los Naranjos	Alton	1/16/2020	Closed	30	30	-	\$ 67,810	\$ 67,810
20433	19456	Oak Haven	Donna	1/16/2020	Closed	24	24	-	\$ 63,090	\$ 63,090
20434	19457	Raintree	Alamo	1/16/2020	Closed	32	32	-	\$ 82,925	\$ 82,925
20435	19458	Seagraves Gardens	Seagraves	1/16/2020	Closed	32	32	-	\$ 91,709	\$ 91,709
20436	19459	Silver Trail	Menard	1/16/2020	Closed	24	24	-	\$ 67,091	\$ 67,091
20437	19460	The Village	Tomball	1/16/2020	Closed	64	64	-	\$ 172,768	\$ 172,768
20438	19461	Valley View	Valley View	1/16/2020	Closed	24	24	-	\$ 78,834	\$ 78,834
20439	19462	Villa Vallarta	Rio Grande City	1/16/2020	Closed	40	40	-	\$ 122,529	\$ 122,529
20440	19463	Vista Verde	Cotulla	1/16/2020	Closed	24	24	-	\$ 82,514	\$ 82,514
20441	19464	Willowick	Gainesville	1/16/2020	Closed	60	60	-	\$ 171,018	\$ 171,018
20442	19465	Windmill	Giddings	1/16/2020	Closed	28	28	-	\$ 77,926	\$ 77,926
20443	19466	Windwood I & II	Kingsland	1/16/2020	Closed	68	68	-	\$ 151,618	\$ 151,618
20407		New Hope Housing Avenue J	Houston	2/20/2020	Closed	100	100	\$ 23,000,000	\$ 1,290,647	\$ 1,290,467
20401		Palladium Port Aransas	Port Aransas	4/23/2020	Closed	183	165	\$ 19,000,000	\$ 1,155,074	\$ 1,155,074
20408		Vi Collina	Austin	4/23/2020	Closed	170	170	\$ 24,000,000	\$ 1,340,220	\$ 1,340,220
20611	20402	333 Holly	The Woodlands	5/21/2020	Closed	332	332	\$ 36,800,000	\$ 2,484,301	\$ 2,484,301
20612	20403	The Pines	The Woodlands	5/21/2020	Closed	152	152	\$ 22,000,000	\$ 1,469,273	\$ 1,469,273
20604	19468	The Walzem	San Antonio	5/21/2020	Closed	200	200	\$ 20,000,000	\$ 1,326,147	\$ 1,280,892
20603	19612	Scott Street Lofts	Houston	5/21/2020	Closed	123	98	\$ 18,000,000	\$ 741,693	\$ 711,964
20416		The Estates at Owen Tech	Austin	5/21/2020	Closed	174	174	\$ 20,000,000	\$ 1,213,610	\$ 1,213,610
20409		McKinney Flats	McKinney	3/26/2020	Closed	205	205	\$ 32,000,000	\$ 1,393,849	\$ 1,393,849
20404		Tampico Apartments	San Antonio	3/26/2020	Closed	200	136	\$ 23,000,000	\$ 739,670	\$ 739,670
20418		Park at 38 Thirty	San Antonio	3/26/2020	Closed	196	196	\$ 25,000,000	\$ 1,027,837	\$ 1,027,837
20412		1604 Lofts Apartments	San Antonio	5/21/2020	Closed	324	324	\$ 38,000,000	\$ 1,895,702	\$ 1,895,702
20452		Enclave at Lake Pointe	Houston	6/25/2020	Closed	132	132	\$ 14,200,000	\$ 723,725	\$ 723,725
20458		Kinwood Apartments	McKinney	6/25/2020	Closed	200	200	\$ 30,000,000	\$ 1,245,289	\$ 1,240,383
20405		Gala at Fate	Fate	5/21/2020	Closed	185	185	\$ 25,000,000	\$ 1,166,285	\$ 1,166,285
20421	19442	Richcrest Apartments	Houston	3/26/2020	Closed	288	286	\$ 30,000,000	\$ 1,974,441	\$ 1,974,441
20456		The Hollows	Channelview CDP	7/23/2020	Closed	192	192	\$ 20,000,000	\$ 1,043,287	\$ 1,043,287
20461		Cascade at Onion Creek	Austin	6/25/2020	Closed	264	264	\$ 35,000,000	\$ 1,431,091	\$ 1,422,168
20609		Pecan Grove	Seguin	7/23/2020	Closed	198	198	\$ 26,000,000	\$ 1,353,160	\$ 1,353,160
20447	19472	Franklin Park	Austin	5/21/2020	Closed	163	163	\$ 15,000,000	\$ 737,361	\$ 737,361
20450		Mira Vista	San Antonio	5/21/2020	Closed	312	312	\$ 28,000,000	\$ 1,783,385	\$ 1,783,385
20419		Woodway Village	Austin	6/25/2020	Closed	160	160	\$ 30,000,000	\$ 1,196,513	\$ 1,168,103
20457		Pinewood Apartments	Houston	6/25/2020	Closed	240	240	\$ 30,000,000	\$ 1,174,359	\$ 1,106,302
20459		Spring Villas	Austin	6/25/2020	Closed	304	302	\$ 45,000,000	\$ 2,295,642	\$ 2,295,524
20602	03438	The Vermillion	Houston	7/23/2020	Closed	260	260	\$ 29,000,000	\$ 1,372,549	\$ 1,375,437
20467		Greenline North	San Antonio	7/23/2020	Closed	292	292	\$ 50,000,000	\$ 1,930,015	\$ 1,930,015
20466		Blue Water Gardens	Hereford	9/3/2020	Closed	132	132	\$ 16,750,000	\$ 738,553	\$ 738,553
TBD	19438	Legacy Senior	Round Rock	11/7/2019	Closed	157	157	\$ 20,000,000	\$ 732,029	\$ 732,029
TBD	18456; 19470	Jackie Robinson Apartments	El Paso	12/12/2019	Closed	186	186	\$ 30,000,000	\$ 1,290,195	\$ 1,290,195
20601	19611	Granada Terrace Apartments	Houston	4/23/2020	Closed	156	156	\$ 12,000,000	\$ 882,061	\$ 882,061
20415		Avenue on 34th Apartments	Houston	9/3/2020	Closed	70	56	\$ 12,000,000	\$ 333,845	\$ 333,845
20478		Vera at Odessa	Odessa	9/3/2020	Closed	288	288	\$ 35,000,000	\$ 1,389,149	\$ 1,389,149
20460	18423; 19400	Villas del San Xavier	San Marcos	12/12/2019	Approved	156	156	\$ 25,000,000	\$ 1,059,750	\$ 1,059,750
20400		Palladium West Francis	Midland	5/21/2020	Approved	240	188	\$ 25,000,000	\$ 1,596,885	\$ 1,596,885
20406		Gala at Central Park Apartments	Hurst	6/25/2020	Approved	94	94	\$ 15,000,000	\$ 486,783	\$ 486,783
20471		Northwood	Houston ETJ	7/23/2020	Approved	288	288	\$ 40,000,000	\$ 2,378,498	\$ 2,378,498
20411		Kitty Hawk Flats Apartments	San Antonio	9/3/2020	Approved	239	239	\$ 28,000,000	\$ 1,359,994	\$ 1,359,994
20606	19610	Fish Pond at Corpus Christi	Corpus Christi	9/3/2020	Approved	112	111	\$ 10,000,000	\$ 682,849	\$ 682,849
20454		South Terrace	Waco	9/3/2020	Approved	250	250	\$ 25,000,000	\$ 1,452,219	\$ 1,445,826
20475		Northview Apartments	San Antonio	9/3/2020	Approved	156	156	\$ 25,000,000	\$ 1,270,215	\$ 1,270,215
20483	02412	Shady Oaks	Fort Worth	9/3/2020	Approved	138	138	\$ 15,000,000	\$ 654,862	\$ 654,862
20449	19469	EMLI at Pecan Creek	Aubrey	4/23/2020	Approved	254	254	\$ 30,000,000	\$ 1,484,333	\$ 1,413,138
20455		Redwood	San Marcos	10/8/2020	Approved	296	296	\$ 50,000,000	\$ 2,145,888	\$ 2,145,888
20474		Canyon Pass	San Antonio	10/8/2020	Approved	264	264	\$ 35,000,000	\$ 2,003,601	\$ 2,003,601

20476		Grand Station Apartments	Austin	10/8/2020	Approved	216	216	\$	35,000,000	\$	1,380,252	\$	1,347,471
20480		Bridge at Turtle Creek	Austin	10/8/2020	Approved	307	307	\$	44,000,000	\$	2,332,344	\$	2,332,344
20462		Sunland County Apartments	Harlingen	11/5/2020	Approved	166	166	\$	20,000,000	\$	941,981	\$	941,981
20486		Old Manor Senior	Austin	11/5/2020	Approved	207	207	\$	30,000,000	\$	1,632,397	\$	1,632,397
20463		Trinity Oaks	Sulphur Springs	11/5/2020	Approved	48	48	\$	2,129,000	\$	159,653	\$	155,956
20489		Horizon Pointe	San Antonio	11/5/2020	Approved	312	312	\$	35,000,000	\$	2,045,672	\$	2,045,672
						<b>13,007</b>	<b>12,772</b>	<b>\$</b>	<b>1,572,879,000</b>	<b>\$</b>	<b>81,871,720</b>	<b>\$</b>	<b>81,564,958</b>
20610		Terrace at Southern Oaks	Dallas	12/10/2020	Active	300	300	\$	45,000,000	\$	2,000,114	\$	-
20490		2100 Memorial	Houston	12/10/2020	Active	197	159	\$	35,000,000	\$	1,640,803	\$	-
20464		Pine Terrace	Mount Pleasant	12/10/2020	Active	76	76	\$	3,371,000	\$	210,127	\$	-
20613		Riverside Senior	Fort Worth	12/10/2020	Active	264	264	\$	40,000,000	\$	1,818,482	\$	-
20488		Wildhorse Flats	Austin	12/10/2020	Active	310	310	\$	50,000,000	\$	2,786,158	\$	-
20487		Springdale Manor Apartments	Austin	12/10/2020	Active	186	186	\$	20,000,000	\$	1,182,803	\$	-
20495		Fawn Ridge Apartments	The Woodlands	12/10/2020	Active	119	118	\$	16,500,000	\$	733,463	\$	-
20491		Ridgecrest Terrace	Dallas	12/10/2020	Active	250	250	\$	40,000,000	\$	1,790,582	\$	-
20493		The Ridge at Lancaster	Dallas	12/10/2020	Active	300	300	\$	50,000,000	\$	2,305,102	\$	-
20494		La Cima	Austin	12/10/2020	Active	260	260	\$	39,000,000	\$	1,772,256	\$	-
20498		Gala at Waxahachie	Waxahachie	12/10/2020	Active	185	185	\$	25,000,000	\$	1,124,956	\$	-
20497		The Oleanders at Broadway	Galveston	12/10/2020	Active	348	261	\$	51,757,648	\$	2,190,531	\$	-
20496		Marshall Apartments	Austin	12/10/2020	Active	100	100	\$	16,500,000	\$	556,883	\$	-
20617	02469	Murdeaux Villas	Dallas	1/14/2021	Active	302	280	\$	35,000,000	\$	17,294,118	\$	-
20620		Oso Bay Apartments	Corpus Christi	1/14/2021	Active	104	104	\$	14,000,000	\$	701,367	\$	-
20615		The Montage	San Antonio ETJ	1/14/2021	Active	216	216	\$	35,000,000	\$	1,454,238	\$	-
20702		Cypress Creek Apartment Homes	Rowlett	1/14/2021	Active	234	187	\$	35,000,000	\$	1,224,185	\$	-
20703		Cove in Odessa	Odessa	1/14/2021	Active	200	200	\$	30,000,000	\$	1,320,816	\$	-
						<b>3,951</b>	<b>3,756</b>	<b>\$</b>	<b>581,128,648</b>	<b>\$</b>	<b>42,106,984</b>	<b>\$</b>	<b>-</b>
20619		The Citadel	Houston	7/23/2020	Pre-Application	74	67	\$	15,000,000	\$	914,051	\$	-
20621	05044	Copperwood	The Woodlands	7/23/2020	Pre-Application	300	300	\$	60,000,000	\$	2,563,139	\$	-
20622	04108	Tamarac Pines	The Woodlands	7/23/2020	Pre-Application	300	300	\$	60,000,000	\$	2,360,422	\$	-
20623	04101	Pleasant Hill	Austin	7/23/2020	Pre-Application	100	100	\$	20,000,000	\$	874,194	\$	-
20624	534284	Cedar Ridge	Leander	7/23/2020	Pre-Application	152	152	\$	18,000,000	\$	567,459	\$	-
20625	04147	Shiloh Village	Dallas	7/23/2020	Pre-Application	168	168	\$	25,000,000	\$	1,234,715	\$	-
20626		Palladium Mountain Creek	Dallas	9/3/2020	Pre-Application	152	152	\$	14,750,000	\$	1,044,403	\$	-
20627		Palladium Simpson Stuart	Dallas	9/3/2020	Pre-Application	270	270	\$	25,750,000	\$	1,864,956	\$	-
20630		Caroline Lofts	Houston	10/8/2020	Pre-Application	119	80	\$	20,000,000	\$	570,279	\$	-
21600	94063	Corona Del Valle	El Paso	10/8/2020	Pre-Application	101	101	\$	8,500,000	\$	524,995	\$	-
						<b>1,736</b>	<b>1,690</b>	<b>\$</b>	<b>267,000,000</b>	<b>\$</b>	<b>12,518,613</b>	<b>\$</b>	<b>-</b>
20417		St. Joe Apartments	Houston	3/19/2020	Withdrawn	307	307	\$	51,757,648	\$	4,596,000	\$	-
20468		Preserve at the Port	San Antonio	7/23/2020	Withdrawn	384	384	\$	37,000,000	\$	1,654,968	\$	-
20431	19454	Los Laureles	Edcouch	1/16/2020	Withdrawn	23	23	\$	-	\$	88,153	\$	88,153
20481		Echo East	San Antonio	9/3/2020	Withdrawn	192	192	\$	20,000,000	\$	1,306,258	\$	-
20413		Residences at Merritt Hill	Rowlett	5/21/2020	Withdrawn	260	260	\$	33,000,000	\$	1,888,671	\$	1,888,671
20473		Agave East	Austin ETJ	9/3/2020	Withdrawn	240	240	\$	35,000,000	\$	1,355,697	\$	1,355,697
20477		Sphinx at Throckmorton Villas	McKinney	10/8/2020	Withdrawn	220	216	\$	28,000,000	\$	1,670,582	\$	-
20444		Plano Kathryn Senior Living	Plano	6/25/2020	Withdrawn	252	252	\$	30,000,000	\$	1,774,750	\$	1,774,750
20479		The Oaks	Dallas	11/5/2020	Withdrawn	260	243	\$	35,000,000	\$	1,488,978	\$	-
20484		The Lantana	San Marcos	11/5/2020	Withdrawn	216	216	\$	26,000,000	\$	1,750,669	\$	-
20628		Mayhill Road	Denton	9/3/2020	Withdrawn	360	360	\$	30,000,000	\$	2,247,493	\$	-
20629		Residences at Merritt Hill	Rowlett	9/3/2020	Withdrawn	260	260	\$	50,000,000	\$	2,206,067	\$	-
20446	19432	St. Johns Square	San Antonio	3/26/2020	Withdrawn	252	54	\$	50,000,000	\$	473,449	\$	449,524
20482		W. Leo Daniels Towers	Houston	11/5/2020	Withdrawn	100	100	\$	15,000,000	\$	833,142	\$	-
						<b>3,326</b>	<b>3,107</b>	<b>\$</b>	<b>440,757,648</b>	<b>\$</b>	<b>23,334,877</b>	<b>\$</b>	<b>5,556,795</b>
<b>TOTAL*</b>						<b>18,694</b>	<b>18,218</b>	<b>\$</b>	<b>2,421,007,648</b>	<b>\$</b>	<b>136,497,317</b>	<b>\$</b>	<b>81,564,958</b>

\*Totals include Closed, Approved, Active and Pre-Application Status



1d

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**NOVEMBER 5, 2020**

Presentation, discussion, and possible action on a Determination Notice for 4% Housing Tax Credits and an Award of Direct Loan Funds (#20462, Sunland Country Apartments, Harlingen)

**RECOMMENDED ACTION**

**WHEREAS**, an application for Sunland Country Apartments, sponsored by LFSC-GP, LLC and the Cameron County Housing Finance Corporation, requesting 4% Housing Tax Credits (HTC) and \$3,000,000 in National Housing Trust Fund (NHTF) Direct Loan funds under the Soft Repayment set-aside of the 2020-2 Multifamily Direct Loan Notice of Funding Availability (2020-1 NOFA), was submitted to the Department on August 6, 2020;

**WHEREAS**, the Certification of Reservation from the Texas Bond Review Board was issued on July 2, 2020, and will expire on December 29, 2020;

**WHEREAS**, the proposed issuer of the bonds is the Cameron County Housing Finance Corporation;

**WHEREAS**, in accordance with 10 TAC §1.301(d)(1), the compliance history is designated a Category 1 and deemed acceptable by Executive Award and Review Advisory Committee (EARAC); and

**WHEREAS**, EARAC recommends \$3,000,000 in NHTF for Sunland Country Apartments and the issuance of a Determination Notice;

**NOW, therefore, it is hereby**

**RESOLVED**, that the issuance of a Determination Notice of \$941,981 in 4% HTC, and \$3,000,000 in NHTF, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website for Sunland Country Apartments is hereby approved as presented to this meeting; and

**FURTHER RESOLVED**, that if the Applicant and the Department have not executed a contract for the NHTF funding by July 1, 2021, the Department may reduce the funding in whole or in part, notwithstanding any other deadline that may appear in the Texas Administrative Code.

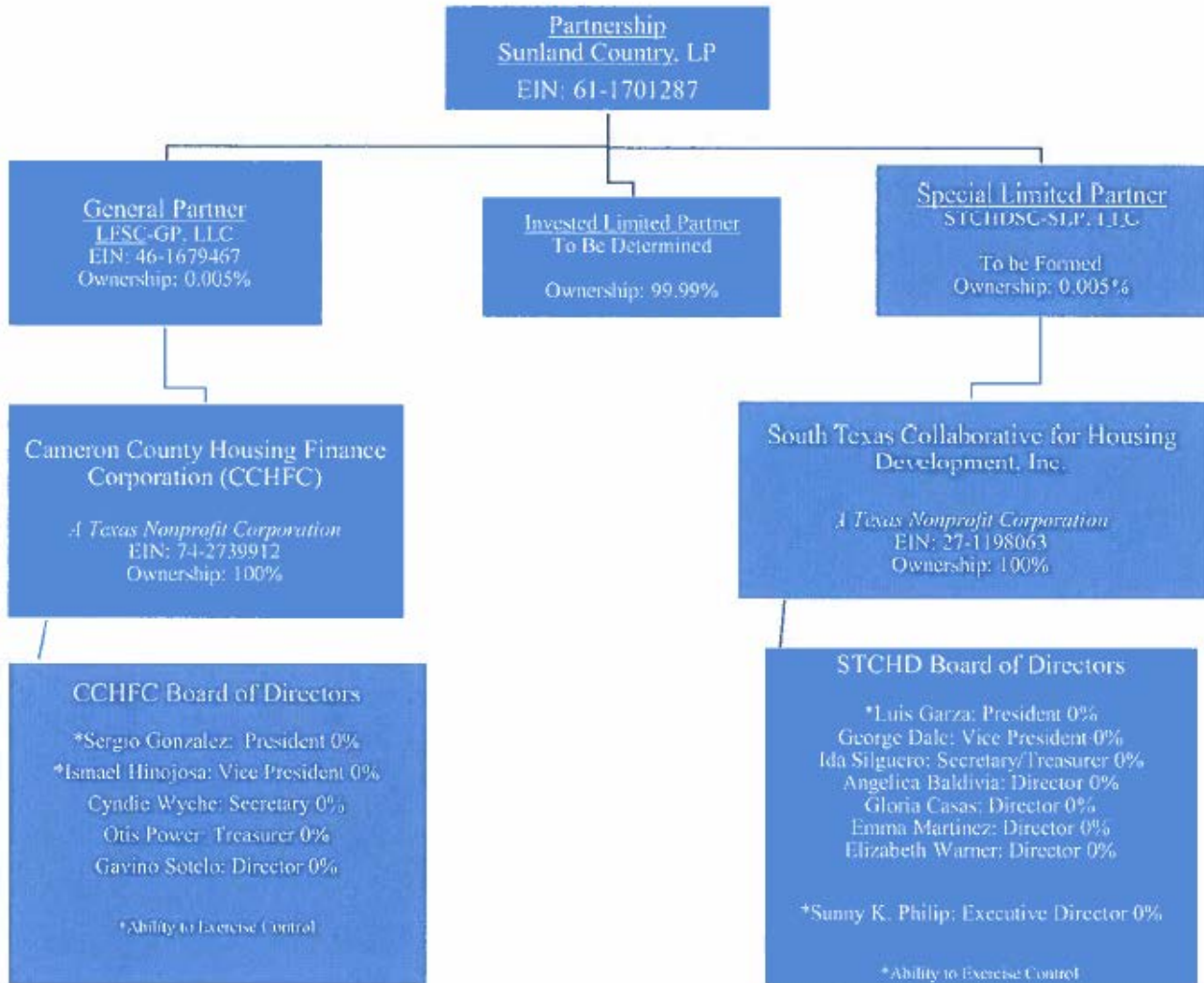
## **BACKGROUND**

*General Information:* Sunland Country Apartments involves the new construction of 166 units to be located at 502 South Ed Carey Drive in Harlingen, Cameron County. The general population will be served and the application reflects an intent to elect the income averaging minimum set-aside. The development proposes two units to be rent and income restricted at 30% of AMFI, 22 units to be rent and income restricted at 40% of AMFI, four units to be rent and income restricted at 50% of AMFI, 91 units to be rent and income restricted at 60% of AMFI, 42 units to be rent and income restricted at 70% of AMFI, and the remaining five units to be rent and income restricted at 80% of AMFI. Layered among the HTC units will be 22 NHTF units and 2 HOME Match Units.

*Organizational Structure:* The Borrower is Sunland Country, LP and includes the entities and principals as illustrated in Exhibit A. The applicant's portfolio is considered a Category 1 and the previous participation was deemed acceptable by EARAC.

*Public Comment:* The Department received two letters of support from State Representative Eddie Lucio III, District 38, and State Senator Eddie Lucio, Jr, District 27.

**EXHIBIT A**



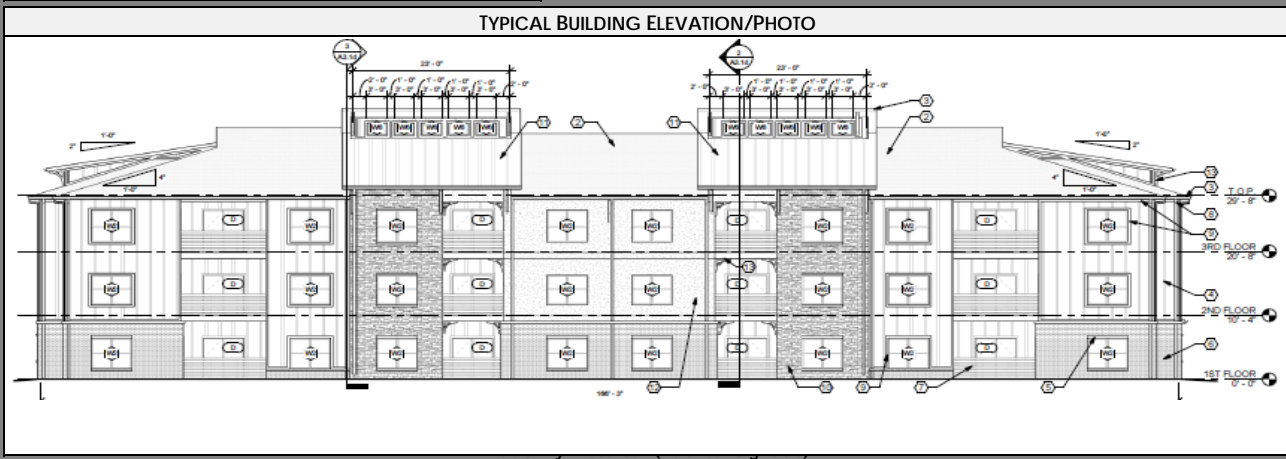
# 20462 Sunland Country Apartments - Application Summary

REAL ESTATE ANALYSIS DIVISION  
October 28, 2020

PROPERTY IDENTIFICATION	
Application #	20462
Development	Sunland Country Apartments
City / County	Harlingen / Cameron
Region/Area	11 / Urban
Population	General
Set-Aside	General
Activity	New Construction

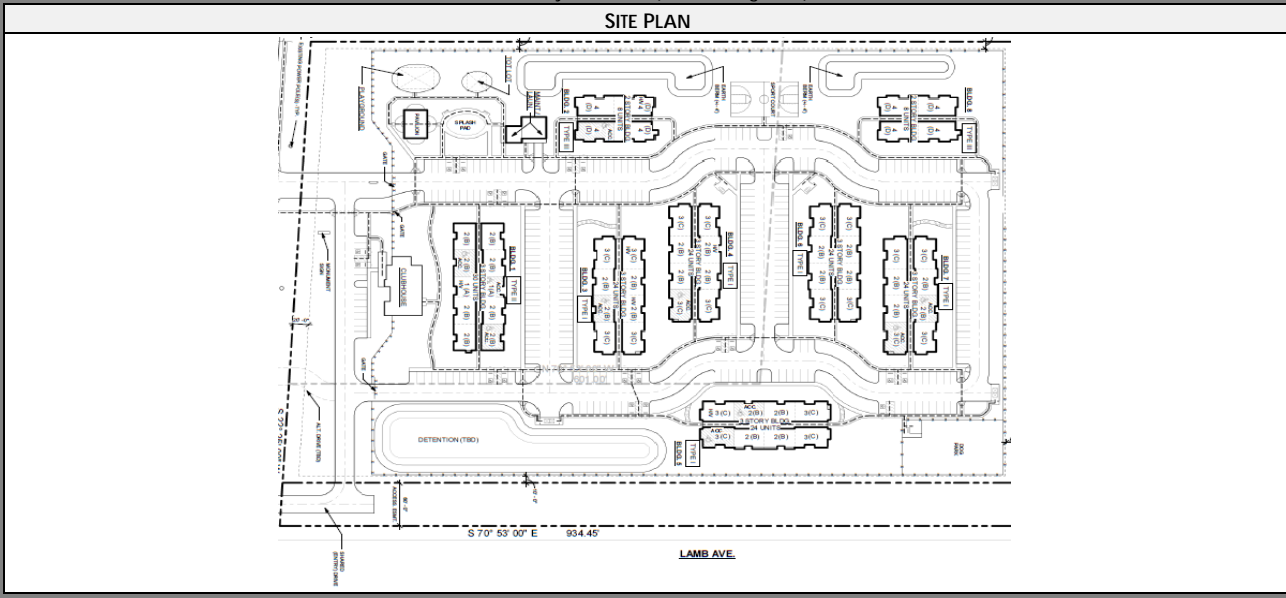
RECOMMENDATION					
TDHCA Program		Request	Recommended		
LIHTC (4% Credit)		\$941,981	\$941,981	\$5,675/Unit	\$0.87

KEY PRINCIPALS / SPONSOR		
Cameron County Housing Finance Corporation		
South Texas Collaborative for Housing Sunny K. Philip		
Related Parties	Contractor - No	Seller - No



UNIT DISTRIBUTION			INCOME AVERAGING		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	25	15%
1	6	4%	50%	4	2%
2	84	51%	60%	90	54%
3	60	36%	70%	42	25%
4	16	10%	80%	5	3%
<b>TOTAL</b>	<b>166</b>	<b>100%</b>	<b>TOTAL</b>	<b>166</b>	<b>100%</b>

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten	Applicant's Pro Forma		
Debt Coverage	1.15	Expense Ratio	46.9%
Breakeven Occ.	86.1%	Breakeven Rent	\$697
Average Rent	\$750	B/E Rent Margin	\$54
Property Taxes	Exempt	Exemption/PILOT	100%
Total Expense	\$4,007/unit	Controllable	\$2,802/unit



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)			0.0%
Highest Unit Capture Rate	0%	0 BR/30%	0
Dominant Unit Cap. Rate	0%	0 BR/30%	0
Premiums (↑60% Rents)	N/A		N/A
Rent Assisted Units	N/A		

DEVELOPMENT COST SUMMARY			
Costs Underwritten		Applicant's Costs	
Avg. Unit Size	1,039 SF	Density	12.8/acre
Acquisition		\$05K/unit	\$895K
Building Cost	\$71.48/SF	\$74K/unit	\$12,329K
Hard Cost		\$94K/unit	\$15,592K
Total Cost		\$156K/unit	\$25,976K
Developer Fee	\$3,067K	(47% Deferred)	Paid Year: 11
Contractor Fee	\$1,851K	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	
Berkadia - FHA 221 (d) 4	40/40	3.40%	\$13,100,000	1.19	Broadduc Const. - MFDL Match	0/0	0.00%	\$225,000		AHPI LIHTC Equity	\$8,194,415	
TDHCA	40/40	0.00%	\$3,000,000	1.15	LFSC, GP, LLC Gen. Partner Cont.	0/0	0.00%	\$100	0.00	STCHD & CCHFC	\$1,456,131	
					STCHDSC, SLP, LLC Sp. Ltd. Part Cont.	0/0	0.00%	\$100	0.00			
<b>TOTAL DEBT (Must Pay)</b>			<b>\$16,100,000</b>		<b>CASH FLOW DEBT / GRANTS</b>			<b>\$225,200</b>		<b>TOTAL EQUITY SOURCES</b>		<b>\$9,650,546</b>
										<b>TOTAL DEBT SOURCES</b>		<b>\$16,325,200</b>
										<b>TOTAL CAPITALIZATION</b>		<b>\$25,975,746</b>

**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: 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.
  - e: Documentation identifying any required matching funds, and confirming that the source is eligible to be counted as matching funds under HUD and TDHCA requirements.
- 2 Receipt and acceptance before Determination Notice:
  - Certification that if the site is in the 100-year floodplain when it places in service, the finished ground floor elevation of the buildings will be at least one foot above the floodplain and that all drives, parking and amenities will be no more than 6 inches below the floodplain; and that the Owner will provide flood insurance coverage for the buildings and for the residents' personal property as long as the buildings remain in the floodplain.
- 3 Documentation at Cost Certification clearing environmental issues identified in the ESA report, specifically:
  - a: Architect certification that all noise assessment mitigation recommendations were implemented and the Development is compliant with HUD noise guidelines.
  - b: Architect or engineer certification that the finished ground floor elevation for each building is at least one foot above the floodplain and that all drives, parking and amenities are not more than 6 inches below the floodplain; or certification (including a Letter of Map Amendment or Revision ("LOMA / LOMR-F") if applicable, documenting that the development is not within the 100 year floodplain.

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	he Cameron County Housing Finance Corporation
Expiration Date	12/29/2020
Bond Amount	\$20,000,000
BRB Priority	Priority 3
Bond Structure	FHA HUD 221(d)(4) Cash Collateralized
% Financed with Tax-Exempt Bonds	60.2%

**RISK PROFILE**

**STRENGTHS/MITIGATING FACTORS**

- Overall Feasibility Indicators
  - Low gross capture rate
- WEAKNESSES/RISKS**
- Reliant on Tax Exemption

**AREA MAP**



**AERIAL PHOTOGRAPH(S)**





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TEXAS HOUSE OF REPRESENTATIVES

# EDDIE LUCIO III

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DISTRICT 38  
CAMERON COUNTY

April 16, 2020

Texas Department of Housing and Community Affairs  
Bobby Wilkinson, Executive Director  
P.O. BOX 13941  
Austin, TX 78711-3941

**Re: TDHCA #20462 Sunland Country Apartments**

Director Wilkinson:

I am writing to extend my full support for the new construction proposed for the Sunland Country Apartments located in Harlingen, Texas in Cameron County. I understand that Sunland Country Apartments will be considered for Texas Department of Housing and Community Affairs Non-Competitive (4%) housing tax credits.

I believe this project represents a magnificent opportunity to continue to meet the growing need for affordable housing in Cameron County. The amenities, location, and the tenant social services to be offered will continue to raise the standard of living for all of the families fortunate enough to call Sunland Country Apartments home.

I fully support Sunland Country Apartments in its efforts to receive tax credits and hope to see this development come to fruition in the coming year.

Please keep me aware of developments concerning this project and thank you for your time.

Sincerely,

A handwritten signature in cursive script that reads "Eddie Lucio III".

Eddie Lucio, III

# THE SENATE OF TEXAS

STATE CAPITOL, 3S.5  
AUSTIN, TEXAS 78711  
(512) 463-0127

1210 W. INTERSTATE 2, STE. 10  
PHARR, TEXAS 78577  
(956) 787-5227



SENATOR  
EDDIE LUCIO, JR.

7 NORTH PARK PLAZA  
BROWNSVILLE, TEXAS 78521  
(956) 548-0227

700 FM 3168  
RAYMONDVILLE, TEXAS 78580  
(956) 689-1860, EXT. 230

April 16, 2020

Mr. Bobby Wilkinson, Executive Director  
Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, TX 78711-3941

Re: TDHCA #20462 Sunland Country Apartments

Dear Mr. Wilkinson:

I am writing to extend my full support for the new construction proposed for the Sunland Country Apartments located in Harlingen, Texas in Cameron County. I understand that Sunland Country Apartments will be considered for Texas Department of Housing and Community Affairs Non-Competitive (4%) housing tax credits.

I believe this project represents a magnificent opportunity to continue to meet the growing need for affordable housing in Cameron County. The amenities, location, and the tenant social services to be offered will continue to raise the standard of living for all of the families fortunate enough to call Sunland Country Apartments home.

Thank you for accepting this letter as my support to Sunland Country Apartments in its efforts to see this development to fruition in the coming year.

Sincerely,

A handwritten signature in black ink that reads "Eddie Lucio, Jr." with a stylized flourish at the end.

Eddie Lucio, Jr.  
State Senator

ELJ/nsg





1e

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**NOVEMBER 5, 2020**

Presentation, discussion, and possible action on a Determination Notice for 4% Housing Tax Credits and an Award of Direct Loan Funds (#20463, Trinity Oaks, Sulphur Springs)

**RECOMMENDED ACTION**

**WHEREAS**, an application for Trinity Oaks, sponsored by LPM Housing LP and Lakewood Property Management LLC, requesting 4% Housing Tax Credits (HTC) and \$925,000 in HOME Direct Loan funds under the General set-aside of the 2020-2 Multifamily Direct Loan Notice of Funding Availability (2020-2 NOFA), was submitted to the Department on April 6, 2020;

**WHEREAS**, the current Certification of Reservation from the Texas Bond Review Board was issued on August 17, 2020, and will expire on February 13, 2021;

**WHEREAS**, the proposed issuer of the bonds is the Texas State Affordable Housing Corporation;

**WHEREAS**, pursuant to 10 TAC §11.101(a)(2)(E), Development Sites within 500 feet of active railroad tracks may be considered ineligible as determined by the Board;

**WHEREAS**, pursuant to 10 TAC §11.101(a)(2), Rehabilitation Developments with ongoing and existing federal assistance from the U.S. Department of Housing and Urban Development (“HUD”), U.S. Department of Agriculture (“USDA”), or U.S. Department of Veterans Affairs (“VA”) may be granted an exemption by the Board if such exemption is requested at the time of or prior to the filing of an Application;

**WHEREAS**, the Applicant is requesting an exemption from the 500-foot distance separation requirement for railroad tracks;

**WHEREAS**, staff has found that the applicant is proposing to rehabilitate an existing property that includes rental assistance from HUD and the request is in keeping with the requirements of 10 TAC §11.101(a)(2);

**WHEREAS**, staff recommends the proposed site be found eligible under 10 TAC §11.101(a)(2) of the 2020 QAP;

**WHEREAS**, in accordance with 10 TAC §1.301(d)(1), the compliance history is designated a Category 1 and deemed acceptable by Executive Award and Review Advisory Committee (EARAC); and

**WHEREAS**, EARAC recommends \$925,000 in HOME for Trinity Oaks and the issuance of a Determination Notice.

**NOW, therefore, it is hereby**

**RESOLVED**, that the issuance of a Determination Notice of \$155,956 in 4% HTC, and \$925,000 in HOME, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website for Trinity Oaks is hereby approved as presented to this meeting.

### **BACKGROUND**

*General Information:* Trinity Oaks involves the acquisition and rehabilitation of 48 units and is located at 600 and 610 Woodlawn Street in Sulphur Springs, Hopkins County. The multifamily development consists of two contiguous phases. Phase one was constructed in 1982, consists of 24 units, and serves the elderly population. Phase two consists of 24 units and was built in 1990 after receiving an award of non-competitive Housing Tax Credits in 1989 (06626). Phase two initially served the general population and is considered an inactive development with regard to the Compliance Period. The applicant states that it currently serves the elderly population, with the exception of four disabled tenants under the age of 55. Several HTC applications have been submitted for Trinity Oaks previously. The project received an award of competitive HTC in 2014 (14000), however, the USDA-Rural Development State Office did not approve the transfer of ownership and loans, resulting in the return of the full allocation. An application was again submitted in 2017 (17255), but the applicant did not receive approvals from the USDA and the application was subsequently terminated. The current application proposes to serve the elderly population and the financing will be utilized to pay off the existing 15 units with rental assistance from the USDA. The Section 8 project based contract is expected to continue for 24 of the units. The development proposes 16 units rent and income restricted at 30% of AMFI and 32 units rent and income restricted at 60% of AMFI. Layered among the HTC units will be 16 Direct Loan units. It is a condition of the award that the applicant provide an executed written agreement from HUD regarding the elderly designation in the new HAP agreements and that such agreement be provided before the Department enters into a Contract for the HOME funds.

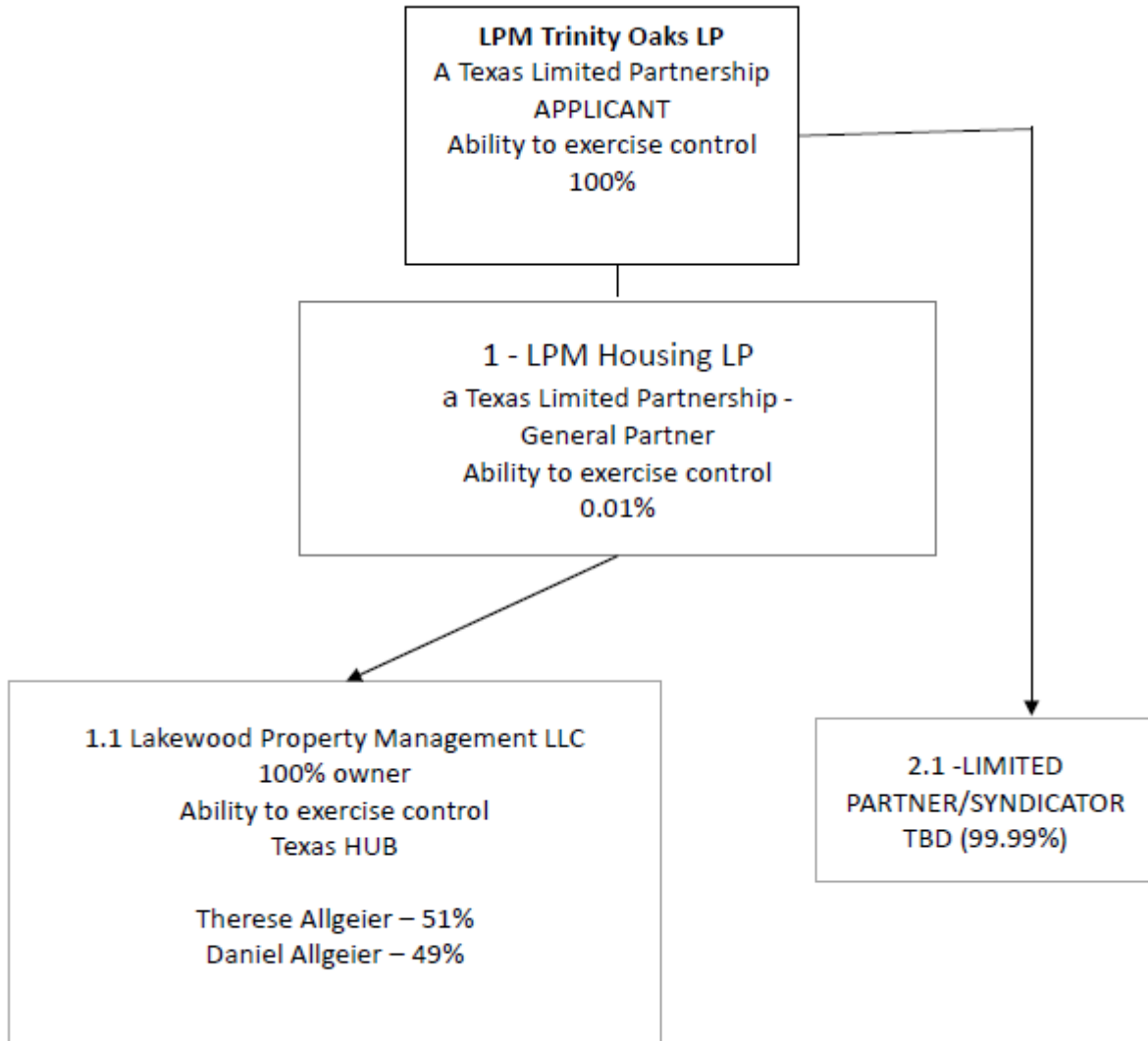
*Site Analysis:* The applicant disclosed that the development site is located within 500 feet of an active railroad track and a concrete batch plant. The northern boundary of the subject property is adjacent to the railroad track. The distance between the nearest building and the tracks is reported to be 466 feet. Bell Concrete is located northeast of the subject property, however, the applicant disclosed this feature only to be prudent and does not believe the facility fits the definition of heavy industry. The concrete batch plant and gravel storage areas are reported as being located in excess of 500 feet from the development site's boundaries. Additionally, many large trees are stated to provide a screen between the facility and Trinity Oaks. Pursuant to 10 TAC §11.101(a)(2) of the 2020 QAP, an exemption may be granted for a rehabilitation development with ongoing and existing federal assistance from HUD, USDA, or Veterans Affairs. The applicant has provided evidence that the existing

property is supported by financial and rental assistance from HUD. Staff recommends the exemption be granted.

*Organizational Structure:* The Borrower is LPM Trinity Oaks LP and includes the entities and principals as illustrated in Exhibit A. The applicant's portfolio is considered a Category 1 and the previous participation was deemed acceptable by EARAC.

*Public Comment:* There were no letters of support or opposition received by the Department.

**EXHIBIT A**



# 20463 Trinity Oaks I and II - Application Summary

REAL ESTATE ANALYSIS DIVISION  
October 28, 2020

PROPERTY IDENTIFICATION	
Application #	20463
Development	Trinity Oaks I and II
City / County	Sulphur Springs / Hopkins
Region/Area	4 / Rural
Population	Elderly Preference
Set-Aside	General
Activity	Acquisition/Rehab (Built in 1985)

RECOMMENDATION						
TDHCA Program	Request	Recommended				
LIHTC (4% Credit)	\$159,653	\$155,956	\$3,249/Unit	\$0.87		
	Amount	Rate	Amort	Term	Lien	
MF Direct Loan Const. to Perm. (Repayable)	\$925,000	2.50%	30	35	2	

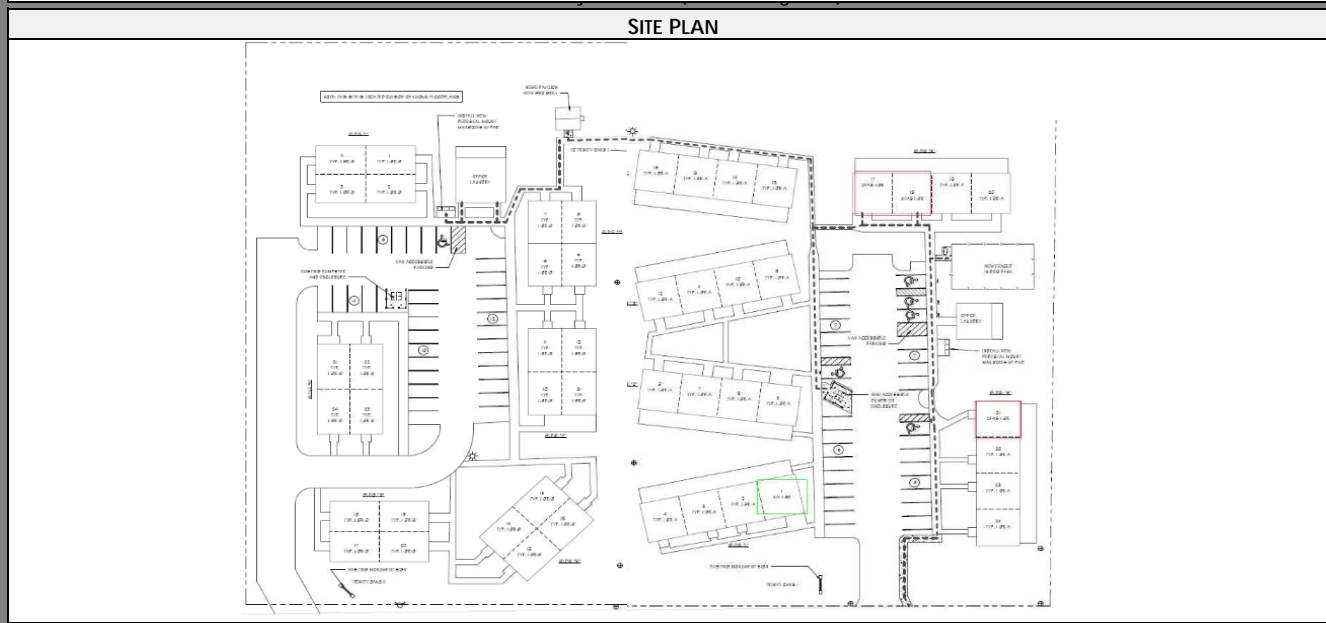
KEY PRINCIPALS / SPONSOR		
Dan & Therese Allgeier of Lakewood Property Management, Inc.		
Related Parties	Contractor - No	Seller - Yes



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	16	33%
1	48	100%	40%	-	0%
2	-	0%	50%	-	0%
3	-	0%	60%	32	67%
4	-	0%	MR	-	0%
<b>TOTAL</b>	<b>48</b>	<b>100%</b>	<b>TOTAL</b>	<b>48</b>	<b>100%</b>

**PRO FORMA FEASIBILITY INDICATORS**

Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	1.27	Expense Ratio	51.0%
Breakeven Occ.	84.3%	Breakeven Rent	\$539
Average Rent	\$604	B/E Rent Margin	\$65
Property Taxes	\$390/unit	Exemption/PILOT	0%
Total Expense	\$3,586/unit	Controllable	\$1,923/unit



**MARKET FEASIBILITY INDICATORS**

Gross Capture Rate (0% Maximum)	1.8%	
Highest Unit Capture Rate	N/A	N/A
Dominant Unit Cap. Rate	1 BR/50%	47
Premiums (↑60% Rents)	N/A	N/A
Rent Assisted Units	24	50% Total Units

**DEVELOPMENT COST SUMMARY**

Costs Underwritten	TDHCA's Costs - Based on PCA	
Avg. Unit Size	602 SF	Density 5.7/acre
Acquisition	\$23K/unit	\$1,110K
Building Cost	\$55.61/SF	\$33K/unit \$1,606K
Hard Cost	\$40K/unit	\$1,911K
Total Cost	\$93K/unit	\$4,453K
Developer Fee	\$509K (99% Deferred)	Paid Year: 12
Contractor Fee	\$264K	30% Boost Yes

**REHABILITATION COSTS / UNIT**

Site Work	\$3K	7%	Finishes/Fixtures	\$6K	14%
Building Shell	\$24K	61%	Amenities	\$K	1%
HVAC	\$2K	5%	Total Exterior	\$28K	75%
Appliances	\$1K	3%	Total Interior	\$9K	25%

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES	
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount
Churchill Stateside Group, LLC	35/35	4.00%	\$1,600,000	1.91	donated labor, materials	0/0	0.00%	\$70,000	1.27	Churchill Stateside	\$1,356,680
TDHCA - MFDL	35/30	2.50%	\$925,000	1.27						Lakewood Property Management	\$501,774
<b>TOTAL DEBT (Must Pay)</b>			<b>\$2,525,000</b>		<b>CASH FLOW DEBT / GRANTS</b>			<b>\$70,000</b>		<b>TOTAL EQUITY SOURCES</b>	<b>\$1,858,454</b>
<b>TOTAL DEBT SOURCES</b>											<b>\$2,595,000</b>
<b>TOTAL CAPITALIZATION</b>											<b>\$4,453,454</b>

**CONDITIONS**

- 1 Receipt and acceptance before Direct Loan Contract Execution:
  - a: HUD approval of revised Section 8 Contract with revised utility allowance that reflects landlord-paid water/sewer, and specifying the target population.
  - b: Documentation that a noise study has been completed, and Architect certification that all recommendations from the noise study are incorporated into the development plans.
  - c: All required URA documentation
- 2 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: 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 minimum 1.15 DCR.
  - e: Documentation identifying any required matching funds, and confirming that the source is eligible to be counted as matching funds under HUD and TDHCA requirements.
- 3 Receipt and acceptance before Determination Notice:
  - a: CPA detailed analysis and a legal opinion from the Equity Investor demonstrating the Development satisfies the 50% Test for Tax Exempt Bond Financing in order to qualify for 4% Housing Tax Credits.
- 4 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.

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	TSAHC
Expiration Date	2/13/2021
Bond Amount	\$2,200,000
BRB Priority	Priority 3
Bond Structure	Tax-Exempt Loan
% Financed with Tax-Exempt Bonds	49.3%

RISK PROFILE	
STRENGTHS/MITIGATING FACTORS	
▫	Ongoing HAP Contract supporting 50% of units
WEAKNESSES/RISKS	
▫	Risk of failing the 50% Test to qualify for 4% tax credits
▫	Low visibility



1f



**TO BE POSTED  
NOT LATER THAN  
THE THIRD DAY  
BEFORE THE  
DATE OF THE  
MEETING**

1g

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**NOVEMBER 5, 2020**

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 13, Multifamily Direct Loan Rule, and an order adopting the new 10 TAC Chapter 13, Multifamily Direct Loan Rule, and directing its publication in the *Texas Register* for adoption

**RECOMMENDED ACTION**

**WHEREAS**, the Texas Department of Housing and Community Affairs (the Department) is authorized to make awards of loans or grants to developers for the State of Texas;

**WHEREAS**, the Department plans to administer the varying fund sources used in making these awards of loans and grants in a specific manner that necessitates this Multifamily Direct Loan Rule;

**WHEREAS**, pursuant to Tex. Gov't Code §2306.053, the Department is authorized to adopt rules governing the administration of the Department and its programs; and

**WHEREAS**, public comment was accepted and such rulemaking is being adopted without substantive changes for publication in the *Texas Register*;

**NOW, therefore, it is hereby**

**RESOLVED**, that the final order adopting the repeal of 10 TAC Chapter 13, Multifamily Direct Loan Rule, and adopting new 10 TAC Chapter 13, Multifamily Direct Loan Rule, together with the preamble presented to this meeting, is hereby ordered and approved for publication in the *Texas Register* and its adoption; and

**FURTHER RESOLVED**, that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to cause the 10 TAC Chapter 13, Multifamily Direct Loan Rule, together with the preamble 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 requested revisions to the preambles.

**BACKGROUND**

Attached to this Board Action Request is the final 10 TAC Chapter 13, Multifamily Direct Loan Rule. Changes to the Multifamily Direct Loan Rule are generally clarifications that staff identified as necessary to provide clear information to Applicants.

The Board approved the proposed repeal and replacement of 10 TAC Chapter 13, Multifamily Direct Loan Rule, at the Board meeting on September 3, 2020, as published in the *Texas Register* for public comment on September 18, 2020. Public comment, in accordance with the Citizen Participation Plan requirements in 24 CFR §91.105, was accepted between 8:00 a.m. Austin local time on September 18, 2020, and 5:00 p.m. Austin local time on October 9, 2020. Staff has reviewed all comments received and provided a reasoned response to these comments in the attached preamble. The Department made a few non-substantive grammar corrections in the version that is presented in the Board Book and if adopted today, that will be sent to the *Texas Register* as final

## **Attachment A: Preamble, including required analysis, for repeal of 10 TAC Chapter 13, the Multifamily Direct Loan Rule**

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 13, Multifamily Direct Loan Rule. The purpose of the repeal is to provide for clarification of the existing rule through new rulemaking 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. Bobby Wilkinson, Executive 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 readoption making changes to an existing activity, administration of the Multifamily Direct Loan Program.

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 or 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 an existing activity, administration of the Multifamily Direct Loan Program.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or 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 or 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. Wilkinson 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 increased clarity and improved access to the Multifamily Direct Loan funds. 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. Wilkinson 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 COMMENT AND STAFF RECOMMENDATIONS: The Department accepted public comment between September 18, 2020, and October 9, 2020, to receive stakeholder comment regarding the repealed sections. All public comment was analyzed, considered and responded to by staff. No public comment was received on the repeal of 10 TAC Chapter 13.

STATUTORY AUTHORITY. The repeal is made 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 13, Multifamily Direct Loan Rule**

- §13.1 Purpose
- §13.2 Definitions
- §13.3 General Loan Requirements
- §13.4 Set-Asides, Regional Allocation, and Priorities
- §13.5 Award Process
- §13.6 Scoring Criteria
- §13.7 Maximum Funding Requests
- §13.8 Loan Structure and Underwriting Requirements
- §13.9 Construction Standards
- §13.10 Development and Unit Requirements
- §13.11 Post-Award Requirements
- §13.12 Pre-Closing Amendments to Direct Loan Terms
- §13.13 Post-Closing Amendments to Direct Loan Terms

## **Attachment B: Preamble, including required analysis, for new 10 TAC Chapter 13, Multifamily Direct Loan Rule**

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 13, Multifamily Direct Loan Rule. The purpose of the new section is to provide compliance with Tex. Gov't Code §2306.111 and to update the rule to: clarify program requirements in multiple sections, codify in rule practices of the division, and change citations to align with changes to other multifamily rules. In general, most changes are corrective in nature, intended to gain consistency with state or federal rules, delete duplicative language or provisions, correct or update rule references, and clarify language or processes to more adequately communicate the language or process.

Tex. Gov't Code §2001.0045(b) does not apply to the action on this 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. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule would be in effect:

1. The rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, administration of the Multifamily Direct Loan 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 rule changes do not require additional future legislative appropriations.
4. The 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 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 expand, limit, or repeal an existing regulation.
7. The rule will not increase or decrease the number of individuals subject to the rule's applicability; and
8. The rule will not negatively or 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 §2306.111.

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. This rule relates to the procedures for multifamily direct loan applications and award through various Department fund sources. Other than in the case of a small or micro-business that is an applicant for such a loan product, no small or micro-businesses are subject to the rule. It is estimated that approximately 200 small or micro-businesses are such applicants; for those entities the new rule provides for a more clear, transparent process for applying for funds and does not result in a negative impact for those small or micro-businesses. There are not likely to be any rural communities subject to the rule because this rule is applicable only to direct loan applicants for development of properties, which are not generally municipalities. The fee for applying for a Multifamily Direct Loan product is \$1,000, unless the Applicant is a nonprofit that provides supportive services or the Applicant is applying for Housing Tax Credits in conjunction with Multifamily Direct Loan funds, in which case the application fee may be waived. These fee costs are not inclusive of external costs required by the basic business necessities underlying any real estate transaction, from placing earnest money on land, conducting an Environmental Site Assessment, conducting a market study, potentially retaining counsel, hiring an architect and an engineer to construct basic site designs and elevations, and paying any other related, third-party fees for securing the necessary financing to construct multifamily housing.

There are 1,296 rural communities potentially subject to the rule for which the economic impact of the rule is projected to be \$0. 10 TAC Chapter 13 places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private parties. In an average year the volume of applications for MFDL resources that are located in rural areas is approximately fifteen. In those cases, a rural community securing a loan will experience an economic benefit, including, potentially, increased property tax revenue from a multifamily Development.

3. The Department has determined that because there are rural MFDL awardees, this program helps promote construction activities and long term tax base in rural areas of Texas. Aside from the fees and costs associated with submitting an Application, there is a probable positive economic effect on small or micro-businesses or rural communities that receive MFDL awards and successfully use those awards to construct multifamily housing, although the specific impact is not able to be quantified in advance.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The rule does not contemplate or 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 proposed rule may provide a possible positive economic effect on local employment in association with this rule since MFDL Developments, layered with housing tax credits, often involve a typical minimum investment of \$10 million in capital, and more commonly an investment from \$20 million to \$30 million. Such a capital investment has direct, indirect, and induced effects on the local and regional economies and local employment. However, because the exact location of where program funds or developments are directed is not determined in rule, and is driven by real estate demand, there is no way to predict during rulemaking where these positive effects may occur. Furthermore, while the Department believes that any and all impacts are positive, that impact is not able to be quantified for any given community until MFDL awards and LIHTCs are actually awarded to a proposed Development, given the unique characteristics of each proposed multifamily Development.

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 significant construction activity is associated with any MFDL Development layered with LIHTC and each apartment community significantly increases the property value of the land being developed, there are no probable negative effects of the new rule on particular geographic regions. If anything, positive effects will ensue in those communities where developers receive MFDL awards.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be improved clarity of program requirements in multiple sections, codification in rule practices of the division, and change citations to align with changes to other multifamily rules. There will not be any economic cost to any individuals required to comply with the new sections because this rule does not have any new requirements that would cause additional costs to applicants.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson 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 because it does not have any new requirements that would cause additional costs to applicants.

#### SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS

Public comments were accepted between September 18, 2020, and October 9, 2020, with comments received from: BETCO Housing Lab

Summary of Comments

§13.5(g)(2)(A) Eligibility Criteria and Determinations

SUMMARY OF COMMENT: Commenter requests clarification of the term “or resources”

STAFF RESPONSE: The eligibility determination is not limited to Direct Loan funds that may have been awarded in the past 15 years, but extends to any assistance from the Department. *Staff recommends no changes based on this comment.*

#### §13.8(e) Criteria for Permanent Refinance Loans

SUMMARY OF COMMENT: Commenter states that it is unclear when the balance of the described loan will be disbursed.

STAFF RESPONSE: Disbursement of funds is governed by §13.11(b)(11), along with the Direct Loan contract and loan documents. *Staff recommends no changes based on this comment.*

## 2021 MULTIFAMILY DIRECT LOAN RULE

§13.1	Purpose
§13.2	Definitions
§13.3	General Loan Requirements
§13.4	Set-Asides, Regional Allocation, and NOFA Priorities
§13.5	Application and Award Process
§13.6	Scoring Criteria
§13.7	Maximum Funding Requests and Minimum Number of MFDL Units
§13.8	Loan Structure and Underwriting Requirements
§13.9	Construction Standards
§13.10	Development and Unit Requirements
§13.11	Post-Award Requirements
§13.12	Pre-Closing Amendments to Direct Loan Terms
§13.13	Post-Closing Amendments to Direct Loan Terms

### **§13.1. Purpose.**

**(a) Authority.** The rules in this chapter apply to the funds provided to Multifamily Developments through the Multifamily Direct Loan Program (MFDL or Direct Loan Program) by the Texas Department of Housing and Community Affairs (the Department). Notwithstanding anything in this chapter to the contrary, loans and grants issued to finance the Development of multifamily rental housing are subject to the requirements of the laws of the State of Texas, including but not limited to Tex. Gov't Code, Chapter 2306 (sometimes referred to as the State Act), and federal law pursuant to the requirements of Title II of the Cranston-Gonzalez National Affordable Housing Act, Division B, Title III of the Housing and Economic Recovery Act (HERA) of 2008 - Emergency Assistance for the Redevelopment of Abandoned and Foreclosed Homes, Section 1497 of the Dodd-Frank Wall Street Reform and Consumer Protection Act: Additional Assistance for Neighborhood Stabilization Programs, Title I of the Housing and Economic Recovery Act of 2008, Section 1131 (Public Law 110-289), and the implementing regulations 24 CFR Part 91, Part 92, Part 93, and Part 570 as they may be applicable to a specific fund source. The Department is authorized to administer Direct Loan Program funds pursuant to Tex. Gov't Code, Chapter 2306, Subchapter I, Housing Finance Division.

**(b) General.** This chapter applies to an award of MFDL funds by the Department and establishes the general requirements associated with the application and award process for such funds. Applicants pursuing MFDL assistance from the Department are required to certify, among other things, that they have familiarized themselves with all applicable rules that govern that specific program including, but not limited to this chapter, Chapter 1 of this title (relating to Administration), Chapter 2 of this title (relating to Enforcement), Chapter 10 of this title (relating to Uniform Multifamily Rules), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan (QAP)), and Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules) will apply if MFDL funds are

layered with those other Department programs. The Applicant is also required to certify that it is familiar with the requirements of any other federal, state, or local financing sources that it identifies in its Application. Any conflict with rules, regulations, or statutes will be resolved on a case by case basis that allows for compliance with all requirements. Conflicts that cannot be resolved may result in Application ineligibility, with the right to an Appeal as provided in 10 TAC §1.7 of this title (relating to Appeals Process) or 10 TAC §11.902 of this title (relating to Appeals Process), as applicable.

**(c) Waivers.** Requests for waivers of any program rules or requirements must be made in accordance with 10 TAC §11.207 of this title (relating to Waiver of Rules), as limited by the rules in this chapter. In no instance will the Department consider a waiver request that would violate federal program requirements or state or federal statute, as provided in paragraphs (1) through (3) of this subsection.

**(1) Waivers for Layered Developments.** For Direct Loan Developments layered with Competitive Housing Tax Credits, the Board may not waive any provision of the Notice of Funding Availability (NOFA). The Board may not waive rules that are federally required, or that have been incorporated as a required part of the Department's Consolidated Plan or One Year Action Plan (OYAP) to the U.S. Department of Housing and Urban Development (HUD);

**(2) Waivers for Non-Layered Developments.** For Direct Loan Developments not layered with Competitive Housing Tax Credits, an Applicant may request that the Department amend its NOFA, amend its Consolidated Plan or OYAP, or ask HUD to grant a waiver of its regulations. If the Applicant's request is approved by the Department's Governing Board (Board), the Application Acceptance Date will then be the date the Department completes the amendment process or receives a waiver from HUD. If this date occurs after the NOFA closes, the Applicant will be required to submit a new Application, and the Direct Loan awardee (pre-closing) may be required to reapply, under a new or otherwise open NOFA; and

**(3) Waivers under Closed NOFAs.** The Board may not waive any portion of a closed NOFA prior to Construction Completion. Thereafter, the Board may only waive any portion of a closed NOFA as part of an approved Asset Management Division work out. Allowable Post-Closing Amendments are described in 10 TAC §13.13 of this title.

**(d) Eligibility and Threshold Requirements.** Applications for Multifamily Direct Loan funds must meet all applicable eligibility and threshold requirements of Chapter 11 of this title (relating to the Qualified Allocation Plan (QAP)), unless otherwise excepted in this rule or NOFA.

### **§13.2. Definitions.**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Tex. Gov't Code, Chapter 2306, §§141, 142, and 145 of the Internal Revenue Code, 24 CFR Part 91, Part 92, Part 93, and 2 CFR Part 200, and 10 TAC Chapters 1 of this title regarding Administration, 2 of this title regarding Enforcement, 10 of this title regarding Uniform Multifamily Rules, and 11 of this title regarding the Qualified Allocation Plan.

**(1) Application Acceptance Date**--The date the MFDL Application is considered received by the Department as described in this chapter, chapter 11 of this title, or in the NOFA.

**(2) Construction Completion**--That necessary title transfer requirements and construction work have been performed and the certificate(s) of occupancy (if New Construction or Reconstruction) and Certificate of Substantial Completion (AIA Form G704), Form HUD-92485 for instances in which a federally insured HUD loan is being utilized, or equivalent notice has been issued.

**(3) Community Housing Development Organization (CHDO)**--A private nonprofit organization with experience developing or owning affordable rental housing that meets the requirements in 24 CFR Part 92 for purposes of receiving HOME Investment Partnerships Program (HOME) funds under the CHDO Set-Aside. In addition, a member of a CHDO's board cannot be a Principal of the Development beyond their role as a board member of the CHDO or be an employee of the development team, and may not receive financial benefit other than reimbursement of expenses from the CHDO (e.g., a voting board member cannot also be a paid executive).

**(4) Deobligated Funds**--The funds released by the Development Owner or recovered by the Department canceling a Contract or award involving some or all of a contractual financial obligation between the Department, and a Development Owner or Applicant.

**(5) Federal Affordability Period**--The period commencing on the later of the date after Construction Completion and after all Direct Loan funds have been disbursed for the project, or the date of Project Completion as defined in 24 CFR §92.2 or §93.3, as applicable, and ending on the date which is the required number of years as defined by the federal program.

**(6) HOME Match-Eligible Unit**--A Unit in the Development that is not assisted with HOME Program funds, but would qualify as eligible for Match under 24 CFR Part 92. Unless otherwise identified by the provisions in the Notice of Funding Availability (NOFA), TCAP Repayment Funds (TCAP RF) and matching contribution on NSP and NHTF Developments must meet all criteria to be classified as HOME-Match Eligible Units.

**(7) Housing Contract System (HCS)**--The electronic information system established by the Department for tracking, funding, and reporting Department Contracts and Developments. The HCS is primarily used for Direct Loan Programs administered by the Department.

**(8) Land Use Restriction Agreement (LURA) Term**--The period commencing on the effective date of the LURA and ending on the date which, at a minimum, is the greater of the loan term or 30 years. The LURA may include the Federal Affordability Period, in addition to the State Affordability Period requirements and State restrictive criteria.

**(9) Matching Contribution (Match)**--A contribution to a Development from nonfederal sources that may be in one or more of the forms provided in subparagraphs (A) through (E) of this paragraph:

(A) Cash contribution (grant), except for cash contributions made by investors in a limited partnership or other business entity subject to pass through tax benefits in a tax credit transaction or owner equity (including Deferred Developer Fee and General Partner advances);

(B) Reduced fees or donated labor from certain eligible contractors, subcontractors, architects, attorneys, engineers, excluding any contributions from a party related to the Developer or Owner;

- (C) Net present value of yield foregone from a below market interest rate loan as described in HUD Community Planning and Development (CPD) Notice 97-03;
- (D) Waived or reduced fees or taxes from cities or counties not related to the Applicant in connection with the proposed Development; or
- (E) Donated land or land sold by an unrelated third party at a price below market value, as evidenced by a third party appraisal.

**(10) Relocation Plan**--A residential anti-displacement and relocation assistance plan for which subparagraphs (A) and (B) of this paragraph apply:

(A) Includes provisions consistent with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §§4601-4655), implementing regulations at 49 CFR Part 24, and policy guidance in Real Estate Acquisition and Relocation Policy and Guidance (HUD Handbook 1378) and the TDHCA Relocation Handbook; and in some HOME and NSP funded Developments Section 104(d) of the Housing and Community Development Act of 1974 (as amended), and 24 CFR Part 42 (as modified for NSP); and

(B) Is in form and substance consistent with requirements of the Department.

**(11) Section 234 Condominium Housing Basic Mortgage Limits (Section 234 Condo Limits)**--

The per-unit subsidy limits for all MFDL funding. These limits take into account whether or not a Development is elevator served and any local conditions that may make development of multifamily housing more or less expensive in a given metropolitan statistical area. If the high cost percentage adjustment applicable to the Section 234 Condo Limits for HUD's Fort Worth Multifamily Hub is applicable for all Developments that TDHCA finances through the MFDL Program, then confirmation of that applicability will be included in the applicable NOFA.

**(12) Site and Neighborhood Standards**--HUD requirements for new construction or reconstruction Developments funded by NHTF (24 CFR §93.150) or new construction Developments funded by HOME (24 CFR §92.202). Proposed Developments that are unable to comply with requirements in 24 CFR §983.57(e)(2) and (3) will not be eligible for HOME or NHTF.

**(13) State Affordability Period**--The LURA Term as described in the MFDL contract and loan documents and as required by the Department in accordance with the State Act which may be an additional period after the Federal Affordability Period.

**(14) Surplus Cash**--Except when the first lien mortgage is a federally insured HUD mortgage which shall be subject to HUD's surplus cash definition, Surplus Cash is any cash remaining:

(A) After the payment of:

- (i) All sums due or currently required to be paid under the terms of any superior lien;
- (ii) All amounts required to be deposited in the reserve funds for replacement;
- (iii) Operating expenses actually incurred by the borrower for the Development during the period with an appropriate adjustment for an allocable share of property taxes and insurance premiums;
- (iv) Recurring maintenance expenses actually incurred by the borrower for the Development during the period; and
- (v) All other obligations of the Development approved by the Department; and

(B) After the segregation of an amount equal to the aggregate of all special funds required

to be maintained for the Development; and

(C) Excluding payment of:

- (i) All sums due or currently required to be paid under the terms of any subordinate liens against the property;
- (ii) Any development fees that are deferred including those in eligible basis; and
- (iii) Any payments or obligations to the borrower, ownership entities of the borrower, related party entities; any payment to the management company exceeding 5% of the effective gross income; incentive management fee; asset management fees; or any other expenses or payments that shall be negotiated between the Department and borrower.

### **§13.3. General Loan Requirements.**

**(a) Funding Availability.** Direct Loan funds may be made available through a NOFA or other similar governing document that includes the basic Application and funding requirements.

**(b) Oversourced Developments.** A Direct Loan request may be reduced or not recommended if an underwriting report issued by the Department's Real Estate Analysis Division concludes the Development does not need all or part of the MFDL funds requested in the Application because it is oversourced, and for which a timely appeal has been completed, as provided in 10 TAC §1.7 of this title (relating to Appeals Process) or 10 TAC §11.902 of this title (relating to Appeals Process for Competitive HTC Applications), as applicable.

**(c) Funding Sources.** Direct Loan funds are composed of annual HOME and National Housing Trust Fund (NHTF) allocations from HUD, repayment of TCAP or TCAP RF loans, HOME Program Income, NSP Program Income (NSP PI or NSP), and any other similarly encumbered funding that may become available by Board action, except as otherwise noted in this chapter. Similar funds include any funds that are identified by the Board to be loaned or granted for the development of multifamily property and are not governed by another chapter in this title, with the exception of State funds appropriated for a specific purpose.

**(d) Eligible and Ineligible Activities.**

**(1) Eligible Activities.** Direct Loan funds may be used for the predevelopment, acquisition, new construction, reconstruction, rehabilitation, or preservation of affordable housing with suitable amenities, including real property acquisition, site improvements, conversion, demolition, or operating cost reserves, subject to applicable HUD guidance. Other expenses, such as financing costs, relocation expenses of any displaced persons, families, businesses, or organizations may be included. MFDL funds may be used to assist Developments previously awarded by the Department when approved by specific action of the Board. Eligible Activities may have fund source restrictions or may be restricted by a NOFA.

**(2) Ineligible Activities.** Direct Loan funds may not be used for:

**(A)** Adaptive Reuse Developments; or

**(B)** Developments layered with Housing Tax Credits that have elected the income averaging election under Section 42(g)(1)(C) of the Internal Revenue Code that have more than 15% of the Units designated as Market Rate Units.

**(e) Ineligible Costs.** All costs associated with the Development and known by the Applicant must be disclosed as part of the Application. Costs ineligible for reimbursement with Direct Loan funds in accordance with 24 CFR Part 91, Part 92, Part 93, Part 570, and 2 CFR Part 200, as

federally required or identified in the NOFA, include but are not limited to:

- (1) Offsite costs;
- (2) Stored Materials;
- (3) Site Amenities;
- (4) Detached Community Buildings;
- (5) Carports and/or parking garages, unless attached as a feature of the Unit;
- (6) Swimming pools;
- (7) Commercial Space costs;
- (8) Reserve accounts except Operating Deficit Reserve accounts;
- (9) TDHCA fees;
- (10) Syndication and organizational costs;
- (11) Delinquent fees, taxes, or charges;
- (12) Costs incurred more than 24 months prior to the effective date of the Direct Loan contract, unless the Application is awarded TCAP RF, and if specifically allowed by the Board;
- (13) Costs that have been allocated to or paid by another fund source, including but not limited to: Deferred Developer Fee, contingency, and general partner loans and advances;
- (14) Deferred Developer Fee;
- (15) Texas Bond Review Board (BRB) fees;
- (16) Community Facility spaces that are not for the exclusive use of tenants and their guests;
- (17) The portion of soft costs that are allocated to support ineligible hard costs; and
- (18) Other costs limited by Award or NOFA, or as established by the Board.

#### **§13.4. Set-Asides, Regional Allocation, and NOFA Priorities.**

**(a) Set-Asides.** Specific types of Activities or Developments for which a portion of MFDL funds may be reserved in a NOFA will be grouped in Set-Asides. The Soft Repayment Set-Aside, CHDO Set-Aside, and General Set-Aside, as described below, are fixed Set-Asides that will be included in the annual NOFA (except if CHDO requirements are waived or reduced by HUD). The remaining Set-Asides described below are flexible Set-Asides and are applicable only if identified in a NOFA; flexible Set-Asides are not required to be programmed on an annual basis. The Board may approve Set-Asides not described in this section. The amount of a single award may be credited to multiple Set-Asides, in which case the credited portion of funds may be repositioned into an oversubscribed Set-Aside prior to a defined collapse deadline. Applications under any and all Set-Asides may or may not be layered with other Department Multifamily programs except as provided in this section or as determined by the Board to address unique circumstances not addressed by these rules.

##### **(1) Fixed Set-Asides:**

**(A) Soft Repayment Set-Aside.** The Soft Repayment Set-Aside will be funded primarily with NHTF allocations received by the Department. The Soft Repayment Set-Aside is reserved for developments providing Supportive Housing and/or extremely low-income and rent restrictions that would not exist otherwise. Applicants seeking to qualify under this set-aside must propose Developments in which all Units assisted with MFDL funds are available for households earning the greater of the poverty rate and 30% AMI, and have rents no higher than the rent limits for extremely low-income tenants in 24 CFR §93.302(b) and that meet either the requirements of clause (i) or (ii) of this subparagraph:



(i) The Supportive Housing requirements in 10 TAC §11.1(d)(122) including the underwriting considerations for Supportive Housing Developments in 10 TAC §11.302(g)(4) of this title (relating to Underwriting and Loan Policy); or

(ii) The requirements in subclauses (I) - (III) of this clause, for which all Units assisted with MFDL funds:

(I) May not also be receiving any project-based subsidy;

(II) May not be receiving tenant-based voucher or tenant-based rental assistance, to the extent that there are other available Units within the Development that the voucher-holder may occupy; and

(III) May not be restricted to 30% AMI or less by Housing Tax Credits, or any other fund source.

**(B) CHDO Set-Aside.** Unless waived or reduced by HUD, a portion of the Department's annual HOME allocation, will be set aside for eligible CHDOs meeting the requirements of the definition of Community Housing Development Organization in 24 CFR §92.2 and 10 TAC §13.2(4) of this chapter. Applicants under the CHDO Set-Aside must be proposing to develop housing on Development Sites located outside Participating Jurisdictions (PJ), unless the award is made within a Persons with Disabilities (PWD) Set-Aside, or the requirement under Tex. Gov't Code §2306.111(c)(1) has been waived by the Governor. CHDO funds are typically available as fully-repayable amortizing debt consistent with 10 TAC §13.8 of this chapter (relating to Loan Structure and Underwriting Requirements). In instances where an application submitted under the CHDO Set-Aside also would qualify under the Soft Repayment Set-Aside, funds under this Set-Aside may be structured in accordance with the Soft Repayment Set-Aside requirements. A grant for CHDO operating expenses may be awarded in conjunction with an award of MFDL funds under this Set-Aside, if no other CHDO operating grants have been awarded to the Applicant in the same Calendar year, in accordance with 24 CFR §92.208. Applications under the CHDO Set-Aside may not have a for profit special limited partner within the ownership organization chart.

**(C) General Set-Aside.** The General Set-Aside is for all other applications that do not meet the requirements of the Soft Repayment, CHDO, or Flexible Set-Asides, if any. A portion of the General Set-Aside may be reallocated into the CHDO Set-Aside in order to fully fund a CHDO award that exceeds the remaining amount in the Set-Aside.

**(2) Flexible Set-Asides:**

**(A) 4% HTC and Bond Layered Set-Aside.** The 4% and Bond Layered Set-Aside is reserved for Applications layered with 4% Housing Tax Credits and Private Bond funds where the Development Owner does not meet the definition of a CHDO, but that the Application does meet all other MFDL requirements.

**(B) Persons with Disabilities (PWD) Set-Aside.** The PWD Set-Aside is reserved for Developments restricting Units for residents who meet the requirements of Tex. Gov't Code §2306.111(c)(2) while not exceeding the number of Units limited by 10 TAC §1.15 of this title (relating to the Integrated Housing Rule). MFDL funds will be awarded in a NOFA for the PWD Set-Aside only if sufficient funds are available to award at least one Application within a Participating Jurisdiction under Tex. Gov't Code §2306.111(c)(1).

**(C) 9% HTC Layered Set-Aside.** The 9% Layered Set-Aside is reserved for Applications that are layered with 9% Housing Tax Credits that do not meet the definition of CHDO, but that do meet all other MFDL requirements. Awards under this Set-aside Are dependent on the concurrent award of a 9% HTC allocation; however, an allocation of 9% HTC does not ensure that a sufficient amount of MFDL funds will be available for award.

(D) Additional Set-Asides may be developed, subject to Board approval, to meet the requirements of specific funds sources, or address Department priorities. To the extent such Set-Asides are developed, they will be reflected in a NOFA or other similar governing document.

**(b) Regional Allocation and Collapse.** All funds received directly from HUD will be allocated to regions and potentially subregions based on a Regional Allocation Formula (RAF) within the applicable Set-Asides (unless the funds have already been through a RAF of the annual NOFA and/or Special Purpose NOFA). The RAF methodology may differ by fund source. HOME funds will be allocated in accordance with Tex. Gov't Code Chapter 2306. The end date and Application Acceptance Date for the RAF will be identified in the NOFA, but in no instance shall it be less than 30 days from the date a link to the Board approved NOFA or NOFA Amendment is published on the Department's website.

(1) After expiration of the RAF, remaining funds within each respective Set-Aside may collapse on an end date identified in the NOFA. All Applications received prior to these collapse period deadlines will continue to hold their priority unless they are withdrawn, terminated, suspended, or funded.

(2) Funds remaining after expiration of the Set-Asides on the end date identified in the NOFA, which have not been requested in the form of a complete Application, may be made available statewide on a first-come first-served basis to Applications submitted after the collapse dates, as further described in the NOFA.

(3) In instances where the RAF would result in regional or subregional allocations insufficient to fund an Application, the Department may use an alternative method of distribution, including an early collapse, revised formula or other methods as approved by the Board, and reflected in the NOFA.

**(c) Notice of Funding Availability (NOFA).** MFDL funds will be distributed pursuant to the terms of a published NOFA that provides the specific collapse dates and deadlines as well as Set-Aside and RAF amounts applicable to each NOFA, along with scoring criteria, priorities, award limits, and other Application information. Set-asides, RAFs, and total funding amounts may increase or decrease in accordance with the provisions herein without further Board action as authorized by the Board.

**(1) Priorities for the Annual NOFA.** Complete Applications received during the period of the RAF (if one is used in the Annual NOFA) will be prioritized for review and recommendation to the Board, if funds are available in the region or subregion (as applicable) and in the Set-Aside under which the Application is received. If insufficient funds are available in a region or subregion to fund all Applications then the scoring criteria in §13.6 of this Chapter will be applied if necessary and the oversubscribed Applications will be evaluated only after the RAF and/or Set-Aside collapse and in accordance with the additional priority levels below, unless an Application received earlier is withdrawn or terminated. If insufficient funds are available within a region, subregion, or Set-Aside, the Applicant may request to be considered under

another Set-Aside if they qualify, prior to the collapse. Applications will be reviewed and recommended to the Board if funds are available in accordance with the order of prioritization described in paragraphs (A) - (C) of this subsection.

**(A) Priority 1.** Applications not layered with current year 9% Housing Tax Credits (HTC) that are received prior to the Market Analysis Delivery Date as described in 10 TAC §11.2 of this title (relating to Program Calendar for Housing Tax Credits). Priority 1 Applications may be prioritized based on score within their respective Set-Aside for a certain time period, for certain populations, or for certain geographical areas, as further described in the NOFA.

**(B) Priority 2.** Applications layered with current year 9% HTC will be prioritized based on their recommendation status and score for an HTC allocation under the provisions of the Qualified Allocation Plan (QAP). All Priority 2 applications will be deemed received on the Market Analysis Delivery Date identified in Chapter 11 of this title, relating to the QAP. Priority 2 applications will be recommended for approval of the MFDL award at the same meeting when the Board approves the 9% HTC allocations. Applications for 9% HTC allocations are not guaranteed the availability of MFDL funds, as further provided in §13.5(f) of this chapter.

**(C) Priority 3.** Applications that are received after the Market Analysis Delivery Date identified in the QAP will be evaluated on a first come first served basis for any remaining funds, until the final deadline identified in the annual NOFA. However, the NOFA may describe additional prioritization periods for certain populations, or for certain geographical areas. Applications layered with 9% HTC that are on the waitlist after the late July Board meeting will be considered Priority 3 Applications; if the Applicant receives an allocation later in the year, the Application Acceptance date will be the date the Commitment Notice is issued, and MFDL funds are not guaranteed to be available.

**(d) Other Priorities.** The Board may set additional priorities for the annual NOFA, and for one time or special purpose NOFAs.

### **§13.5. Application and Award Process.**

**(a) Applications.** MFDL Applicants must follow the applicable requirements in 10 TAC Chapter 11 Subchapter C (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules).

**(b) Application Acceptance Date.** Applications will be considered received on the business day of receipt, unless a different time period is described in the Department's rules or NOFA. If an Application is received after 5:00 p.m., Austin local time, it will be determined to have been received on the following business day. Applications received on a non-business day will be considered received on the next day the Department is open. Applications will be considered complete at the time all Application materials, required third party reports and application fee(s) are received by the Department. Within certain Set-Asides or priorities, the date of receipt may be fixed, regardless of the earlier actual date a complete Application is received, if so specified in the Department's rules or NOFA. If multiple Applications have the same Application Acceptance Date, in the same region or subregion (as applicable), and within the same Set-Aside, then score and tiebreaker factors, as described in §13.6 of this chapter (relating to Selection Criteria) for MFDL or 10 TAC §11.7 and §11.9 of this title (relating to Tie Breaker

Factors and Competitive HTC Selection Criteria, respectively) for Applications layered with 9% HTC, will be used to determine the Application's rank.

**(c) Market Analysis.** Applications proposing Rehabilitation that request MFDL as the only source of Department funding may be exempted from the Market Analysis requirement in 10 TAC §11.205(2) (relating to Required Third Party Reports) if the Development's rent rolls for the most recent six months reflect occupancy of at least 80% of all habitable Units.

**(d) Required Site Control Agreement Provisions.** All Applicants for MFDL funds must include the following provisions in the purchase contract or site control agreement if the subject property is not already owned by the Applicant:

(1) "Notwithstanding any other provision of this Contract, Purchaser shall have no obligation to purchase the Property, and no transfer of title to the Purchaser may occur, unless and until the Department has provided Purchaser and/or Seller with a written notification that: (A) It has completed a federally required environmental review and its request for release of federal funds has been approved and, subject to any other Contingencies in this Contract, (i) the purchase may proceed, or (ii) the purchase may proceed only if certain conditions to address issues in the environmental review shall be satisfied before or after the purchase of the property; or (B) It has determined that the purchase is exempt from federal environmental review and a request for release of funds is not required."; and

(2) "The Buyer does not have the power of eminent domain relating to the purchase and acquisition of the Property. The Buyer may use federal funds from the U.S. Department of Housing and Urban Development (HUD) to complete this purchase. HUD will not use eminent domain authority to condemn the Property. All parties entered this transaction voluntarily and the Buyer has notified the Seller of what it believes the value of the Property to be in accordance with 49 CFR Part 24 Appendix A. If negotiations between both parties fail, Buyer will not take further action to acquire the Property."

**(e) Oversubscribed Funds for 9% HTC-Layered Applications.** Should MFDL funds be oversubscribed in a Set-Aside or for a fund source that has geographic limitations within a Set-Aside, Applications concurrently requesting 9% HTC will be notified and may amend their Application to accommodate another fund source and make changes that still meet threshold requirements in 10 TAC Chapter 11 and 13 of this title, and do not impact scoring under 10 TAC Chapter 11 of this title. The Department will provide notice to all impacted Applicants in the case of over-subscription, which will include a deadline for response. Multiple Applications from a single or affiliated Applicants does not constitute oversubscription, and the Applicant(s) will not be able to amend their Applications as described in this paragraph. If MFDL funds become available between the Market Analysis Delivery Date, and the last Board meeting in July, they will not be reserved for 9% HTC-layered Applications, unless the reservation is described in the NOFA.

**(f) Availability of funds for 4% HTC-layered Applications.** If an Application requesting layered 4% HTC and Direct Loan funds is terminated under 10 TAC §11.201(2)(E), it will receive a new Application Acceptance Date for purposes of Direct Loan on submission of the new Certificate of Reservation. Direct Loan funds will not be reserved for terminated Applications, and may not be available for the Application with a new Reservation.

**(f) Source of Direct Loan Funds.** To the extent that an Application is submitted under a Set-Aside where multiple sources of Direct Loan funds are available, the Department will select

sources of funds for recommended Applications, as provided in paragraphs (1) – (4) of this subsection.

(1) The Department will generally select the recommended source of funds to award to an Application in the order described in subparagraphs (A) – (C) of this paragraph, which may be limited by the type of activity an Application is proposing or the proposed Development Site of an Application:

(A) Federal funds with commitment and expenditure deadlines will be selected first;

(B) Federal funds that do not have commitment and expenditure deadlines will be selected next; and

(C) Nonfederal funds that do not have commitment and expenditure deadlines will be selected last; however,

(2) The Department may also consider repayment risk or ease of compliance with other fund sources when assigning the source of funds to recommend for award to an Application;

(3) The Department may move to the next fund source prior to exhausting another selection; and

(4) The Department will make the final decision regarding the fund source to be recommended for an award (within a Set-Aside that has multiple fund sources), and this recommendation may be not be appealed.

**(g) Eligibility Criteria and Determinations.** The Department will evaluate Applications received under a NOFA for eligibility and threshold pursuant to the requirements of this chapter and Chapter 11 of this title (relating to the Qualified Allocation Plan). The Department may terminate the Application if there are changes at any point prior to MFDL loan closing that would have had an adverse effect on the score and ranking order of the Application that would have resulted in the Application being ranked below another Application received prior to the subject Application.

(1) Applicants requesting MFDL as the only source of Department funds must meet the Experience Requirement as provided in either subparagraph (A) or (B) of this paragraph:

(A) The Experience Requirement as provided in 10 TAC §11.204(6) of this title (relating to Required Documentation for Application Submission); or

(B) Alternatively by providing the acceptable documentation listed in §11.204(6)(i)-(ix) of this title evidencing the successful development, and at least five years of the successful operation, of a project or projects with at least twice as many affordability restricted Units as requested in the Application.

(2) The Executive Director or authorized designee must make eligibility determinations for Applications for Developments that meet the criteria in subparagraph (A) or (B) of this paragraph regardless of available fund sources:

(A) Received an award of funds or resources from the Development from the Department within 15 years preceding the Application Acceptance Date; or

(B) Started or completed construction, and are not proposing acquisition or rehabilitation.

(3) An Application that requires an eligibility determination must identify that fact prior to, or in their Application so that an eligibility determination may be made subject to the Applicant's appeal rights under 10 TAC §11.902 or 10 TAC §1.7 of this title, as applicable. A finding of eligibility under this section does not guarantee an award. Applications requiring eligibility determinations generally will not be funded with HOME or NSP funds.

(A) Requests under this subsection will not be considered more than 60 calendar days

prior to the first Application Acceptance Date published in the NOFA, for the Set-Aside in which the Applicant plans to apply.

(B) Criteria for consideration include clauses (i) - (iii) of this subparagraph:

(i) Evidence of circumstances beyond the Applicant's control that could not have been prevented with appropriate due diligence; or

(ii) Force Majeure events (not including weather events); and

(iii) Evidence that no further exceptional conditions exist that will delay or cause further cost increases.

(C) Criteria for consideration shall not include weather events, typical construction, or financing delays.

(D) Applications for Developments that previously received an award from the Department ~~in~~ within 15 years preceding the Application Acceptance Date will be evaluated at no more than the amount of Developer Fee proposed the last time that the Department published an Underwriting Report. MFDL funds may not be used to fund increased Developer Fee, regardless of the allowability of the increase under other Department rules.

**(h) Request for Preliminary Determination.** Applicants considering a request for Direct Loan layered with a 9% HTC Application may submit a Request for Preliminary Determination with the HTC Pre-Application. The results of evaluation of the Request may be used as evidence of review of the Development and the Principals for purposes of scoring under 10 TAC §11.9(e)(1)(E). Submission of a Request for Preliminary Determination does not obligate the Applicant to request Multifamily Direct Loan funds with their full Application. The Preliminary Determination is based solely on the information provided in the request, and does not indicate that the full Application will be accepted. It is not a guarantee that Direct Loan funds will be available or awarded to the full Application.

**(i) Effective rules and contractual terms.** The contractual terms of an award will be governed by and reflect the rules in effect at the time of Application; however, any changes in federal requirements will be reflected in the contractual terms. Further provided, that if after award, but prior to execution of such Contract, there are new rules in effect, the Direct Loan awardee may elect to be governed by the new rules, provided the Application would continue to have been eligible for award under the rules and NOFA in effect at the time of Application.

### **§13.6. Scoring Criteria.**

The criteria identified in paragraphs (1) - (6) of this section will be used in the evaluation and ranking of Applications if other Applications have the same Application Acceptance Date, within the same Set-Aside, and having the same prioritization. There is no rounding of numbers in this section, unless rounding is explicitly indicated for that particular calculation or criteria. The scoring items used to calculate the score for a 9% HTC-Layered Application will be utilized for scoring for an MFDL Application, and evaluated in the same manner, except as specified below. Scoring criteria in Chapter 11 of this title will always be superior to Scoring Criteria in this chapter if an MFDL Application is also concurrently requesting 9% HTC:

**(1) Opportunity Index.** Applicants eligible for points under 10 TAC §11.9(c)(4) (relating to the Opportunity Index) (up to 7 points).

**(2) Resident Services.** Applicants eligible for points under 10 TAC §11.9(c)(3)(A) (relating to

Resident Services) (10 points) and Applicants eligible for points under 10 TAC §11.9(c)(3)(B) (relating to Resident Services) (1 point).

**(3) Underserved Area.** Applicants eligible for points under 10 TAC §11.9(c)(5) (relating to Underserved Area) (up to 5 points).

**(4) Subsidy per Unit.** An Application that caps the per MFDL eligible cost per Unit subsidy limit below Section 234 Condo Limits or HUD 221(d)(4) statutory limits (as applicable) for all Direct Loan Units regardless of Unit size at:

(A) \$100,000 per MFDL eligible cost per Unit (4 points).

(B) \$80,000 per MFDL eligible cost per Unit (8 points).

(C) \$60,000 per MFDL eligible cost per Unit (10 points).

**(5) Rent Levels of Residents.** Except for Applications submitted under the Soft Repayment Set-Aside, an Application may qualify to receive up to 13 points for placing the following rent and income restrictions on the proposed Development for the Federal and State Affordability Periods. These Units must not be restricted to 30% or less of AMI by another fund source; however, layering on other HTC Units may be considered for scoring purposes.

(A) At least 20% of all low-income Units at 30% or less of AMI (13 points);

(B) At least 10% of all low-income Units at 30% or less of AMI or, for a Development located in a Rural Area, 7.5% of all low-income Units at 30% or less of AMI (12 points); or

(C) At least 5% of all low-income Units at 30% or less of AMI (7 points).

**(6) Tiebreaker.** In the event that two or more Applications receive the same number of points based on the scoring criteria above, staff will recommend for award the Application that proposes the greatest percentage of 30% AMI MFDL Units within the Development that would convert to households at 15% AMI in the event of a tie as represented in the Tiebreaker Certification submitted at the time of Application.

**(7) Application Changes between Submission and Award.** Changes to Applications where scoring is utilized under Chapter 13 will not be allowed between submission and award.

### **§13.7. Maximum Funding Requests and Minimum Number of MFDL Units.**

**(a) Maximum Funding Request.** The maximum funding request for an Application will be identified in the NOFA, and may vary by development type, set-aside, or fund source.

**(b) Maximum New Construction or Reconstruction Per-Unit Subsidy Limits.** While more restrictive per-Unit subsidy caps are allowable and incentivized as point scoring items in 10 TAC §13.6 of this chapter (relating to Scoring Criteria) or, the per-Unit subsidy limit for a Development will be determined by the Department as the Section 234 Condo limits with the applicable high cost percentage adjustment in effect at the start date of the NOFA, which are the maximum MFDL eligible cost per-Unit subsidy limits that an Applicant may use to determine the amount of MFDL funds combined with other federal funds that may subsidize a Unit.

**(c) Maximum Rehabilitation Per-Unit Subsidy Limits.** The MFDL eligible cost per-Unit to rehabilitate a Development may not exceed the HUD 221(d)(4) statutory limits, subject to high cost factors as published in the NOFA,

**(d) Minimum Number of MFDL Units.** The minimum required number of MFDL Units will be determined by the MFDL per-Unit subsidy limits and the cost allocation analysis, which will ensure the amount of MFDL Units as a percentage of total Units is equal to or greater than the percentage of MFDL funds requested as a percentage of total eligible MFDL Development costs.

Applicants may be able to estimate the minimum number of MFDL Units by entering Application information into the Direct Loan Unit Calculator Tool available on the Department's website, but this tool might not cover the specific requirements of every Application. A larger number of Units may also be required if scoring is utilized.

### **§13.8. Loan Structure and Underwriting Requirements.**

**(a) Loan Structures.** Loan structures will generally be governed by the Direct Loan fund source as described below but may be further differentiated within a Set-Aside, as described in a NOFA.

(1) Loans of NHTF may be structured as deferred payable, deferred forgivable, or amortizing loan at an interest rate as low as 0%. The amortization period for an NHTF amortizing loan will not exceed 40 years. Terms for these loans will be published in the NOFA. It is the responsibility of the Applicant to account for any Basis, taxable event implications, and other federal superior lender requirements when requesting the deferred forgivable or deferred payable loan structure available in this Set-Aside.

(2) Loans of HOME, NSP PI, and TCAP RF will be structured as fully repayable (must pay) at an interest rate specified in the NOFA and approved by the Board, with an amortization period not to exceed 40 years and loan term that matches the term of any superior loans (within six months) at the time of Application, within the requirements of §13.8(c)(3) of this chapter. To the extent the Direct Loan has first lien position during the permanent term, the amortization period and loan term must meet the requirements of §13.8(c)(3) of this Chapter. Terms for these loans will be published in the NOFA. The interest rate, amortization period, and term for the loan will be fixed by the Board at the time of award, and can only be amended prior to loan closing by the process in 10 TAC §13.12 (relating to Pre-Closing Amendments to Direct Loan Terms).

(3) Requirements of any other fund source will be determined in the NOFA.

**(b) Closing Memo to Underwriting Report.** Any changes to the total development cost, expenses, income, and/or other sources of funds from time of the publication of the initial Underwriting Report at the time of award to the time of loan closing, must be reevaluated by Real Estate Analysis staff, who will typically publish a Closing Memo to the Underwriting Report. The Report may recommend changes to the principal amount and/or the repayment structure for the Multifamily Direct Loan pursuant to §11.302 of this title (relating to Underwriting Rules and Guidelines), except that the change must have been an available option in the rule or NOFA (as applicable), and may not be made to awards that were competitively scored to the extent that change would have caused the Development to lose points. This will allow the Department to uphold the competitive process, mitigate any increased risk, and to ensure that the Development is not oversubsidized. Where the Department determines such risk is not adequately mitigated, the award may be terminated or reconsidered by the Board. Increases in the principal amount or scheduled payment amounts of any superior loans that cause the total Debt Coverage Ratio (DCR) to decrease by more than .05 require approval by the Board. If the changes cause the total DCR to no longer comply with 10 TAC §11.302 of this title (relating to Underwriting Rules and Guidelines), the award may be subject to termination.

**(c) Criteria for Construction-to-Permanent Loans.** Direct Loans awarded through the Department must adhere to the following criteria as identified in paragraphs (1) - (11) of this subsection if being requested as construction-to-permanent loans, for which the interest rate



will be specified in the NOFA and approved by the Board:

(1) The construction term for MFDL loans shall be coterminous with any superior construction loan(s), but no greater than 36 months. In the event the MFDL loan is the only loan with a construction term or the superior construction loan, the construction term shall be 24 months with one available six-month extension that may be approved for good cause by the Executive Director or his designee;

(2) No interest will accrue during the construction term;

(3) The loan term shall be no less than 15 years and no greater than 40 years and six months, and the amortization period shall be between 30 to 40 years. The Department's loan must mature at the same time or within six months of the shortest term of any senior debt, so long as neither exceeds 40 years and six months. The loan term commences following the end of the construction term;

(4) ~~For~~ For Direct Loans structured as deferred payable loans, the loan shall be structured with either one balloon payment due at the end of the loan or with several payments due at a point in time during the loan term. For Direct Loans structured as deferred forgivable, the loan shall be structured with one balloon payment due at the end of the loan term; -

(5) For amortized Direct Loans that are not subordinate to a HUD-insured loan, the loan shall be structured with regular monthly payments beginning on the first of the month following the end of the construction term and continuing for the loan term;

(6) For amortized Direct Loans that are subordinate to a HUD-insured loan, the loan shall be structured with an annual payment beginning on the first of the month following one year after the end of the construction term and continuing until the end of the loan term;

(7) If an amortized Direct Loan is subordinate to a HUD-insured loan that requires the Direct Loan to be subject to surplus cash flow as defined by HUD, staff will require the debt service coverage ratio on both the HUD insured loan and the Department's loan - as restricted to surplus cash flow - to continue to meet the minimum 1.15 DCR in accordance with 10 TAC §11.302(d)(4)(D) (relating to Acceptable Debt Coverage Ratio Range), and may require payment of any remaining amount from other sources;

(8) Loans shall be secured with a deed of trust with a permanent lien position that is superior to any other sources for financing including hard repayment debt that is in an amount less than or equal to the Direct Loan amount and superior to any other sources that have soft repayment structures, non-amortizing balloon notes, have deferred forgivable provisions, or in which the lender has an identity of interest with any member of the Development Team. Parity liens may only be considered with USDA Rural Development;

(9) If the Direct Loan amounts are more than 50% of the Total Housing Development Cost, except for Developments also financed through the USDA §515 program, the Application must include documents identified in either subparagraphs (A) or (B) of this paragraph:

(A) A letter from a Third Party Certified Public Accountant verifying the capacity of the Applicant, Developer, or Development Owner to provide at least 10% of the Total Housing Development Cost as a short term loan for the Development; or

(B) Evidence of a line of credit or equivalent tool in the sole determination of the Department equal to at least 10% of the Total Housing Development Cost from a financial institution that is available for use during the proposed Development activities;

(10) If the Direct Loan is the only source of permanent Department funding for the

Development, the Development Owner must provide all items required in subparagraphs (A) and (B) of this paragraph:

- (A) Equity in an amount not less than 10% of Total Housing Development Costs; however,
  - (i) An Applicant for Direct Loan funds may request Board approval to have an equity requirement of less than 10% that would not have to meet the waiver requirements in 10 TAC §11.207 of this title. The request must specify the proposed equity that will be provided and provide support for why that reduced level of equity will be sufficient to provide reasonable assurance that such owner will be able to complete construction and stabilization timely; and
  - (ii) "Sweat equity" or other forms of equity that cannot be readily accessed will not be allowed to count toward the equity requirement; and

(B) Evidence submitted through the Application Submission Process that shows the Direct Loan amount is not greater than 80% of the Total Housing Development Costs; and

(11) Up to 50% of the loan may be advanced at loan closing, should there be sufficient eligible costs to reimburse that amount.

**(d) Criteria for Construction Only Loans.** Direct Loans through the Department must adhere to the following criteria as identified in paragraphs (1) - (3) of this subsection if being requested as construction only loans:

- (1) The term of the construction loan must be coterminous with any superior construction loan(s), but no greater than 36 months. In the event that the Direct Loan is the only construction loan or is the superior construction loan, the term may not exceed 24 months with available six-month extension that may be approved for good cause by the Executive Director or his designee;
- (2) The interest rate may be as low as 0%; and
- (3) Up to 50% of the loan may be advanced at loan closing, should there be sufficient costs to reimburse that amount.

**(e) Criteria for Permanent Refinance Loans.** If 90% of the Department's loan will repay existing debt, the first payment will be due the month after the month of loan closing, in which 90% of the loan may be advanced at loan closing, unless the Board approves another date.

**(f) Evaluations.** All Direct Loan Applicants in which third-party financing entities are part of the sources of funding must include a pro forma and lender approval letter evidencing review of the Development and the Principals, as described in 10 TAC §11.9(e)(1) of this title (relating to Competitive HTC Selection Criteria). Where no third-party financing exists, the Department reserves the right to procure a third-party evaluation which will be required to be prepaid by the Applicant.

**(g) Pass-Through Loans.** Department funds may not be used as pass-through financing. The Department's Borrower must be the Development Owner.

### **§13.9. Construction Standards.**

All Developments financed with Direct Loans will be required to meet at a minimum the applicable requirements in Chapter 11 of this title (relating to the Qualified Allocation Plan). In addition, Developments must meet all applicable state and local codes, ordinances, and standards; the 2015 International Existing Building Code (IEBC) or International Building Code (IBC), as applicable. Should IEBC be more restrictive than local codes, or should local codes not

exist, then the Development must meet the requirements imposed by IEBC or IBC, as applicable. Developments must also meet the requirements in subsections (a) - (e) of this section:

**(a) Third-Party Recommendations.** Recommendations made in the Environmental Site Assessment (§11.305 of this title) and any Scope of Work and Cost Review (§11.306 of this title) with respect to health and safety issues, life expectancy of major systems (structural support; roofing; cladding and weatherproofing; plumbing; electrical; and heating, ventilation, and air conditioning) must be implemented;

**(b) Lead and Asbestos Testing.** For properties originally constructed prior to 1978, the Scope of Work and Cost Review and scope of work must be provided to the party conducting the lead-based paint and/or asbestos testing, and the Development Owner must implement the mitigation recommendations of the testing report;

**(c) Broadband Infrastructure.** The broadband infrastructure requirements described in 24 CFR §92.251(a)(2)(vi) or (b)(1)(x) for HOME, NSP, or TCAP RF; or 24 CFR §93.301(a)(2)(vi) or 24 CFR §93.301(b)(2)(vi) for NHTF, as applicable;

**(d) Properties in Catastrophe Areas.** Developments located in the designated catastrophe areas specified in 28 TAC §5.4008 must comply with 28 TAC §5.4011 (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2008); and

**(e) Minimum Construction Standards.** Rehabilitation Developments funded with federal sources may also be required to meet Minimum Rehabilitation Standards, as required by HUD.

### **§13.10. Development and Unit Requirements.**

**(a) Proportionality.** The bedroom/bathroom/amenities and square footages for Direct Loan Units must be comparable to the bedroom/bathroom/amenities and square footages for the total number of Units in the Development based on the amount of Direct Loan funds requested as a percentage of total MFDL eligible costs. As a result of this requirement, the Department will use the Proration Method as the Cost Allocation Method in accordance with CPD Notice 16-15, except as described in subsection (b) of this section. Additionally, the amount of Direct Loan funds requested cannot exceed the per-unit subsidy limit described in this chapter or in the applicable NOFA. Direct Loan Units must be provided as a percentage of each Unit Type, in proportion to the percentage of total costs included in the Direct Loan.

**(b) Floating Units.** Floating Direct Loan Units may only float among the Units as described in the Direct Loan Contract and Direct Loan LURA.

(1) For HOME, NSP, and TCAP RF, Direct Loan Units must float throughout the Development unless the Development also contains public housing Units that will receive Operating Fund or Capital Fund assistance under Section 9 of the 1937 Act as defined in 24 CFR §5.100.

(2) For NHTF, Direct Loan Units must float throughout the Development, except as prohibited by 24 CFR §93.203.

**(c) Unit Match Requirements.**

(1) For a Development funded with NSP and/or NHTF, a required matching contribution will result in at least one HOME Match-Eligible Unit, in addition to the NSP and/or NHTF Units.

(2) For a Development funded with HOME, a required matching contribution may or may not result in a HOME Match-Eligible Unit, beyond the Department's HOME assisted Units.

(3) For a Development funded with TCAP RF in the annual NOFA, a matching contribution in

addition to the Match that the Department counts from the TCAP RF investment will result in some amount of TCAP RF assisted Units being considered HOME Match-Eligible Units.

**(d) Minimum Affordability Period.** The minimum affordability period for all Direct Loan Units awarded under a NOFA will match the greater of the term of the loan, or 30 years unless a lesser period is approved by the Board. The Department reserves the right to extend the Affordability Period for Developments that fail to meet Program requirements.

**(e) Restricted Units.** If the Department is the only source of permanent funding for the Development by virtue of equity from HTC and MFDL funding, all Units must be income and rent restricted under a combination of HTC and Direct Loan LURAs, regardless of the amount of deferred Developer Fee as a permanent source. If the MFDL funding is the only source of permanent funding for the Development, all Units must be income and rent restricted by the Direct Loan LURA, and all costs must be MFDL eligible, regardless of the amount of deferred Developer Fee as a permanent source.

**(f) Income Levels Committed at Time of Application.** If the Direct Loan funds are used in a 9% or 4% HTC-Layered Development that is electing Income Averaging to qualify under IRC §42, the Direct Loan Units required by the LURA must continue to be provided at the income levels committed at the time of Application. Direct Loan Unit designations may not change to meet Income Averaging requirements.

**(g) Mandatory Development Features.** Development features described under 10 TAC §11.101(b)(4) may be selected to meet federal or state requirements, without a change to the number or description of features (e.g. selection of Broadband).

### **§13.11. Post-Award Requirements.**

**(a)** Direct Loan awardees must satisfactorily complete the following Post-Award Requirements after the Board approval date.

**(b)** If a Direct Loan award is declined by the Direct Loan awardee and returned after Board approval, or if the Direct Loan awardee or Affiliates fail to timely enter into the Contract, close the loan, begin and complete construction, or leave a portion of the Direct Loan award unexpended, penalties may apply under 10 TAC §11.9(f) (relating to Competitive HTC Selection Criteria), and/or the Department may prohibit the Applicant and all Affiliates from applying for MFDL funds for a period of two years.

**(c)** Extensions to the benchmarks in paragraphs (1) - (4) and (7) – (8) of this subsection may only be approved by the Executive Director or authorized designee in accordance with 10 TAC §13.12 or 10 TAC §13.13 of this chapter, as applicable.

**(1) Award Letter.** If provided, Direct Loan awardees must execute and return to the Department an Award Letter, ~~z~~ -provided by the Department, ~~z~~ within 15 calendar days after receipt. The Award Letter will be conditional in nature, and provide a basic outline of the terms and conditions approved by the Board.

**(2) Environmental Clearance.** In order to obtain environmental clearance (if applicable), Direct Loan awardees must submit a fully completed environmental review -including any applicable reports to the Department within 90 calendar days of the Board approval date. If the awardee was contemporaneously awarded 9% HTC and selected Readiness to Proceed points under 10 TAC §11.9(c)(8), this period is within 14 calendar days of the Board approval date. If the awardee receives an allocation of 9% HTC from the waitlist after the July Board

meeting, the fully completed environmental review must be submitted within 90 calendar days of receipt of the Carryover Allocation Agreement. Applicants or Direct Loan awardees that commit any choice limiting activities as defined by HUD in 24 CFR Part 58 prior to obtaining environmental clearance may be subject to termination of the Direct Loan award.

**(3) Contract Execution.** After a Development receives environmental clearance (if applicable), the Department will draft a Contract to be emailed to the Direct Loan awardee. Direct Loan awardees must execute and return a Contract to the Department within 30 calendar days after receipt of the Contract.

**(4) Loan Closing and Construction Commencement.** Loan closing must occur and construction must begin on or before the date described in the Contract. If construction has not commenced within 12 months of the Contract Effective Date, the award may be terminated.

**(5) Quarterly Construction Status Reports.** The Development Owner is required to submit quarterly Construction Status Reports to the Asset Management Division as described and by the deadlines specified in 10 TAC §10.402(h) of this title (relating to Construction Status Report).

**(6) Mid-Construction Development Inspection Letter.** In addition to any other obligations required as the result of any other Department funding sources, the Development Owner must submit a Mid-Construction Development Inspection Request once the Development has met at least 25% construction completion as indicated on the G703 Continuation Sheet or HUD equivalent form. Department inspection staff will issue a Mid-Construction Development Inspection Letter that confirms work is being done in accordance with the applicable codes, the construction contract, and construction documents. Regardless of how Direct Loan funds are allocated among acquisition, Hard, and Soft costs, up to 50% of the Direct Loan award may be released prior to issuance of the Mid-Construction Development Inspection Letter, with the remaining 50% available for disbursement in accordance with the percentage of Construction Completion.

**(7) Construction Completion.** Construction must be completed, as reflected by the Development's certificate(s) of occupancy (if new construction and/or reconstruction) and Certificate of Substantial Completion (AIA Form G704) or Form HUD-92485 for instances in which a federally insured HUD loan is being utilized, within the construction term of any superior construction loan(s) -or 24 months of the actual loan closing date if no superior construction loan(s) exists.

**(8) Closed Final Development Inspection Letter.** The Closed Final Development Inspection Letter must be issued by the Department within 36 months of loan closing. This letter will verify committed amenities have been provided and confirm compliance with all applicable accessibility requirements; this letter may include deficiencies that require resolution. The Final Development Inspection may be conducted concurrently with a Uniform Physical Condition Standards (UPCS) inspection. However, any letters associated with a UPCS inspection will not satisfy the Closed Final Development Inspection Letter required by this subsection.

**(9) Initial Occupancy.** Initial occupancy of all MFDL assisted Units by eligible households shall occur within six months of the final Direct Loan draw. Requests to extend the initial occupancy period must be accompanied by documentation of marketing efforts and a marketing plan.

The marketing plan may be submitted to HUD for final approval, if required by the MFDL fund source.

**(10) Per Unit Repayment.** Repayment may be required on a per Unit basis for Units that have not been rented to eligible households within 18 months of the final Direct Loan draw.

**(11) Termination and Repayment for Failure to Complete.** Termination of the Direct Loan award and repayment of all disbursed funds will be required for any Development that is not completed within four years of the effective date of a Direct Loan Contract.

**(12) Loan Closing.** In preparation for closing any Direct Loan, the Development Owner must submit the items described in subparagraphs (A) - (F) of this paragraph. Providing incomplete documents, or not responding timely to subsequent Department requests for materials needed to facilitate closing, may significantly inhibit the Department's ability to meet closing timelines. Any request to change the financing structure of the Development, or the ownership structure, will in most cases extend the amount of time it will take for the Department to meet closing timelines, and may move prioritization of the closing below that of other Developments.

(A) Documentation of the prior closing or concurrent closing with all sources of funds necessary for the long-term financial feasibility of the Development.

(B) Due diligence items determined by the Department to be prudent and necessary to meet the Department's rules and to secure the interests of the Department, as requested by Staff.

(C) When Department funds have a first lien position during the construction term, or if the Development is a public work under state law assurance of completion of the Development in the form of payment and performance bonds in the full amount of the construction contract or equivalent guarantee as allowable under state law in the sole determination of the Department is required. Development Owners utilizing the USDA §515 program for a Development that is not a public work are exempt from this requirement, but must meet the alternative requirements set forth by USDA.

(D) Documentation required for preparation of closing loan documents includes, but is not limited to:

(i) Substantially final information necessary for REA staff to reevaluate the transaction prior to loan closing, including but not limited to a substantially final development cost schedule, sources and uses, operating pro forma, annual operating expenses, rent schedule, updated written financial commitments or term sheets, and any additional financing exhibits that have changed since the time of Application.

(ii) Substantially final Draft Owner/General Contractor agreement and draft Owner/Architect agreement prior to closing with final executed copies required by the day of closing;

(iii) Survey of the Property that includes a certification to the Department, Development Owner, Title Company, and other lenders;

(iv) Plans and specifications for review by the Department's inspection staff. Inspection staff will issue a plan review letter that is intended to assist in identifying early concerns associated with the Department's final construction requirements; and

(v) If layered with Housing Tax Credits, a substantially final draft limited partnership agreement between the General Partner and the tax credit investor entity.

(E) If required by the fund source, prior to Contract Execution unless an earlier period is described in Chapters 10, 11, or 12 of this title, the Development Owner must provide verification of:

- (i) Environmental clearance from the Department or HUD, as applicable;
- (ii) Site and Neighborhood clearance from the Department;
- (iii) Documentation necessary to show compliance with the Uniform Relocation Assistance and Property Act and any other relocation requirements that may apply; and
- (iv) Any other documentation that is necessary or prudent to meet program requirements or state or federal law in the sole determination of the Department.

(F) The Direct Loan Contract as executed, which will be drafted by the Department's counsel or its designee for the Department. No changes proposed by the Developer or Developer's counsel will be accepted unless approved by the Department's Legal Division or its designee.

**(13) Loan Documents.** The Development Owner is required to execute all loan closing documents required by and in the form and substance acceptable to the Department's Legal Division.

(A) Loan closing documents include but are not limited to a promissory note, deed of trust, construction loan agreement (if the proceeds of the loan are to be used for construction), LURA, Architect and/or licensed engineer certification of understanding to complete environmental mitigation if such mitigation is identified in HUD's environmental clearance or the Real Estate Analysis Division (REA) Underwriting Report and assignment and security instruments whereby the Developer, the Development Owner, and/or any Affiliates (if applicable) grants the Department their respective right, title, and interest in and to other collateral, including without limitation the Owner/Architect agreement and the Owner/General Contractor agreement, to secure the payment and performance of the Development Owner's obligations under the loan documents.

(B) Loan terms and conditions may vary based on the type of Development, Real Estate Analysis Underwriting Report, and the Set-Aside under which the award was made.

**(14) Disbursement of Funds.** The Borrower must comply with the requirements in subparagraphs (A) - (K) of this paragraph in order to receive a disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Borrower's compliance with these requirements is required with a request for disbursement:

(A) All requests for disbursement must be submitted through the Department's Housing Contract System, using the MFDL draw workbook or such other format as the Department may require;

(B) Documentation of the total construction costs incurred and costs incurred since the last disbursement of funds must be submitted. Such documentation must be signed by the General Contractor and certified by the Development architect and is generally in the form of an AIA Form G702/ G703 or HUD equivalent form;

(C) Disbursement requests must include a down-date endorsement to the Direct Loan (mortgagee) title policy or Nothing Further Certificate that includes a title search through the date of the Architect's signature on AIA form G702 or HUD equivalent form. For release of retainage, the down-date endorsement to the Direct Loan title policy or

Nothing Further Certificate must be dated at least 30 calendar days after the date of the completion as certified on the Certificate of Substantial Completion (AIA Form G704) with \$0 as the work remaining to be completed. If AIA Form G704 or HUD equivalent form indicates an amount of work remaining to be completed, the Architect must provide confirmation that all work has been completed. Disbursement requests for acquisition and closing costs are exempt from this requirement;

(D) At least 50% of Direct Loan funds (except as otherwise allowed for Permanent Refinance Loans described in 10 TAC §13.8(e)) will be withheld from the initial disbursement of loan funds to allow for periodic disbursements;

(E) The initial draw request for the Development must be entered into the Department's Housing Contract System no later than 15 calendar days prior to the one year anniversary of the effective date of the Direct Loan Contract;

(F) Up to 75% of Direct Loan funds may be drawn before providing evidence of Match. Thereafter, the Borrower must provide evidence of Match being credited to the Development prior to release of the final 25% of funds;

(G) Developer Fee disbursement shall be limited by subparagraph (H) of this paragraph and is further conditioned upon clauses (i) - (iii), as applicable:

(i) For Developments in which the loan is secured by a first lien deed of trust against the Property, 75% shall be disbursed in accordance with percent of construction completed. 75% of the total allowable fee will be multiplied by the percent completion, as documented by the construction contract and as may be verified by an inspection by the Department. The remaining 25% shall be disbursed at the time of release of retainage; or

(ii) For Developments in which the loan is not secured by a first lien deed of trust or the Development is also utilizing Housing Tax Credits, Developer Fees will not be reimbursed by the Department, except as follows. If all other lenders and syndicator in a Housing Tax Credit Development (if applicable) provide written confirmation that they do not have an existing or planned agreement to govern the disbursement of Developer Fees and expect that Department funds shall be used to fund Developer Fees, they shall be reimbursed in the same manner as described in subparagraph (A) of this paragraph; and

(iii) The Department may reasonably withhold any disbursement in accordance with the Loan Documents and if it is determined that the Development is not progressing as reasonably necessary to meet the benchmarks for the timely completion of construction of the Development as set forth in the loan documents, or that cost overruns have put the Development Owner's ability to repay its Direct Loan or complete the construction at risk in accordance with the terms of the loan documents and within budget. If disbursement has been withheld under this subsection, the Development Owner must provide evidence to the satisfaction of the Department that the Development will be timely completed and occupied in order to continue receiving funds. If disbursement is withheld for any reason, disbursement of any remaining Developer Fee will be made only after construction of the Development has been completed, and all requirements for expenditure and occupancy have been met; and



(H) Expenditures must be allowable and reasonable in accordance with federal and state rules and regulations. The Department shall review each expenditure requested for reasonableness. The Department may request the Development Owner make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of Department funds to Development Owner as may be necessary or advisable for compliance with all program requirements;

(I) Table Funding (the wiring of Direct Loan funds to the title company at loan closing) may be permitted at the time of closing, for disbursement of funds related to eligible acquisition costs and eligible softs costs incurred, and in an amount not to exceed 50% of the total funds. Table Funding must be requested in writing and will not be considered unless the Direct Loan Contract has been executed, and all necessary documentation has been submitted to and accepted by the Department at least 10 calendar days prior to the anticipated closing date;

(J) Following 50% construction completion, any funds will be released in accordance with the percentage of construction completion as documented on AIA Form G702/703 or HUD equivalent form. 10% of requested Hard Costs will be retained and will not be released until the final draw request. If the Development is receiving funds from more than one MFDL source, the retainage requirement will apply to each fund source individually. All of the items described in clauses (i) - (xii) of this subparagraph are required in order to approve the final draw request:

(i) Fully executed Certificate of Substantial Completion (AIA Form G704) or Form HUD-92485 (for instances in which a federally insured HUD loan is being utilized) with \$0 as the cost estimate of work that is incomplete. If AIA Form G704 or Form HUD-92485 indicates an amount of work remaining to be completed, the Architect must provide confirmation that all work has been completed;

(ii) A down date endorsement to the Direct Loan title policy or Nothing Further Certificate dated at least 30 calendar days after the date of completion as certified on the Certificate of Substantial Completion (AIA Form G704) or Form HUD-92485;

(iii) For Developments not layered with Housing Tax Credits, a Closed Final Development Inspection Letter from the Department;

(iv) For Developments subject to the Davis-Bacon Act, evidence from the Department's Senior Labor Standards Specialist that the final wage compliance report was received and approved or confirmation that HUD or other entity maintains Davis-Bacon oversight;

(v) Certificate(s) of Occupancy (for New Construction or Reconstruction Units);

(vi) Development completion reports, which includes, but is not limited to, documentation of full compliance with the Uniform Relocation Act/104(d), Match Documentation requirements, and Section 3 of the Housing and Urban Development Act of 1968, as applicable to the Development, and any other applicable requirement; and

(vii) If applicable to the Development, certification from Architect or a licensed engineer that all HUD environmental mitigation conditions have been met;

(K) No disbursement of funds will be approved without receipt of all closing documents

in the form and substance required by the Department's Legal Division; and  
(J) The final draw request must be submitted within the construction term as determined in accordance with 10 TAC §13.8(c)(1) or (d)(1) as applicable, unless the construction term has been extended in accordance with 10 TAC §13.12 or 10 TAC §13.13 of this chapter, as applicable.

**(15) Annual Audits and Cost Certifications under 24 CFR §93.406(b).**

**(A) Annual Audits under 24 CFR §93.406(b).** Unless otherwise directed by the Department, the Development Owner shall arrange for the performance of an annual financial and compliance audit of funds received and performances rendered under the Direct Loan Contract, subject to the conditions and limitations set forth in the executed Direct Loan Contract. All approved audit reports will be made available for public inspection within 30 days after completion of the audit.

**(B) Cost Certifications under 24 CFR §93.406(b).**

**(i) Non-HTC-Layered Developments.** Within 180 calendar days of the later of all title transfer requirements and construction work having been performed, as reflected by the Development's Certificate(s) of Occupancy (if New Construction) or Certificate of Substantial Completion (AIA Form G704 or HUD equivalent form), or when all modifications required as a result of the Department's Final Construction Inspection are cleared as evidenced by receipt of the Closed Final Development Inspection Letter, the Development Owner will submit to the Department a cost certification done by an independent licensed certified public accountant of all Development costs (including project NHTF eligible costs), subject to the conditions and limitations set forth in the executed Direct Loan Contract.

**(ii) HTC-Layered Developments.** With the Cost Certification required by the Low Income Housing Tax Credit Program, the Development Owner must submit to the Department a cost certification completed by an independent licensed certified public accountant of all Development costs (including NHTF project eligible costs), subject to the conditions and limitations set forth in the executed Direct Loan Contract.

**§13.12. Pre-Closing Amendments to Direct Loan Terms.**

**(a) Executive Approval Required Pre-Closing.** The Executive Director or authorized designee may approve amendments to loan terms prior to closing as described in paragraphs (1) - (6) of this subsection.

(1) Extensions of up to six months to the loan closing date required in 10 TAC §13.11(c)(4) of this chapter (relating to Post-Award Requirements) may be approved prior to closing. An Applicant must submit sufficient evidence documenting good cause, including but not limited to, documented delays caused by circumstances outside the control of the applicant or constraints in arranging a multiple fund source closing. An extension will not be available if an Applicant has:

(A) Failed to timely begin or complete a process required to close; including, but not limited to:

- (i) The process of finalizing all equity and debt financing;
- (ii) The environmental clearance process;
- (iii) The due diligence processing requirements; or

(B) Made changes to the Development that require significant additional underwriting by the Department without at least 45 days to complete the review.

(2) Changes to the construction term and/or loan maturity date to accommodate the requirements of other lenders or to maintain parity of term may be approved prior to closing.

(3) Extensions of up to 12 months to the Construction Completion date or date of receipt of a Closed Final Development Inspection Letter required in 10 TAC §13.11(c)(8) of this chapter may be requested but generally are not approved prior to initial loan closing. Extensions under this paragraph are determined based on documentation that the extension is necessary to complete construction and that there is good cause for the extension.

(4) Only to the extent determined necessary by Real Estate Analysis to maintain financial feasibility, changes to the amortization period (not to exceed 40 years) or interest rate (to not less than the minimum specified in rule or NOFA) that cause the annual repayment amount to decrease less than 20%, or any changes to the amortization or interest rate that increase the annual repayment amount up to 20%.

(5) Decreases in the Direct Loan amount, provided the decrease does not jeopardize the financial viability of the Development in the determination of Real Estate Analysis may be approved prior to closing, though the Development Owner may be subject to penalties as further described in 10 TAC §13.11 of this chapter (relating to Post-Award Requirements). Increases will not be approved unless the Applicant applies for the additional funding under an open NOFA.

(6) Changes to other loan terms or requirements that would not require a Waiver or change in Scoring Items, as necessary to facilitate the loan closing without exposing the Department to undue financial risk.

**(b) Board Approval Required Pre-Closing.** Board approval is necessary for any other changes prior to closing.

### **§13.13. Post-Closing Amendments to Direct Loan Terms.**

**(a) Good Cause Extensions.** The Executive Director or authorized designee may approve extensions of up to 12 months under 10 TAC §13.11(g) or (m)(11) of this chapter (relating to Post-Award Requirements) based on documentation that there is good cause for the extension.

**(b) Amendments to MFDL Awards.** Except in cases of Force Majeure, changes to terms of awards subject to mandatory HUD reporting requirements will only be processed after the Construction Completion is reported to the federal oversight entity as completed, and the last of the MFDL funds have been drawn.

**(c) Executive Amendments.** The Executive Director or authorized designee may approve amendments to loan terms post-closing as described in paragraphs (1) - (3) of this subsection. Board approval is necessary for any other changes post-closing.

**(1) Changes in Terms.** Changes to the amortization or maturity date to accommodate the requirements of other lenders or maintain parity of term may be approved post-closing, provided the changes result in the Direct Loan continuing to meet the requirements of 10 TAC §13.8(c)(1) and (3) of this chapter (relating to Loan Structure and Underwriting Requirements), and NOFA requirements.

**(2) Post-Closing Subordinations or Re-subordinations of MFDL Liens.** Re-subordination of the Direct Loan in conjunction with refinancing may be approved post-closing, provided the

conditions in subparagraphs (A) - (E) of this paragraph are met:

(A) The Borrower is current with loan payments to the Department, and no notice has been given of any Event of Default on any MFDL loan. Histories of late or non-payment on any other MFDL loan may result in denial of the request;

(B) The refinance does not propose payment to any of the Development Owner or Developer parties (including the Limited Partners);

(C) A proposal for partial repayment of the MFDL lien is made with the request; and

(D) The new superior lien is in an amount that is equal to or less than the original senior lien and does not negatively affect the financial feasibility of the Development.

(i) For purposes of this section, a negative effect on the financial feasibility of the Development shall mean a reduction in the total Debt Coverage Ratio (DCR) of more than 0.05, or if the DCR no longer meets the requirements of 10 TAC §11.302 of this title; and

(ii) Changes to accommodate refinancing with a new superior lien that is in an amount that exceeds the original senior lien and which will be directly applied to property improvements, as evidenced by the loan or security agreements (exclusive of fees associated with the refinance and any required reserves), will be considered on a case by case basis.

(E) The subordination or re-subordination request does not include a request to subordinate or resubordinate any MFDL LURA, with the exception of partial subordination or re-subordination of receivership rights (subject to the proposed receiver entity or Affiliate not having been Debarred by the Department or on the Federal Suspended or Debarred Listing).

**(3) Workout Arrangements.** Changes required to the Department's loan terms or amounts that are part of an approved Asset Management Division work out arrangement may be approved after Construction Completion.

**(d) Contract Assignments and Assumptions of MFDL Liens.** The Executive Director or authorized designee may approve the Contract Assignment and Assumption of MFDL Liens following approval of an Ownership Transfer request if the conditions in paragraphs (1) – (3) of this subsection are met:

(1) The assignment or assumption is not prohibited by the Contract, Loan Documents, or regulations;

(2) The assignment or assumption request is based on either subparagraph (A) or (B) of this paragraph:

(A) There are insufficient funds available in the transaction to fully repay the Direct Loan at the time of acquisition, for which Deferred Developer Fee, Development Owner or Affiliate Contributions, or other similar liabilities will not be considered in determining whether the Direct Loan could be repaid at the time of acquisition; or

(B) The new superior lien will be directly applied to property improvements as evidenced by the loan or security agreements, exclusive of fees association with the new financing and any required reserves; and

(3) The corresponding Ownership Transfer has been approved in accordance with all requirements in 10 TAC §10.406 of this title (relating to Ownership Transfers), and no prospective Owner including person, -or affiliate, as those terms are defined in 2 CFR Part 180

and 2 CFR Part 2424, Subpart I, has been subject to state Debarment or are on the Federal Suspended or Debarred Listing. This includes Board Members and Limited Partners.

1h

**BOARD ACTION REQUEST**

**LEGAL DIVISION**

**NOVEMBER 5, 2020**

Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning related properties Twentyfive25 f/k/a The Grove at Trinity Mills (Bond # MF009, CMTS 2529), Solaire f/k/a Heritage Square (Bond # MF011, CMTS 2562), The Finley f/k/a The Highlands (Bond # MF012, CMTS 2535), 600 East f/k/a Stone Ridge (Bond # MF014, CMTS # 2519)

**RECOMMENDED ACTION**

**WHEREAS**, Twentyfive25 f/k/a The Grove at Trinity Mills, owned by 2525 Players Court LLC (2525 Owner), had uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

**WHEREAS**, Solaire f/k/a Heritage Square, owned by 4753 Duncanville Road LLC (Solaire Owner), had uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

**WHEREAS**, The Finley f/k/a The Highlands, owned by 2359 Highland Road LLC (Finley Owner), had uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

**WHEREAS**, 600 East f/k/a Stone Ridge, owned by 600 East Arkansas Lane LLC (600 East Owner), had uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

**WHEREAS**, 2525 Owner, Solaire Owner, Finley Owner, and 600 East Owner are related entities, ultimately controlled by GVA Pro LLC (collectively known as "Owner");

**WHEREAS**, all findings that had been referred for an administrative penalty were resolved informally, with final violations addressed on October 6, 2020;

**WHEREAS**, on September 29, 2020, Owner's representatives participated in an informal conference with the Enforcement Committee and agreed, subject to Board approval, to enter into an Agreed Final Order assessing an administrative penalty of \$2,500; and

**WHEREAS**, staff has based its recommendations for an Agreed Final Order on the Department's rules for administrative penalties and an assessment of each and all of the statutory factors to be considered in assessing such penalties, applied specifically to the facts and circumstances present in this case.

**NOW, therefore, it is hereby**

**RESOLVED**, that an Agreed Final Order assessing an administrative penalty of \$2,500, for noncompliance at Twentyfive25 f/k/a The Grove at Trinity Mills (Bond # MF009, CMTS 2529), Solaire f/k/a Heritage Square (Bond # MF011, CMTS 2562), The Finley f/k/a The Highlands (Bond # MF012, CMTS 2535), and 600 East f/k/a Stone Ridge (Bond # MF014, CMTS # 2519), substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, is hereby adopted as the order of this Board.

**BACKGROUND**

Four properties currently controlled by GVA Pro, LLC were referred for an administrative penalty during 2020. All were originally acquired by Asmara Affordable Housing, Inc. in 1996, using proceeds from NHP Foundation – Asmara Project Series 1996A Bonds; there are no direct loan funds or tax credits issued by TDHCA. The bonds were refinanced in 2003 using NHP Foundation – Asmara Project Series 2003 Bonds totaling \$31,500,000 to refund Series 1996, and to finance capital improvements and necessary repairs to nine projects in Texas, including the four properties listed below. TDHCA approved the sale of the four properties listed below in 2017. GVA Pro, LLC is the general partner for five total properties, including the four listed below, and is ultimately controlled by Alan Stalcup, its sole member. Records of the Texas Secretary of State list Mr. Stalcup as the manager for each owner. CMTS lists Laura Smith as the primary contact for each owner. All properties are self-managed by GVA Property Management, with Laura Smith as the primary contact in CMTS. An informal conference with the TDHCA Enforcement Committee was attended by Laura Smith and Leah Finley; Ms. Smith is the Executive Vice President for GVA Property Management and Leah Finley is their Regional Manager for the Dallas-Fort Worth area.

<b>Property</b>	<b>Former property name</b>	<b>Owner<sup>1</sup></b>	<b>Units</b>	<b>Location</b>
TwentyFive25 (Bond # MF009, CMTS 2529)	The Grove at Trinity Mills	2525 Players Court LLC	320, of which 208 are restricted by TDHCA	Dallas
Solaire (Bond # MF011, CMTS 2562)	Heritage Square	4753 Duncanville Road LLC	112, all of which are restricted by TDHCA	Dallas
The Finley (Bond # MF012, CMTS 2535)	The Highlands	2359 Highland Road LLC	136, of which 120 are restricted by TDHCA	Dallas
600 East (Bond # MF014, CMTS # 2519)	Stone Ridge	600 East Arkansas Lane LLC	204, of which 194 are restricted by TDHCA	Arlington

GVA Pro, LLC has a history of prior administrative penalty referrals that were resolved informally during 2018 for TwentyFive25, The Finley, and Solaire. All had similar findings and the owner had just acquired the properties, so the referrals were closed with a warning letter after findings were resolved. Findings from 2018 included failure to maintain compliant written policies and procedures, failure to maintain a compliant Affirmative Marketing Plan, failure to recertify one household, and failure to provide social services at one property.



The following findings of noncompliance were identified during onsite file monitoring and Uniform Physical Conditions Standards (UPCS) inspections conducted during 2020. The uncorrected findings were referred for an administrative penalty when no corrective documentation was received, and final findings of noncompliance were resolved on October 6, 2020, after intervention by the Enforcement Committee.

1. TwentyFive25:
  - a. Failure to provide Tenant Income Certification and Documentation: Units 802 and 1012.
2. Solaire:
  - a. Unit not leased to low income household / household income above limit upon initial occupancy: Units 112, 203.
  - b. Failure to provide Tenant Income Certification and Documentation: Units 202, 305, 306, 601, and 709.
  - c. Written Policies and Procedures / Tenant Selection Criteria: Units 207, 305, 306, 402, 404, 413, and 601
3. The Finley:
  - a. Failure to provide pre-onsite documentation, including Written Policies and Procedures, Affirmative Marketing Plan, and Social Services documentation.
  - b. Unit not leased to low income household / Household income above limit upon initial occupancy: Unit 239.
  - c. Failure to include tenant lease protection language: Unit 239.
  - d. Failure to provide Tenant Rights and Resources Guide: Unit 239.
  - e. Failure to provide Tenant Income Certification and Documentation: Units 115, 253, 255.
  - f. Written Policies and Procedures / Tenant Selection Criteria: Units 210, 224, 268.
4. 600 East:
  - a. Uniform Physical Condition Standards (UPCS) Findings from 2020 onsite inspection.

All findings listed above have been resolved, with final corrections received on October 6, 2020, but they remain eligible for an administrative penalty. It is not appropriate to close these administrative penalty referrals with a warning letter because of the prior history for the ownership group, with warning letters previously issued during 2018. Additionally, the properties that are part of this administrative penalty recommendation represent 80% of the owner's portfolio with TDHCA, all of which failed to submit a reply to the Compliance Division during the corrective action period. When corrections were submitted, they required multiple reviews and submissions because they were incomplete. The referrals also show a pattern of failure to annually recertify households across multiple properties. These facts indicate internal organization and management problems. However, full resolution has been achieved, and no orders have previously been signed for this ownership group to pay an administrative penalty. Initial Enforcement Committee deliberations for these four properties contemplated a significantly higher penalty, but owner representatives discussed compelling improvements during the informal conference that members believe will decrease the likelihood of future violations. Improvements included hiring new staff and district management with tax credit experience, all staff at the properties attended income eligibility and compliance trainings after referral for a penalty, and management is proactively

searching for UPCS trainings and information so that they can perform self-inspections. Management has also implemented new software to improve tenant file tracking and recertifications, a biweekly supervisory review of new tenant files via the new software, and is regularly logging in to CMTS to check for TDHCA correspondence and deadlines. Owner has agreed to sign an Agreed Final Order to pay a \$2,500 administrative penalty.

Consistent with direction from the Department's Enforcement Committee, a probated and, upon successful completion of probation, partially forgivable administrative penalty in the amount of \$2,500 is recommended. This will be a reportable item of consideration under previous participation for any new award to the principals of the Owner.

ENFORCEMENT ACTION AGAINST	§	BEFORE THE
2525 PLAYERS COURT LLC,	§	TEXAS DEPARTMENT OF
4753 DUNCANVILLE ROAD LLC,	§	HOUSING AND COMMUNITY
2359 HIGHLAND ROAD LLC, AND	§	AFFAIRS
600 EAST ARKANSAS LANE LLC WITH RESPECT TO	§	
TWENTYFIVE25 (BOND # MF009, CMTS 2529),	§	
SOLAIRE (BOND # MF011, CMTS 2562), THE	§	
FINLEY (BOND # MF012, CMTS 2535), AND 600	§	
EAST (BOND FILE # MF014 / CMTS # 2519)	§	

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 5<sup>th</sup> day of November, 2020, 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 2525 PLAYERS COURT LLC, 4753 DUNCANVILLE ROAD LLC, 2359 HIGHLAND ROAD LLC, AND 600 EAST ARKANSAS LANE LLC, all Texas limited liability companies (collectively, Respondent).

This Agreed Order is executed pursuant to the authority of the Administrative Procedure Act (APA), Tex. Gov't Code §2001.056, which authorizes the informal disposition of contested cases. In a desire to conclude this matter without further delay and expense, the Board and Respondent agree to resolve this matter by this Agreed Final Order. The Respondent agrees to this Order for the purpose of resolving this proceeding only and without admitting or denying the findings of fact and conclusions of law set out in this Order.

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

**WAIVER**

Respondent acknowledges the existence of their right to request a hearing as provided by Tex. Gov't Code §2306.044, and to seek judicial review, in the District Court of Travis County, Texas, of any order as provided by Tex. Gov't Code §2306.047. Pursuant to this compromise and settlement, the Respondent waives those rights and acknowledges the jurisdiction of the Board over Respondent.

## **FINDINGS OF FACT (FOF)**

### **Jurisdiction:**

1. Asmara Affordable Housing, Inc. (Prior Owner) acquired multiple properties in 1996 using proceeds from NHP Foundation – Asmara Project Series 1996A Bonds. The bonds were refinanced in 2003 using NHP Foundation – Asmara Project Series 2003 Bonds totaling \$31,500,000 to refund Series 1996, and to finance capital improvements and necessary repairs to nine projects in Texas, including TwentyFive25 (Bond # MF009, CMTS 2529), Solaire (Bond # MF011, CMTS 2562), The Finley (Bond # MF012, CMTS 2535), and 600 East (Bond # MF014, CMTS # 2519) (collectively, Properties).
2. Prior Owner signed four land use restriction agreements (collectively LURAs) regarding the Properties. The first was an Amended and Restated Regulatory and Land Use Restriction Agreement (TwentyFive25 Bond LURA), dated as of December 1, 2003, and filed of record at Document Number 2003203160 of the Official Public Records of Real Property of Denton County, Texas. The second was an Amended and Restated Regulatory and Land Use Restriction Agreement (Solaire Bond LURA), dated as of December 1, 2003, and filed of record at Document Number 200302687761 of the Official Public Records of Real Property of Dallas County, Texas, as amended by that first amendment dated April 1, 2013, and filed of record at Document Number 201300132550. The third was an Amended and Restated Regulatory and Land Use Restriction Agreement (Finley Bond LURA), dated as of December 1, 2003, and filed of record at Document Number 200302687762 of the Official Public Records of Real Property of Dallas County, Texas, as amended by that first amendment signed April 1, 2013, and filed of record at Document Number 201300132551. The fourth was a an Amended and Restated Regulatory and Land Use Restriction Agreement (600 East Bond LURA), dated as of December 1, 2003, and filed of record at Document Number D203462754 of the Official Public Records of Real Property of Tarrant County, Texas. In accordance with Section 11 of each LURA, the LURAs are a restrictive covenant/deed restriction encumbering the Properties and binding on all successors and assigns for the full term of the LURAs.
3. Respondent purchased the Properties in 2017, and is bound to the terms of the LURAs in accordance with Section 11 thereof.
4. Respondent is subject to the regulatory authority of TDHCA.

## Compliance Violations<sup>1</sup>:

### **TwentyFive25:**

1. An on-site monitoring review was conducted on January 17, 2020, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and an April 30, 2020, corrective action deadline was set, however, no corrective documentation was received by the deadline and the following violations were referred for an administrative penalty:
  - a. Respondent failed to provide Tenant Income Certification and Documentation for units 802 and 1012, a violation of 10 TAC §10.612 (Tenant File Requirements) and Section 2(b) of the TwentyFive25 Bond LURA, which require Bond developments with less than 100% of units set aside for low income households to annually recertify each household. The violation for unit 802 was corrected on May 27, 2020, and the violation for Unit 1012 was corrected on June 9, 2020, after intervention by the Enforcement Committee.

### **Solaire:**

2. An on-site monitoring review was conducted on January 28, 2020, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and a May 11, 2020, corrective action deadline was set, however, no corrective documentation was received by the deadline and the following violations were referred for an administrative penalty:
  - b. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 112 and 203, a violation of 10 TAC §10.611 (Determination, Documentation and Certification of Annual Income) and Section 2(b) of the Solaire Bond LURA, which require screening of tenants to ensure qualification for the program. The violation for unit 112 was corrected on June 1, 2020, and the violation for unit 203 was dropped on June 11, 2020, after intervention by the Enforcement Committee.
  - c. Respondent failed to provide Tenant Income Certification and Documentation for units 202, 305, 306, 601, and 709, a violation of 10 TAC §10.612 (Tenant File Requirements) and Section 2(b) of the Solaire Bond LURA, which require Bond developments with less than 100% of units set aside for low income households

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<sup>1</sup> Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TAC Chapter 10 refers 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.

to annually recertify each household. Violations were corrected between June 1, 2020 and June 16, 2020, after intervention by the Enforcement Committee.

- d. Respondent failed to maintain written tenant selection criteria under which each household was screened in the tenant files for units 207, 305, 306, 402, 404, 413, and 601, a violation of 10 TAC §10.610 (Written Policies and Procedures), which requires all developments to establish written tenant selection criteria that meet minimum TDHCA requirements and maintain a copy in the tenant file. Violations for units 207, 404, and 413 were dropped when corrections were submitted on June 1, 2020, and other unit violations were corrected between June 1, 2020, and June 24, 2020, after intervention by the Enforcement Committee.

### **The Finley:**

3. An on-site monitoring review was conducted on February 7, 2020, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and a May 14, 2020, corrective action deadline was set, however, no corrective documentation was received by the deadline and the following violations were referred for an administrative penalty:
  - e. Respondent failed to submit pre-onsite documentation, including Written Policies and Procedures, an Affirmative Marketing Plan, and documentation of Social Services, a violation of 10 TAC §10.607 and §10.618, which require all developments to submit necessary documentation as requested in preparation for an upcoming monitoring review. The violation was corrected on June 17, 2020, after intervention by the Enforcement Committee.
  - f. Respondent failed to provide documentation that household income was within prescribed limits upon initial occupancy for unit 239, a violation of 10 TAC §10.611 (Determination, Documentation and Certification of Annual Income) and Section 2(b) of the Finley Bond LURA, which require screening of tenants to ensure qualification for the program. The violation was corrected on June 17, 2020, after intervention by the Enforcement Committee.
  - g. Respondent failed to execute required lease provisions or exclude prohibited lease language for unit 239, a violation of 10 TAC §10.613 (Lease Requirements), which requires leases to include specific language protecting tenants from eviction without good cause and prohibiting owners from taking certain actions such as locking out or seizing property, or threatening to do so, except by judicial process. The violation was corrected on June 17, 2020, after intervention by the Enforcement Committee.
  - h. Respondent failed to provide a Tenant Rights and Resources Guide and get a signed Acknowledgment for unit 239, a violation of 10 TAC §10.613 (Lease Requirements), which requires owners to post a laminated copy of the Guide in a

common area of the leasing office and provide a copy to each household during the application process and upon any subsequent change to common amenities, unit amenities, or services. The violation was corrected on June 17, 2020, after intervention by the Enforcement Committee.

- i. Respondent failed to provide Tenant Income Certification and Documentation for units 115, 253, 255, a violation of 10 TAC §10.612 (Tenant File Requirements) and Section 2(b) of the Finley Bond LURA, which require Bond developments with less than 100% of units set aside for low income households to annually recertify each household. The violations were corrected on June 17, 2020, after intervention by the Enforcement Committee.
- j. Respondent failed to maintain written tenant selection criteria under which each household was screened in the tenant files for units 210, 224, and 268, a violation of 10 TAC §10.610 (Written Policies and Procedures), which requires all developments to establish written tenant selection criteria that meet minimum TDHCA requirements and maintain a copy in the tenant file. The violations were corrected on July 29, 2020, after intervention by the Enforcement Committee.

#### **600 East f/k/a Stone Ridge**

4. A Uniform Physical Condition Standards (UPCS) inspection was conducted on March 11, 2020. Inspection reports showed numerous serious property condition violations, a violation of 10 TAC § 10.621 (Property Condition Standards). Notifications of noncompliance were sent and a June 29, 2020, corrective action deadline was set. No corrective documentation was received by the deadline and violations listed at Exhibit 1 were referred for an administrative penalty. Final proof of correction was received on October 6, 2020, after intervention by the Enforcement Committee.
5. All violations listed above are considered resolved at the time of this Order.

#### **CONCLUSIONS OF LAW**

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, and 10 TAC Chapter 2.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
3. Respondent violated 10 TAC §10.612 and Section 2(b) of the LURAs in 2020, by failing to provide annual recertifications for units 802 and 1012 at TwentyFive25, units 202, 305, 306, 601, and 709 at Solaire, and units 115, 253, 255 at The Finley.
4. Respondent violated 10 TAC §10.611 and Section 2(b) of the LURAs in 2020, by failing to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 112 and 203 at Solaire and unit 239 at The Finley.

5. Respondent violated 10 TAC §10.610 in 2020, by not maintaining written tenant selection criteria in the tenant files for units 207, 305, 306, 402, 404, 413, and 601 at Solaire, and units 210, 224, and 268 at The Finley.
6. Respondent violated 10 TAC §10.607 and §10.618 in 2020, by not submitting pre-onsite documentation including Written Policies and Procedures, an Affirmative Marketing Plan, and documentation of Social Services in preparation for the monitoring review at The Finley.
7. Respondent violated leasing requirements in 10 TAC §10.613 in 2020, by failing to execute required lease provisions and prohibitions for unit 239 at The Finley.
8. Respondent violated leasing requirements in 10 TAC §10.613 in 2020, by failing to provide a Tenant Rights and Resources Guide for unit 239 at The Finley and having the household sign an acknowledgment form.
9. Respondent violated 10 TAC §10.621, by failing to comply with HUD's Uniform Physical Condition Standards when major violations were discovered and not timely corrected at 600 East.<sup>2</sup>
10. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules, the Board has personal and subject matter jurisdiction over Respondent pursuant to Tex. Gov't Code §2306.041 and §2306.267.
11. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.
12. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code §2306.053 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to Tex. Gov't Code §2306.041.
13. An administrative penalty of \$2,500 is an appropriate penalty in accordance with 10 TAC Chapter 2.

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<sup>2</sup> HUD's Uniform Physical Condition Standards are the standards adopted by TDHCA pursuant to 10 TAC §10.621(a)



Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in Tex. Gov't Code §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the Governing Board of the Texas Department of Housing and Community Affairs orders the following:

**IT IS HEREBY ORDERED** that Respondent is assessed an administrative penalty in the amount of \$2,500.

**IT IS FURTHER ORDERED** that Respondent shall follow the requirements of 10 TAC §10.406, a copy of which is included at Exhibit 2, and obtain approval from the Department prior to consummating a sale of the property, if contemplated.

**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 November 5, 2020.

By: \_\_\_\_\_  
Name: Leslie Bingham  
Title: Vice 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 \_\_\_\_ day of November, 2020, personally appeared Leslie Bingham, 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 \_\_\_\_ day of November, 2020, 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

**SIGNATURE PAGE FOR TWENTYFIVE25**

STATE OF TEXAS §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, \_\_\_\_\_ (notary name), a notary public in and for the State of \_\_\_\_\_, on this day personally appeared Alan Stalcup (person signing document), known to me or proven to me through circle one: personally known / driver's license / passport to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (he/she) executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is Alan Stalcup, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of Manager for Respondent. I am the authorized representative of Respondent, owner of the Property, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Governing Board of the Texas Department of Housing and Community Affairs."

**RESPONDENT:**

**2525 PLAYERS COURT LLC**, a Texas limited liability company

By: \_\_\_\_\_  
Name: Alan Stalcup  
Title: Manager

Given under my hand and seal of office this \_\_\_\_\_ day of November, 2020.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



**SIGNATURE PAGE FOR THE FINLEY**

STATE OF TEXAS §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, \_\_\_\_\_ (notary name), a notary public in and for the State of \_\_\_\_\_, on this day personally appeared Alan Stalcup (person signing document), known to me or proven to me through circle one: personally known / driver's license / passport to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (he/she) executed the same for the purposes and consideration therein expressed, who being by me duly sworn, deposed as follows:

1. "My name is Alan Stalcup, I am of sound mind, capable of making this statement, and personally acquainted with the facts herein stated.
2. I hold the office of Manager for Respondent. I am the authorized representative of Respondent, owner of the Property, which is subject to a Land Use Restriction Agreement monitored by the TDHCA in the State of Texas, and I am duly authorized by Respondent to execute this document.
3. Respondent knowingly and voluntarily enters into this Agreed Final Order, and agrees with and consents to the issuance and service of the foregoing Agreed Order by the Governing Board of the Texas Department of Housing and Community Affairs."

**RESPONDENT:**

**2359 HIGHLAND ROAD LLC**, a Texas limited liability company

By: \_\_\_\_\_  
Name: Alan Stalcup  
Title: Manager

Given under my hand and seal of office this \_\_\_\_\_ day of November, 2020.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



## Exhibit 1

### UPCS Violation List

Area	Building	Unit	Inspectable Item	Deficiency	Level	Note	Completed Date	Completed By
Site			Grounds	Overgrown/Penetrating Vegetation	L3	Bldg 15 17		How was this resolved? (buildings 15 & 17 not on invoices)
Site			Health & Safety	Electrical Hazards - Exposed Wires/Open Panels	L3	Behind bldg 15	3/13/2020	Mariano Lopez
Site			Health & Safety	Hazards - Sharp Edges	L3		4/8/2020	Metro 57
Site			Health & Safety	Hazards - Tripping	L3	By office pole missing, by bldg 36, CABLE CORD BLDG 25		How was this resolved?
Site			Parking/Drives	Cracks/Settlement/Heaving/Loose Materials/Potholes	L3	Potholes by bldg 25	4/22/2020	Metro 57
Building Exterior	Bldg 10		Health & Safety	Electrical Hazards - Exposed Wires/Open Panels	L3	AC disconnect	7/28/2020	Mariano Lopez
Building Exterior	Bldg 10		Health & Safety	Hazards - Sharp Edges	L3	Nails fence	3/26/2020	Mariano Lopez
Common Areas	Bldg 10		Halls/Corridors/Stairs	Broken/Missing Hand Railing	L3	Lag bolts	7/28/2020	Mariano Lopez
Unit	Bldg 10	1003	Ceiling	Mold/Mildew/Water Stains/Water Damage	L3	Bdr 2		How was this resolved?
Unit	Bldg 10	1003	Doors	Damaged Frames/Threshold/Lintels/Trim	L3	Front dr		How was this resolved?
Unit	Bldg 10	1003	Doors	Damaged Surface (Holes/Paint/Rusting)	L3	Front dr	7/14/2020	Mariano Lopez
Unit	Bldg 10	1005	Bathroom	Lavatory Sink - Damaged/Missing	L1	Bath sink surface	7/28/2020	Delta Renovation
Unit	Bldg 10	1005	Doors	Damaged Frames/Threshold/Lintels/Trim	L3	Bath dr frame	3/13/2020	Delta Renovation
Unit	Bldg 10	1005	Health & Safety	Electrical Hazards - Exposed Wires/Open Panels	L3	Panel gaps	3/13/2020	Mariano Lopez

Unit	Bldg 10	1005	Health & Safety	Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable	L3	Bdr 1(RDI)	3/11/2020	Verified by Inspector
Unit	Bldg 10	1005	Health & Safety	Infestation - Insects	L3	Kitchen	7/27/2020	Massey
Unit	Bldg 10	1005	Kitchen	Refrigerator-Missing/Damaged/Inoperable	L1	Gasket	3/11/2020	Jermaine McCants
Unit	Bldg 10	1013	Bathroom	Shower/Tub - Damaged/Missing	L2	Surface	7/28/2020	Delta Renovation
Unit	Bldg 10	1013	Smoke Detector	Missing/Inoperable	L3	Hall	7/28/2020	Jermaine McCants
Building Systems	Bldg 11		Health & Safety	Electrical Hazards - Exposed Wires/Open Panels	L3	AC disconnect	7/29/2020	Mariano Lopez
Building Systems	Bldg 11		Sanitary System	Missing Drain/Cleanout/Manhole Covers	L3	Clean out cover	7/29/2020	Mariano Lopez
Unit	Bldg 11	1103	Doors	Damaged Hardware/Locks	L3	Strike plate back door	3/19/2020	Jermaine McCants
Unit	Bldg 11	1103	Electrical	Missing Breakers/Fuses	L3	Missing	3/19/2020	Jermaine McCants
Unit	Bldg 11	1103	Kitchen	Range/Stove - Missing/Damaged/Inoperable	L3	Missing	3/19/2020	Jermaine McCants
Unit	Bldg 11	1103	Smoke Detector	Missing/Inoperable	L3	Bdr 1	3/19/2020	Jermaine McCants
Unit	Bldg 11	1105	Bathroom	Water Closet/Toilet - Damaged/Clogged/Missing	L3	Toilet	3/13/2020	Jermaine McCants
Unit	Bldg 11	1105	Ceiling	Mold/Mildew/Water Stains/Water Damage	L3	Kitchen	3/20/2020	Mariano Lopez
Unit	Bldg 11	1105	Health & Safety	Infestation - Insects	L3	Kitchen	7/27/2020	Massey
Unit	Bldg 11	1105	Smoke Detector	Missing/Inoperable	L3	Hall	7/17/2020	Jermaine McCants
Unit	Bldg 11	1109	Bathroom	Shower/Tub - Damaged/Missing	L3	Missing shower head	7/17/2020	Mariano Lopez
Unit	Bldg 11	1109	Outlets/Switches	Missing/Broken Cover Plates	L3	Bdr 1	7/17/2020	Jermaine McCants



Unit	Bldg 11	1111	Health & Safety	Hazards - Tripping	L3	Carpet hall		How was this resolved?
Unit	Bldg 11	1111	Kitchen	Dishwasher/Garbage Disposal - Inoperable	L2	Dishwasher missing	7/17/2020	Jermaine McCants
Unit	Bldg 11	1111	Kitchen	Range/Stove - Missing/Damaged/Inoperable	L3	Missing	7/17/2020	Jermaine McCants
Unit	Bldg 11	1111	Kitchen	Refrigerator-Missing/Damaged/Inoperable	L3	Missing	7/17/2020	Jermaine McCants
Building Exterior	Bldg 12		Walls	Cracks/Gaps	L2		Invoices don't say which buildings were repaired or date	
Unit	Bldg 12	120C	Health & Safety	Infestation - Insects	L3	Bath	7/27/2020	Massey
Unit	Bldg 12	120C	Kitchen	Refrigerator-Missing/Damaged/Inoperable	L1	Gasket	7/17/2020	Mariano Lopez
Unit	Bldg 12	120C	Walls	Damaged	L2	Bdr and kitchen NIS	4/20/2020	Advanced Painting
Unit	Bldg 14	140A	Bathroom	Shower/Tub - Damaged/Missing	L2	Bath 2 surface	4/20/2020	Advanced Painting
Unit	Bldg 14	140A	Doors	Damaged Frames/Threshold/Lintels/Trim	L3	Patio	7/17/2020	Jermaine McCants
Unit	Bldg 14	140A	Doors	Damaged Hardware/Locks	L3	Patio strike plate	7/17/2020	Mariano Lopez
Unit	Bldg 14	140A	Walls	Damaged	L3	Kitchen and bdr 2 NIS	4/15/2020	Advanced Painting
Building Exterior	Bldg 15		Roofs	Missing/Damaged Shingles	L3		Not addressed	
Unit	Bldg 15	150B	Bathroom	Shower/Tub - Damaged/Missing	L3	Surface bath 1 and shower head	4/29/2020	Advanced Painting
Unit	Bldg 15	150B	Ceiling	Bulging/Buckling	L3	Bath 2	4/15/2020	Advanced Painting
Unit	Bldg 15	150B	Ceiling	Mold/Mildew/Water Stains/Water Damage	L3	Bath 2	4/15/2020	Advanced Painting
Unit	Bldg 15	150B	Ceiling	Peeling/Needs Paint	L2	Bath 2	4/15/2020	Advanced Painting

Unit	Bldg 15	150B	Smoke Detector	Missing/Inoperable	L3	Hall and bdr 2	3/13/2020	Jermaine McCants
Unit	Bldg 15	150B	Walls	Damaged	L2	Bath 2 soap dish	4/29/2020	Advanced Painting
Unit	Bldg 15	150B	Windows	Inoperable/Not Lockable	L1	Living and dining	7/24/2020	Ameristar Screen and Glass
Building Exterior	Bldg 16		Roofs	Missing/Damaged Shingles	L1	Shingles	Not addressed	
Building Exterior	Bldg 16		Walls	Cracks/Gaps	L3	Front around brick	Invoices don't say which buildings were repaired or date	
Unit	Bldg 16	160B	Ceiling	Bulging/Buckling	L3	Living room	6/1/2020	Advanced Painting
Unit	Bldg 16	160B	Ceiling	Peeling/Needs Paint	L2	Bdr 1 and 2	6/1/2020	Advanced Painting
Unit	Bldg 16	160B	Walls	Damaged	L2	Living and bdrms	6/1/2020	Advanced Painting
Building Exterior	Bldg 17		Health & Safety	Hazards - Sharp Edges	L3	Nails sticking out by 17A SOFFIT AREA	3/17/2020	Jermaine McCants
Unit	Bldg 17	170A	Bathroom	Shower/Tub - Damaged/Missing	L1	Stopper bath 1	7/17/2020	Mariano Lopez
Unit	Bldg 17	170A	Ceiling	Mold/Mildew/Water Stains/Water Damage	L3	Both bdrs	7/28/2020	Delta Renovation
Unit	Bldg 17	170A	Ceiling	Peeling/Needs Paint	L2	Bdr 1a nd 2	6/1/2020	Advanced Painting
Unit	Bldg 17	170A	Doors	Damaged Frames/Threshold/Lintels/Trim	L3	Front dr	7/21/2020	Mariano Lopez
Unit	Bldg 19	190D	Bathroom	Shower/Tub - Damaged/Missing	L2	Bath 1 surface	7/28/2020	Delta Renovation
Unit	Bldg 19	190D	Doors	Damaged Hardware/Locks	L3	Front dr strike plate	7/21/2020	Mariano Lopez
Unit	Bldg 19	190D	Walls	Peeling/Needs Paint	L2	Bdr 1 and 2	7/28/2020	Delta Renovation
Building Exterior	Bldg 22		Foundations	Cracks/Gaps	L3	Back hole in foundation	Invoices don't say which buildings were repaired or date	

Building Systems	Bldg 22		Domestic Water	Leaking Central Water Supply	L3	Spigot dripping	3/18/2020	Jermaine McCants
Unit	Bldg 22	220D	Doors	Damaged Hardware/Locks	L3	Front dr strike plates	7/17/2020	Mariano Lopez
Unit	Bldg 22	220D	Electrical	GFI Inoperable	L3	Kitchen	7/17/2020	Mariano Lopez
Unit	Bldg 22	220D	Kitchen	Dishwasher/Garbage Disposal - Inoperable	L2	Disposal	7/17/2020	Mariano Lopez
Unit	Bldg 22	220D	Smoke Detector	Missing/Inoperable	L3	Hall	7/17/2020	Jermaine McCants
Unit	Bldg 22	220D	Walls	Damaged	L2	Bath hall soap disp tub	7/17/2020	Mariano Lopez
Unit	Bldg 22	220D	Walls	Mold/Mildew/Water Stains/Water Damage	L3	Hall bath	7/17/2020	Mariano Lopez
Building Exterior	Bldg 24		Roofs	Missing/Damaged Shingles	L2	Shingles	Not addressed	
Unit	Bldg 24	240B	Bathroom	Water Closet/Toilet - Damaged/Clogged/Missing	L3	Bath 1 and 2	7/17/2020	Mariano Lopez
Unit	Bldg 24	240B	Doors	Damaged Surface (Holes/Paint/Rusting)	L3	Bdr 1 NIS	7/17/2020	Mariano Lopez
Unit	Bldg 24	240B	Smoke Detector	Missing/Inoperable	L3	Bdr 2	7/17/2020	Jermaine McCants
Building Exterior	Bldg 25		Health & Safety	Hazards - Sharp Edges	L3	Fencing	7/20/2020	Mariano Lopez
Building Exterior	Bldg 25		Roofs	Damaged/Clogged Drains	L3	Clogged	Not addressed	
Building Exterior	Bldg 25		Walls	Cracks/Gaps	L3	Front	Invoices don't say which buildings were repaired or date	
Unit	Bldg 25	250C	Ceiling	Peeling/Needs Paint	L1	Bdr	6/1/2020	Advanced Painting
Unit	Bldg 25	250C	Doors	Damaged Surface (Holes/Paint/Rusting)	L3	Bdr 1 NIS	7/17/2020	Jermaine McCants
Unit	Bldg 25	250C	Kitchen	Dishwasher/Garbage Disposal - Inoperable	L2	Disposal	7/21/2020	Jermaine McCants

Unit	Bldg 27	270B	Bathroom	Lavatory Sink - Damaged/Missing	L1	Bath 1 surface	3/22/2020	Advanced Painting
Unit	Bldg 27	270B	Bathroom	Shower/Tub - Damaged/Missing	L2	Surface	7/28/2020	Delta Renovation
Unit	Bldg 27	270B	Doors	Damaged Hardware/Locks	L3	Front dr	7/14/2020	Jermaine McCants
Unit	Bldg 27	270B	Health & Safety	Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable	L3		7/14/2020	Jermaine McCants
Building Exterior	Bldg 29		Roofs	Missing/Damaged Shingles	L2	Shingles	Not addressed	
Unit	Bldg 29	290A	Ceiling	Holes/Missing Tiles/Panels	L2	Living room	7/15/2020	Jermaine McCants
Unit	Bldg 29	290A	Doors	Damaged Hardware/Locks	L3	Strke plate front dr	7/15/2020	Jermaine McCants
Building Exterior	Bldg 33		Roofs	Missing/Damaged Shingles	L2	Shingles	Not addressed	
Unit	Bldg 33	330D	Bathroom	Shower/Tub - Damaged/Missing	L2	Bath 2 surface	7/28/2020	Delta Renovation
Unit	Bldg 33	330D	Doors	Damaged Frames/Threshold/Lintels/Trim	L3		7/21/2020	Mariano Lopez
Unit	Bldg 33	330D	Health & Safety	Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable	L3	Bdr 2 (RDI)	3/11/2020	Verified by Inspector
Building Exterior	Bldg 34		Health & Safety	Infestation - Insects	L3	Kitchen	Pest company invoice doesn't show which unit(s)	
Building Exterior	Bldg 35		Roofs	Damaged Soffits/Fascia/Soffit Vents	L2	Shingles	Not addressed	
Building Exterior	Bldg 35		Walls	Cracks/Gaps	L3	Right side	Invoices don't say which buildings were repaired or	
Unit	Bldg 35	350C	Walls	Peeling/Needs Paint	L2	Living room	7/16/2020	Mariano Lopez
Building Exterior	Bldg 36		Roofs	Missing/Damaged Shingles	L2	Shingles	Not addressed	
Building Exterior	Bldg 36		Walls	Cracks/Gaps	L3	Right side	Invoices don't say which buildings were repaired or date	



debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), prior to recommending any new financing or allocation of credits.

(e) Transfers Prior to 8609 Issuance or Construction Completion. Prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) an Applicant may request an amendment to its ownership structure to add Principals. 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. A development sponsor, General Partner or Development Owner may not sell the Development in whole or voluntarily end their Control prior to the issuance of 8609s.

(f) Nonprofit Organizations. If the ownership transfer request is to replace a nonprofit organization within the Development ownership entity, the replacement nonprofit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Nonprofit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Nonprofit Organization that meets the requirements of §42(h)(5) of the Code and Tex. Gov't Code §2306.6706, if applicable, and can demonstrate planned participation in the operation of the Development on a regular, continuous, and substantial basis.

(2) If the LURA requires ownership or material participation in ownership by a nonprofit organization or CHDO, the Development Owner must show that the transferee is a nonprofit organization or CHDO, as applicable, that complies with the LURA.

(3) Exceptions to the above may be made on a case by case basis if the Development is past its Compliance Period/Federal Affordability Period, was not reported to the IRS as part of the Department's Nonprofit Set Aside in any HTC Award year, and follows the procedures outlined in §10.405(b)(1) - (5) of this chapter (relating to LURA Amendments that require Board Approval). The Board must find that:

(A) The selling nonprofit is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(B) The participation by the nonprofit was substantive and meaningful during the full term of the Compliance Period but is no longer substantive or meaningful to the operations of the Development; and

(C) The proposed purchaser is an affiliate of the current Owner or otherwise meets the Department's standards for ownership transfers.

(g) Historically Underutilized Business (HUB) Organizations. If a HUB is the general partner or special limited partner of a Development Owner and it determines to sell its ownership interest, after the issuance of 8609's, the purchaser of that partnership interest or the general or special limited partner is not required to be a HUB as long as the procedure described in §10.405(b)(1) of this chapter (relating to Non-Material LURA Amendments) has been followed and approved.

(h) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances pertaining to the transfer and the effects of approval or denial. Documentation must be submitted as directed in the Post Award Activities Manual, which includes but is not limited to:

(1) A written explanation outlining the reason for the request;

(2) Ownership transfer information, including but not limited to the type of sale, amount of Development reserves to transfer in the event of a property sale, and the prospective closing date;

(3) Pre and post transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §11.204(13)(A) of Subchapter C;

(4) A list of the names and contact information for transferees and Related Parties;

(5) Previous Participation information for any new Principal as described in §11.204(13)(B) of Subchapter C;

(6) Agreements among parties associated with the transfer;

(7) Owners Certifications with regard to materials submitted further described in the Post Award Activities Manual;

(8) Detailed information describing the organizational structure, experience, and financial capacity of any party holding a controlling interest in any Principal or Controlling entity of the prospective Development Owner;

(9) Evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least 30 calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30 day period has expired;

(10) Any required exhibits and the list of exhibits related to specific circumstances of transfer or Ownership as detailed in the Post Award Activities Manual.

(i) Once the Department receives all necessary information under this section and as required under the Post Award Activities Manual, staff shall initiate a qualifications review of a transferee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter and §11.202 of Subchapter C (relating to Ineligible Applicants and Applications).

(j) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) In cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) In cases where the general partner is being replaced if the award of credits was made at least five years prior to the transfer request date.

(k) Penalties, Past Due Fees and Underfunded Reserves. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties or fees imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department. In the event a transferring Development has a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in §10.404(a) (relating to Replacement Reserve Accounts), or that appears insufficient to meet capital expenditure needs as indicated by the number or cost of repairs included in a PCA, the prospective Development Owner may be required to establish and maintain a replacement reserve account or increase the amount of regular deposits to the replacement reserve account by entering into a Reserve Agreement with the Department. The Department may also request a plan and timeline relating to needed repairs or renovations that will be completed by the departing and/or incoming Owner as a condition to approving the Transfer.

(l) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by the corresponding ownership transfer fee as outlined in §11.901 of this chapter (relating to Fee Schedule, Appeals, and other Provisions).

Source Note: The provisions of this §10.406 adopted to be effective January 5, 2017, 41 TexReg 10569; amended to be effective January 4, 2018, 42 TexReg 7610; amended to be effective December 30, 2018, 43 TexReg 8297

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**BOARD ACTION REQUEST**

**LEGAL DIVISION**

**NOVEMBER 5, 2020**

Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning related properties Mitay Inc Scattered Site (HTC 92009 / CMTS 1026), 2512 Thorne (HTC 70046 / CMTS 2344), and 1213 Pecan (HTC 70083 / CMTS 912)

**RECOMMENDED ACTION**

**WHEREAS**, Mitay Inc. Scattered Site and 2512 Thorne, owned by Mitay, Inc. (Mitay Owner), have uncorrected compliance findings relating to the applicable land use restriction agreements and the associated statutory and rule requirements;

**WHEREAS**, 1213 Pecan, owned by 1213 Pecan Street Series LLC (Pecan Owner), has uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

**WHEREAS**, Mitay, Inc. and 1213 Pecan Street Series LLC are related entities, ultimately controlled by Annie Miles, Edgar Miles, and Byron Miles (collectively known as "Owner");

**WHEREAS**, Owner representatives have attended multiple informal conferences and signed prior Agreed Final Orders in 2013, 2015, and 2019;

**WHEREAS**, the prior Agreed Final Orders were violated and both Uniform Physical Condition Standards and file monitoring violations remain unresolved, including annual reports, utility allowance, missing annual eligibility certifications, incomplete tenant files, household income violations, incomplete tenant selection criteria, and failure to submit pre-onsite documentation;

**WHEREAS**, administrative penalties totaling \$42,000 were paid under the prior Agreed Final Orders because of owner's failure to remedy the above violations;

**WHEREAS**, during its 2019 file monitoring reviews, TDHCA identified the following violations that remain unresolved for Mitay Inc. Scattered Site, 2512 Thorne, and 1213 Pecan: failure to submit 2019 Annual Reports; failure to provide pre-onsite documentation, including a Unit Status Report, Utility Allowance, and Entrance Interview Questionnaire; failure to collect Annual Eligibility Certifications; failure to provide compliant written policies and procedures including tenant selection criteria; household income violations for four units; and failure to provide Tenant Rights and Resources Guide for two units; and failure to establish a utility allowance. All are violation types that have been identified previously and are therefore considered repeated violations;

**WHEREAS**, on October 27, 2020, Owner representatives participated in an informal conference with the Enforcement Committee and agreed, subject to Board approval, to enter into an Agreed Final Order assessing an administrative penalty of \$40,000. As an

incentive to comply, the penalty is to be partially probated, with \$15,000 to be paid on or before December 7, 2020, and the remaining \$25,000 to be forgiven if all violations are resolved as specified in the Agreed Final Order on or before December 7, 2020; and

**WHEREAS**, staff has based its recommendations for an Agreed Final Order on the Department's rules for administrative penalties and an assessment of each and all of the statutory factors to be considered in assessing such penalties, applied specifically to the facts and circumstances present in this case.

**NOW, therefore, it is hereby**

**RESOLVED**, that an Agreed Final Order assessing an administrative penalty totaling \$40,000, subject to partial forgiveness as outlined above, for noncompliance at Mitay Inc Scattered Site (HTC 92009 / CMTS 1026), 2512 Thorne (HTC 70046 / CMTS 2344), and 1213 Pecan (HTC 70083 / CMTS 912), substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, is hereby adopted as the order of this Board.

## BACKGROUND

Mitay Inc Scattered Site (HTC 92009 / CMTS 1026), 2512 Thorne (HTC 70046 / CMTS 2344), and 1213 Pecan (HTC 70083 / CMTS 912), are small housing tax credit allocations of between one and four units each, located in Amarillo, Potter County, and controlled by the Miles family. Two additional single unit housing tax credit allocations are no longer monitored by TDHCA because the LURAs expired in 2019.

<b>Property</b>	<b>Owner</b>	<b>Annual HTC Allocation</b>	<b>LURA effective</b>	<b>LURA expiration</b>	<b># Units</b>
Mitay Inc Scattered Site	Mitay, Inc.	\$4,000	2/16/1994	12/31/2022	4 (includes a duplex and two single family homes)
2512 Thorne	Mitay, Inc.	\$1,160	11/15/1990	12/31/2020	1
1213 Pecan	1213 Pecan Street Series LLC	\$1,138	11/15/1990	12/31/2020	1

Records of the Texas Secretary of State show Annie Miles, Edgar Miles, and Byron Miles as officers of the above referenced corporate entities. CMTS lists Byron Miles, Edgar Miles, and Edwin Miles as the primary contacts for Owner. The properties are self-managed.

Despite numerous attempts by the Compliance Division, Legal Division, and Enforcement Committee to provide technical assistance and obtain acceptable corrective action, Owner has failed to operate the properties in compliance with LURA requirements and does not respond to monitoring deadlines. Owner has attended multiple informal conferences with the Enforcement Committee and signed Agreed Final Orders in 2013, 2015, and 2019. The 2019 Agreed Final Orders included the maximum potential administrative penalty of \$20,000 for Uniform Physical Condition Standards (UPCS) violations, but with partial forgiveness of 25% as an incentive to comply. All prior Orders were violated and although administrative penalties totaling \$42,000 have been paid as required, UPCS and file monitoring violations under those orders remain unresolved, including annual reports, utility allowance, missing annual eligibility certifications, incomplete tenant files, household income violations, incomplete tenant selection criteria, and failure to submit pre-onsite documentation. The violations remain unresolved, but have already been penalized and are not included in the current administrative penalty referral as a result, except for violations that were identified a second time during the 2019 file monitoring review and were referred for an administrative penalty during 2020.

The LURA for Mitay Inc. Scattered Site will expire on December 31, 2022, and the LURAs for 2512 Thorne and 1213 Pecan will expire December 31, 2020. The Enforcement Rule at 10 TAC Chapter 2 is currently in the amendment process, with multiple improvements proposed to address properties such as these, which are at the end of their affordability restrictions and where the owner has shown little inclination to comply despite repeated administrative penalty assessments. Among the changes are to make an owner eligible for debarment in the event of a violated Agreed Final Order where violations are not corrected within six months of demand. Changes were also made to the penalty matrix, increasing the penalty over time for physical violations that are uncorrected six months from the corrective action deadline, and providing clarity regarding increased penalty amounts to be applied to repeated violation types when a Responsible Party has already paid a penalty for that finding type.

The following compliance violations identified during 2019 and 2020 were referred for an administrative penalty and are unresolved. They are part of the current 2020 administrative penalty referral.

1. 2019 Annual Owner's Compliance Report (AOCR) for each property, which comes due on April 30 of each year, but was extended to July 15, 2020 due to the coronavirus pandemic;
2. Failure to provide pre-onsite documentation, including a Unit Status Report, a Utility Allowance, and an Entrance Interview Questionnaire for all properties;
3. Failure to collect Annual Eligibility Certifications for all units at all properties;
4. Failure to implement an updated utility allowance, affecting all units at all properties;
5. Failure to maintain written policies and procedures, including tenant selection criteria, for all properties;
6. Failure to provide Tenant Rights and Resources Guide to tenants at Mitay Inc. Scattered Site; and
7. Unit not leased to low income household / Household income above limit upon initial occupancy for all units at Mitay Inc. Scattered Site, where households were not screened for eligibility.

Owner representative, Byron Miles, participated in an informal conference with the Enforcement Committee on October 27, 2020, and agreed to sign Agreed Final Orders with the following terms:

1. A \$40,000 administrative penalty, subject to partial forgiveness as indicated below;
2. Owner must submit a \$15,000 portion of the administrative penalty on or before December 7, 2020;
3. Owner must correct the reporting and UPCS violations as indicated in the Agreed Final Order, and submit full documentation of the corrections to TDHCA on or before December 7, 2020;
4. If Owner complies with all requirements and addresses all violations as required, the remaining \$25,000 of the administrative penalty will be forgiven; and
5. If Owner violates any provision of the Agreed Final Order, the full administrative penalty will immediately come due and payable.

Mr. Miles indicated that this is a family business that was created by his parents, but they retired and have relied on him to take over. He is overwhelmed by the program requirements. He acknowledged repeated problems at the properties and admitted that the situation was getting out of control, with the properties becoming more noncompliant as time passes. He considered selling a few years ago, but nobody was interested in buying because of the existing compliance violations. He also stated that a large penalty would put them out of business. He indicates that he is willing to comply and thinks he can bring the property into compliance with the help of his wife, who recently retired, and assistance from another local housing tax credit apartment complex with a property manager who is familiar with program requirements. He was cooperative and admits that he needs help. He has attended training and further training materials will be provided to him.

Committee members deliberated at length regarding an appropriate administrative penalty. Of the \$40,000 recommended administrative penalty, \$30,000 is associated with Mitay Inc. Scattered Site, with 50% of that amount to be paid up front, and the other 50% to be forgivable if corrections are submitted as required by December 7, 2020. The remaining \$10,000 is collectively associated with 1213 Pecan and 2512 Thorne, and is fully forgivable. The Committee felt that this large probated and forgivable portion of \$25,000 provides a significant incentive for the Owner to make progress toward compliance. It also

incentivizes restoring compliance at 1213 Pecan and 2512 Thorne before their LURA terms expire on December 31, 2020. The LURA for Mitay Inc. Scattered Site will expire December 31, 2022.

Consistent with direction from the Department's Enforcement Committee, a probated and, upon successful completion of probation, partially forgivable administrative penalty in the total amount of \$40,000, is recommended. This will be a reportable item of consideration under previous participation for any new award to the principals of the Owner.

ENFORCEMENT ACTION AGAINST MITAY,	§	BEFORE THE
INC. WITH RESPECT TO MITAY INC.	§	TEXAS DEPARTMENT OF
SCATTERED SITE (HTC FILE # 92009 /	§	HOUSING AND COMMUNITY
CMTS # 1026) AND 2512 THORNE (HTC	§	AFFAIRS
70046 / CMTS 2344), AND AGAINST	§	
1213 PECAN STREET SERIES LLC WITH	§	
RESPECT TO 1213 PECAN	§	
(HTC 70083 / CMTS 912)	§	

**AGREED FINAL ORDER**

**General Remarks and official action taken:**

On this 5<sup>th</sup> day of November, 2020, 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 **MITAY, INC.**, a Texas corporation, and **1213 PECAN STREET SERIES LLC**, a sole proprietorship controlled by Edgar A. Miles and Ann Miles, a married couple (collectively, Respondent), with respect to Mitay Inc. Scattered Site, 2512 Thorne, and 1213 Pecan (collectively, Properties).

This Agreed Order is executed pursuant to the authority of the Administrative Procedure Act (APA), Tex. Gov't Code §2001.056, which authorizes the informal disposition of contested cases. In a desire to conclude this matter without further delay and expense, the Board and Respondent agree to resolve this matter by this Agreed Final Order. The Respondent agrees to this Order for the purpose of resolving this proceeding only and without admitting or denying the findings of fact and conclusions of law set out in this Order.

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

**WAIVER**

Respondent acknowledges the existence of their right to request a hearing as provided by Tex. Gov't Code §2306.044, and to seek judicial review, in the District Court of Travis County, Texas, of any order as provided by Tex. Gov't Code §2306.047. Pursuant to this compromise and settlement, the Respondent waives those rights and acknowledges the jurisdiction of the Board over Respondent.

## **FINDINGS OF FACT (FOF)**

### **Jurisdiction:**

1. During 1992, Respondent was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$4,000 to acquire and rehabilitate Mitay Inc. Scattered Site (Mitay Property) (HTC file No. 92009 / CMTS No. 1026 / LDLD No. 328).
2. Respondent signed a land use restriction agreement (Mitay LURA) regarding the Mitay Property. The Mitay LURA was effective February 16, 1994, and filed of record at Volume 2394, Page 558 of the Official Public Records of Real Property of Potter County, Texas (Records).
3. During 1990, Walter C. Spear was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$1,160 to acquire and rehabilitate one unit known as 2512 Thorne (HTC file No. 70046 / CMTS No. 2344 / LDLD No. 352).
4. Walter C. Spear signed a land use restriction agreement (Thorne LURA) regarding 2512 Thorne. The LURA was effective November 15, 1990, and filed of record at Volume 2134, Page 842 of the Records. In accordance with Section 2 of the LURA, the LURA is a restrictive covenant/deed restriction encumbering the property and binding on all successors and assigns for the full term of the LURA.
5. Walter C. Spear transferred his interests in 2512 Thorne to Mitay, Inc. through a Warranty Deed with Vendor's Lien effective December 15, 1994, and filed in the Records at Volume 2134, Page 843. The restrictions remained in place in accordance with Section 2 of the LURA, thereby binding Respondent to the terms of the agreement.
6. During 1990, E.A. Miles was awarded an allocation of Low Income Housing Tax Credits by the Board, in an annual amount of \$1,138 to acquire, rehabilitate and operate one unit known as 1213 Pecan (HTC file No. 70083 / CMTS No. 912 / LDLD No. 454).
7. E.A. Miles signed a land use restriction agreement (Pecan LURA) regarding 1213 Pecan. The LURA was effective November 15, 1990, and filed of record at Volume 2134, Page 271 of the Records.
8. E.A Miles and Ann Miles transferred their interests in 1213 Pecan to 1213 Pecan Street Series LLC through a Special Warranty Deed on October 13, 2016, and filed in the Records at Document Number 20170PR0002645. The restrictions remained in place in accordance with Section 2 of the LURA, thereby binding Respondent to the terms of the agreement.
9. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations:

10. The Properties have a history of violations and Respondent previously signed Agreed Final Orders in 2013, 2015, and 2019, all of which were violated.
11. On July 22, 2020 and August 25, 2020, TDHCA sent notice that Respondent had failed to timely submit their 2019 Annual Owner's Compliance Reports for the Properties, a violation of 10 TAC §10.607 (Reporting Requirements), which requires each development to submit an Annual Owner's Compliance Report. The report remains delinquent.
12. An on-site monitoring review was conducted on September 4, 2019, at Mitay, Inc. Scattered Site, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and a December 31, 2019, corrective action deadline was set, however, the following violations were not resolved:
  - a. Respondent failed to submit pre-onsite documentation, including a Unit Status Report, a Utility Allowance, and an Entrance Interview Questionnaire, a violation of 10 TAC §10.607 and §10.618, which require all developments to submit necessary documentation as requested in preparation for an upcoming monitoring review.
  - b. Respondent failed to provide an Annual Eligibility Certifications for 2419 N Hughes A, 2419 N Hughes B and 1901 NW 17<sup>th</sup>, a violation of 10 TAC §10.612 (Tenant File Requirements), which requires developments to annually collect an Annual Eligibility Certification form from each household.
  - c. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for 1105 NW 19<sup>th</sup>, 1901 NW 17<sup>th</sup>, 2419 North Hughes A, and 1419 North Hughes B, a violation of 10 TAC §10.611 (Determination, Documentation and Certification of Annual Income) and Section 4 of the LURA, which require screening of tenants to ensure qualification for the program.
  - d. Respondent failed to provide a Tenant Rights and Resources Guide and get a signed Acknowledgment for 2419 N Hughes and 1901 NW 17<sup>th</sup>, a violation of 10 TAC §10.613 (Lease Requirements), which requires owners to post a laminated copy of the Guide in a common area of the leasing office and provide a copy to each household during the application process and upon any subsequent change to common amenities, unit amenities, or services.
  - e. Respondent failed to establish an updated utility allowance for the property, a violation of 10 TAC §10.614 (Utility Allowances), which requires all developments to establish a utility allowance.
  - f. Respondent failed to maintain written tenant selection criteria, a violation of 10 TAC §10.610 (Written Policies and Procedures), which requires all developments



to establish written tenant selection criteria that meet minimum TDHCA requirements.

13. An on-site monitoring review was conducted on September 4, 2019, at 2512 Thorne, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and a December 26, 2019, corrective action deadline was set, however, the following violations were not resolved:
  - a. Respondent failed to submit pre-onsite documentation, including a Unit Status Report, a Utility Allowance, and an Entrance Interview Questionnaire, a violation of 10 TAC §10.607 and §10.618, which require all developments to submit necessary documentation as requested in preparation for an upcoming monitoring review.
  - b. Respondent failed to provide an Annual Eligibility Certification, a violation of 10 TAC §10.612 (Tenant File Requirements), which requires developments to annually collect an Annual Eligibility Certification form from each household.
  - c. Respondent failed to establish an updated utility allowance for the property, a violation of 10 TAC §10.614 (Utility Allowances), which requires all developments to establish a utility allowance.
  - d. Respondent failed to maintain written tenant selection criteria, a violation of 10 TAC §10.610 (Written Policies and Procedures), which requires all developments to establish
  
14. An on-site monitoring review was conducted on September 4, 2019, at 1213 Pecan, to determine whether Respondent was in compliance with LURA requirements to lease units to low income households and maintain records demonstrating eligibility. The monitoring review found violations of the LURA and TDHCA rules. Notifications of noncompliance were sent and a December 26, 2019, corrective action deadline was set, however, the following violations were not resolved:
  - a. Respondent failed to submit pre-onsite documentation, including a Unit Status Report, a Utility Allowance, and an Entrance Interview Questionnaire, a violation of 10 TAC §10.607 and §10.618, which require all developments to submit necessary documentation as requested in preparation for an upcoming monitoring review.
  - b. Respondent failed to provide an Annual Eligibility Certification, a violation of 10 TAC §10.612 (Tenant File Requirements), which requires developments to annually collect an Annual Eligibility Certification form from each household.
  - c. Respondent failed to establish an updated utility allowance for the property, a violation of 10 TAC §10.614 (Utility Allowances), which requires all developments to establish a utility allowance.

- d. Respondent failed to maintain written tenant selection criteria, a violation of 10 TAC §10.610 (Written Policies and Procedures), which requires all developments to establish written tenant selection criteria that meet minimum TDHCA requirements.
15. All violations listed above are considered unresolved at the time of this Order.

### **CONCLUSIONS OF LAW**

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503 and 10 TAC Chapter 2.
2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
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. Respondent violated 10 TAC §10.607 in 2020 by failing to submit an Annual Owner's Compliance Report for the year 2019 at the Properties;
5. Respondent violated 10 TAC §10.607 and §10.618 in 2019, by not submitting pre-onsite documentation in preparation for the monitoring reviews for the Properties;
6. Respondent violated 10 TAC §10.612 in 2019 by failing to collect Annual Eligibility Certifications for the Properties.
7. Respondent violated 10 TAC §10.611 and Section 4 of the LURA in 2019, by failing to provide documentation that household income was within prescribed limits upon initial occupancy for four units at Mitay Inc. Scattered Site;
8. Respondent violated leasing requirements in 10 TAC §10.613 in 2019, by failing to provide a Tenant Rights and Resources Guide for two units at Mitay Inc. Scattered Site;
9. Respondent violated 10 TAC §10.614 in 2019, by failing to establish a utility allowance for the Properties;
10. Respondent violated 10 TAC §10.610 in 2019, by not maintaining written tenant selection criteria meeting TDHCA requirements for the Properties;
11. Because Respondent is a housing sponsor with respect to the Properties, and has violated TDHCA rules, the Board has personal and subject matter jurisdiction over Respondent pursuant to Tex. Gov't Code §2306.041 and §2306.267.

12. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.
13. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code §2306.053 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to Tex. Gov't Code §2306.041.
14. An administrative penalty of \$40,000 is an appropriate penalty in accordance with 10 TAC Chapter 2.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in Tex. Gov't Code §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the Governing Board of the Texas Department of Housing and Community Affairs orders the following:

**IT IS HEREBY ORDERED** that Respondent is assessed an administrative penalty in the amount of \$40,000, subject to partial deferral as further ordered below.

**IT IS FURTHER ORDERED** that Respondent shall pay and is hereby directed to pay a \$15,000 portion of the assessed administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before December 7, 2020.

**IT IS FURTHER ORDERED** that Respondent shall fully correct the file monitoring violations as indicated at Exhibits 1 and 2, and submit full documentation of the corrections to TDHCA on or before December 7, 2020.

**IT IS FURTHER ORDERED** that Respondent shall submit the 2019 annual report for each of the Properties as indicated at Exhibit 3 on or before December 7, 2020.

**IT IS FURTHER ORDERED** that if Respondent timely and fully complies with the terms and conditions of this Agreed Final Order, correcting all violations as required, the satisfactory performance under this order will be accepted in lieu of the remaining assessed administrative penalty, and the remaining \$25,000 portion of the administrative penalty will be deferred and forgiven.

**IT IS FURTHER ORDERED** that if Respondent fails to satisfy any conditions or otherwise violates any provision of this order, or the property is sold before the terms and conditions of this Agreed Final Order have been fully satisfied, then the full administrative penalty shall be immediately due and payable to the Department. Such payment shall be made by cashier's check payable to the "Texas Department of Housing and Community Affairs" upon the earlier of (1) within thirty days of the date the Department sends written notice to Respondent that it has

violated a provision of this Order, or (2) the property closing date if sold before the terms and conditions of this Agreed Final Order have been fully satisfied.

**IT IS FURTHER ORDERED** that corrective documentation must be uploaded to the Compliance Monitoring and Tracking System (CMTS) by following the instructions at this link: <http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>. After the upload is complete, an email must be sent to Ysella Kaseman at [ysella.kaseman@tdhca.state.tx.us](mailto:ysella.kaseman@tdhca.state.tx.us) to inform her that the documentation is ready for review. If it comes due and payable, the penalty payment must be submitted to the following address:

<b>If via overnight mail (FedEx, UPS):</b>	<b>If via USPS:</b>
TDHCA Attn: Ysella Kaseman 221 E 11 <sup>th</sup> St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711

**IT IS FURTHER ORDERED** that Respondent shall follow the requirements of 10 TAC §10.406, a copy of which is included at Exhibit 4, and obtain approval from the Department prior to consummating a sale of the property, if contemplated.

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

*[Remainder of page intentionally blank]*











## Exhibit 1

### **File Monitoring Violation Resources and Instructions**

#### **Resources:**

1. Refer to the following link for all references to the rules at 10 TAC §10 that are referenced below:  
[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=F&rl=Y)
2. Refer to the following link for copies of forms that are referenced below:  
<http://www.tdhca.state.tx.us/pmcomp/forms.htm>
3. Technical support and training presentations are available at the following links:  
Income and Rent Limits: <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>  
Utility Allowance: <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>  
Affirmative Marketing Technical Assistance: <http://www.tdhca.state.tx.us/pmcdocs/AMT-Assistance-Guide.pdf>  
Tenant Selection Criteria Webinar: <http://www.tdhca.state.tx.us/pmcomp/presentations.htm>  
Online Reporting: <http://www.tdhca.state.tx.us/pmcomp/reports.htm>  
FAQ's: <http://www.tdhca.state.tx.us/pmcomp/compFaqs.htm>
4. **All corrections must be submitted via CMTS:** See link for steps to upload documents  
<http://www.tdhca.state.tx.us/pmcdocs/CMTSUserGuide-AttachingDocs.pdf>.
5. **Important notes -**
  - i. Do not backdate any documents listed below.
  - ii. A transfer of a qualified household from another unit is not sufficient to correct any findings. If there is a tenant income certification or household income above limit violation, a transfer from another unit will simply cause the finding to transfer to that unit.

#### **Instructions:**

6. **Pre-onsite documentation** – Submit for each of the three Properties.
  - i. Submit Entrance Interview Questionnaire via CMTS. The Questionnaire can be found by logging into CMTS at <https://pox.tdhca.state.tx.us/aims2/pox>. Click the “Unit Status Report” link. On the next page, click “Submit Reports”. Scroll down the next page. There should be a section for the Entrance Interview Questionnaire. Complete the questionnaire and submit for each property.
  - ii. Submit a Unit Status Report via CMTS at <https://pox.tdhca.state.tx.us/aims2/pox>. Enter data for each unit and household member, then submit a Unit Status Report for each property.
  - iii. Upload supporting information to CMTS regarding any application fees or charges that are required to apply for a unit at any of the Properties. For example, any invoices, contracts, or vendor price sheets to support the cost for a background check. See [10 TAC §10.622](#) for information regarding permitted application fees.

7. **Utility Allowance:** This is not an amount that you will charge to tenants; it is an estimate of how much the households will pay toward utilities, to ensure that their total housing expenses are appropriately restricted.

How to prepare: Details regarding utility allowances are at this link: <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>. Calculate a utility allowance in accordance with 10 TAC §10.614. Look over the “10.614 (utility allowance)” tab of this spreadsheet, which provides details regarding how TDHCA monitors for this item so that you can check over your work before submission: <http://www.tdhca.state.tx.us/pmcdocs/OnsiteMonitoringForms.xlsx>. As a courtesy, TDHCA has provided a copy of the City of Amarillo Housing Authority’s utility allowance schedule if you wish to use that method. TDHCA has also provided the income and rent limits.

What to submit for each of the Properties: Submit a copy of the new utility allowance via CMTS upload. Also submit the development’s updated Unit Status Report to demonstrate that the utility allowance has been implemented. When determining the rent to charge to tenants, you must ensure that the tenant-paid rent, plus the utility allowance, plus any housing subsidies, plus any mandatory fees, are below the maximum limits set by TDHCA. Rent will be tested development-wide once the proper allowance is implemented, and any resulting noncompliance will be cited at that time and provided a separate corrective action period of 90 days. For more information, see <http://www.tdhca.state.tx.us/pmcomp/utility-allowance.htm>

8. **Annual Eligibility Certifications:** An Annual Eligibility Certification (AEC) was not completed by the anniversary of the household move-in dates for 2419 N Hughes A, 2419 N Hughes B and 1901 NW 17<sup>th</sup>, 1213 Pecan, and 2512 Thorne. Per [10TAC §10.612\(b\)\(1\)](#), 100 % low-income Housing Tax Credit developments must annually collect and maintain current data on each household that includes the number of household members, age, ethnicity, race, disability status, rental amounts and rental assistance (if any). §10.612(b)(2) requires HTC developments to collect and maintain current student status data for each low-income household on an annual basis. This information can be collected on the Department’s AEC form or the Income Certification form. The chosen form must be executed by all adults in the household by the anniversary of the households move in date but no earlier than 120 days of the anniversary date of the households move in date.

How to prepare: If the households that occupied 2419 N Hughes A, 2419 N Hughes B and 1901 NW 17<sup>th</sup>, 1213 Pecan, and 2512 Thorne as of October 2019 remain in the units, have them sign Annual Eligibility Certifications. Each adult household member must sign. If new households occupy the units, you must provide a full new tenant file, including: (A) application; (B) verifications of each source of income and assets; (C) Income Certification; (D) Lease and lease addendum; and (E) Tenant Rights and Resources Guide Acknowledgment. Remember that items A-C above must be dated within 120 days of one another. Tenant file guidelines are at Exhibit 2.

What to submit: Copies of signed Annual Eligibility Certification forms for 2419 N Hughes A, 2419 N Hughes B and 1901 NW 17<sup>th</sup>, 1213 Pecan, and 2512 Thorne if occupied by the same household from October 2019. Copy of full new tenant file as indicated above if a new household occupies the unit. Submit via CMTS upload. Tenant file guidelines are at Exhibit 2.

**9. Lease violations, including Tenant Rights and Resources Guide:**

Actions to perform: Implement Tenants Rights and Resource Guide as indicated at 10 TAC §10.613(l). Customize Guide available on the Forms webpage. Provide a copy to the households in 2419 N Hughes and 1901 NW 17<sup>th</sup>, and have each household sign the Tenant Rights and Resources Guide Acknowledgment available on the Forms webpage. Going forward, provide a copy of the Guide to each household during the application process and upon any subsequent change to the amenities or services and have the households sign Acknowledgments.

What to submit: Upload to CMTS copies of signed Tenant Rights and Resources Guide Acknowledgments for 2419 N Hughes and 1901 NW 17<sup>th</sup>.

**10. Written policies and procedures, including tenant selection criteria:**

How to prepare compliant criteria: Prepare updated written policies and procedures addressing all requirements at [10 TAC §10.802](#). Staff recommends using that rule as a checklist. Ensure that you include an effective date for the policy. A training video regarding 2020 changes to the Written Policies and Procedures Rule is at this link: <https://www.tdhca.state.tx.us/pmcomp/presentations.htm>.

What to submit: Upload to CMTS a copy of the complete written policies and procedures, including tenant selection criteria, for each of the Properties.

**11. Household income above limit upon initial occupancy for units:** Follow the instructions below for 1105 NW 19<sup>th</sup>, 1901 NW 17<sup>th</sup>, 2419 North Hughes A, and 1419 North Hughes B, and submit documentation via CMTS upload. See Exhibit 2 for tenant file guidelines.

<b>Circumstance with respect to units listed above</b>	<b>Instruction</b>
I. If unit is occupied by a qualified household	Certify the household using current circumstances and upload to CMTS for each unit: <ul style="list-style-type: none"> <li>A. New application using current circumstances;</li> <li>B. New verifications of each source of income and assets;</li> <li>C. New Income Certification;</li> <li>D. Lease and lease addendum; and</li> <li>E. Tenant Rights and Resources Guide Acknowledgment.</li> </ul> Remember that items A-C above must be dated within 120 days of one another.  If the unit is vacant or the tenant does not qualify, follow alternate instructions below.
II. If unit is occupied by a nonqualified household on a month-to-month lease	<ul style="list-style-type: none"> <li>A. Follow your normal procedures for terminating residency and upload a copy of documentation to TDHCA.**</li> <li>B. Once the unit becomes available, occupy the unit by a qualified household, and upload the full new tenant file within 30 days of occupancy*. Receipt of the full tenant file after December 7, 2020 is acceptable for this circumstance provided that Requirement A above is fulfilled.</li> </ul>

<p>III. If unit is occupied by a nonqualified household with a non-expired lease</p>	<p>A. Issue a nonrenewal notice** to tenant and upload a copy to TDHCA, along with a letter committing to occupying the unit with a new qualified household and submitting a full tenant file* as soon as the unit becomes available. If the tenant is protected by another program such as Section 8 or USDA-RD and the property cannot issue a nonrenewal notice as a result, upload a letter to TDHCA stating which program protects the household and committing to occupying the unit with a new qualified household and submitting a full tenant file* as soon as the unit becomes available;</p> <p>B. As soon as the unit is occupied by a qualified household, you must upload the full tenant file*. Receipt of the full tenant file after December 7, 2020 is acceptable for this circumstance provided that Requirement A above is fulfilled by that deadline.</p>
<p>V. If unit has been vacant <i>more than</i> 30 days</p>	<p>A. Unit must be made ready for occupancy and a letter certifying to that effect must be uploaded to TDHCA.</p> <p>B. Occupy the unit by a qualified household, and upload the full new tenant file within 30 days of occupancy*. Receipt of the full tenant file after December 7, 2020 is acceptable for this circumstance provided that Requirement A above is fulfilled by that deadline.</p>
<p>VI. If unit has been vacant <i>less than</i> 30 days</p>	<p>A. If unit is ready for occupancy, a letter certifying to that effect must be uploaded to TDHCA.</p> <p>B. If unit is not ready for occupancy, upload a letter to TDHCA including details regarding work that is required and when the unit will be ready for occupancy (no more than 30 days from the date of vacancy).</p> <p>C. Occupy the unit by a qualified household, and upload the full new tenant file within 30 days of occupancy*. Receipt of the full tenant file after December 7, 2020 is acceptable for this circumstance provided that Requirements A and B above are fulfilled by that deadline.</p>

*\*A full tenant file must include:*

- A. Tenant application;*
- B. Verifications of all sources of income and assets;*
- C. Tenant income certification;*
- D. Lease and lease addendum;*
- E. Tenant Rights and Resources Guide Acknowledgment; and*
- F. A copy of the tenant selection criteria under which the household was screened.*

*Remember that items A-C above must be dated within 120 days of one another.*

*See Exhibit 2 for tenant file guidelines*

*\*\* If a notice of nonrenewal or notice of termination is sent to tenant, ensure that it complies with requirements of the rule at 10 TAC 10.802(g)*

## Exhibit 2

### Tenant File Guidelines

The following technical support does not represent a complete list of all file requirements and is intended only as a guide. TDHCA staff recommends that property managers responsible for accepting and processing applications attend First Thursday Training / Income Determination Training in order to get a full overview of the process. Forms discussed below are available at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm>.

*\*Important Note\* The application, verifications of income and assets, and Tenant Income Certification (1 – 5 below) must be signed within 120 days of one another. If one component is outside of that time frame, you must recertify.*

1. **Intake Application:** Each adult household member must complete their own application in order to be properly screened at initial certification. A married couple can complete a joint application. The Department does not have a required form to screen households, but we make a sample form available for that purpose. All households must be screened for household composition, income and assets. Applicants must complete all blanks on the application and answer all questions. Any lines left intentionally blank should be marked with “none” or “n/a.” The application must be signed and dated by all adult household members, using the date that the form is actually completed. If you use the Texas Apartment Association (TAA) Rental Application, be aware that it does not include all requirements, but they have a “Supplemental Rental Application for Units Under Government Regulated Affordable Housing Programs” that includes the additional requirements. TDHCA also has an application form that you can use; using our form is not required for the application, but it does screen for all requirements.
2. **Release and Consent:** Have tenant sign TDHCA’s Release and Consent form so that verifications may be collected by the property.
3. **Verify Income:** Each source of income and asset must be documented for every adult household member based upon the information disclosed on the application. There are multiple methods:
  - a. **Income Verification for Households with Section 8 Certificates (HTC only):** If you correctly use this form, you do not need to further verify income or assets, but you do need to collect all other components of the tenant file. This form is signed by the Public Housing Authority, verifying that the household is eligible at initial occupancy or at recertification. The form may only be used if the housing authority performed an income certification or recertification within 120 days of the effective date of the application that you collect (step 1 above) and the Income Certification form that is signed (step 5 below). If outside of that period, you must verify income and assets yourself;
  - b. **First hand verifications (required for HOME):** Paystubs or payroll print-outs that show gross income. If you choose this method, ensure that you consistently collect a specified number of consecutive check stubs as defined in your management plan;
  - c. **Employment Verification Form:** Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the employer. To prevent fraud, you must submit the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the employer portion has authority to do so and has access to all applicable information in order to verify the employment income. If

you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it;

- d. **Verification of non-employment income:** You must obtain verifications for all other income sources, such as child support, social security, and/or unemployment benefits. Self-certification by the household is not acceptable. Examples: benefit verification letter(s) would be acceptable for social security and/or employment benefits. Acceptable verifications for child support could include documents such as divorce decree(s), court order(s), or a written statement from the court or attorney general regarding the monthly awarded amount;
  - e. **Telephone Verifications:** These are acceptable *only* for clarifying discrepancies and cannot be used as primary form of verification. Include your name, the date, the name of the person with whom you spoke, and your signature. These are appropriate if there is an unusual circumstance relating to the tenant file;
  - f. **Certification of Zero Income:** If an adult household member does not report any sources of income on the application, this form can be used to document thorough screening and to document the source of funds used to pay for rent, utilities, and/or other necessities.
4. **Verify Assets:** Regardless of their balances, applicants must report all assets owned, including assets such as checking or savings accounts. The accounts are typically disclosed on the application form, but you must review all documentation from the tenant to ensure proper documentation of the household's income and assets. For instance, review the credit report (if you pull one), application, pay stubs, and other documents to ensure that all information is consistent. Examples of ways to find assets that are frequently overlooked: Review pay stubs for assets such as checking and retirement accounts that the household may have forgotten to include in the application. These accounts must also be verified. Format of verifications:
- a. **Under \$5000 Asset Certification Form (HTC only):** If the total cash value of the assets owned by members of the household is less than \$5,000, as reported on the Intake Application, the TDHCA Under \$5,000 Asset Certification form may be used to verify assets. If applicable, follow the instructions to complete one form per household that includes everyone's assets, even minors, and have all adults sign and date using the date that the form is actually completed.
  - b. **First hand verifications (required for HOME)** such as bank statements to verify a checking account. Ensure that you use a consistent number of consecutive statements, as identified in your management plan.
  - c. **3<sup>rd</sup> party verifications** using the TDHCA Asset Verification form. As with the "Employment Verification Form" discussed above, Part 1 must be completed by you and signed by the tenant. Part 2 must be completed by the financial institution. To prevent fraud, you must submit the form directly to the employer and must not allow the tenant to handle it. You should ensure that the person completing the financial institution's portion has authority to do so and has access to all applicable information in order to verify the asset(s). If you receive the verification via mail, retain the envelope. If you receive it via fax, ensure that the fax stamp is on it.

5. **Tenant Income Certification Form:** Upon verification of all income and asset sources disclosed on the application and any additional information found in the documentation submitted by the tenant, the next step is to annualize the sources on the Income Certification Form, add them together, and compare to the applicable income limit for household size which can be found at <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>. Be sure to include any income derived from assets. The form must include all household members, and be signed by each adult household member.
6. **Lease:** Must conform with your LURA and TDHCA requirements and indicate a rent below the maximum rent limits, which can be found at <http://www.tdhca.state.tx.us/pmcomp/irl/index.htm>. When determining the rent, ensure that the tenant's rent, plus the utility allowance, plus any housing subsidies, plus any mandatory fees, are below the maximum limits set by TDHCA. 10 TAC §10.613(a) prohibits the eviction or termination of tenancy of low income households for reasons other than good cause throughout the affordability period in accordance with Revenue Ruling 2004-82. In addition, 10 TAC §10.613(e) prohibits HTC developments from locking out or threatening to lock out any development resident, or seizing or threatening to seize personal property of a resident, except by judicial process, for purposes of performing necessary repairs or construction work, or in case of emergency. The prohibitions must be included in the lease or lease addendum. Additionally, certain programs must include a Lead Warning Statement and the TDHCA VAWA lease addendum, per 10 TAC 10.613(f) and (h). TAA has an affordable lease addendum that has incorporated this required language. If you are not a TAA member, you can draft a lease addendum using the requirements outlined above. For Section 811 units, you must use the HUD Model Lease, HUD form 92236-PRA.
7. **Tenant Selection Criteria:** In accordance with 10 TAC §10.610(b), you must maintain written Tenant Selection Criteria and a copy of those written criteria under which an applicant was screened must be included in the household's file.

### **Exhibit 3**

#### **Annual Owner's Compliance Report Instructions**

Submit the 2019 Annual Owner's Compliance Report (AOCR) online via CMTS for each of the Properties.

CMTS is available at: <https://pox.tdhca.state.tx.us/aims2/pox>.

The report has three parts, each of which must be submitted via CMTS for each of the Properties:

- Part A: Owner's Certification of Program Compliance
- Part B: Unit Status Report
- Owner's Financial Certification

The 2019 AOCR was due 7/15/2020, reporting data as of 12/31/2019. Part A and the Owner's Financial Certification must be completed with information as of 12/31/2019; however, the Unit Status Report can be completed using current occupancy data.

*Technical support:*

- *Training materials regarding annual reporting is available at the following link: <https://www.tdhca.state.tx.us/pmcomp/reports.htm> .*
- *Please note that you must enter current occupancy data and individual household member information for each unit before the system will allow you to submit Part B. To update the Unit Status Report / Quarterly Vacancy Report, you will log in to CMTS. Once logged in, click on "Unit Status Report". Click on "Enter Unit Occupancy" at the top of the next screen. From there, you will be able to enter occupancy information for each unit, along with household member data. Once all units have been updated, submit that data via CMTS as the 2019 AOCR Part B. To get to those reports, go back to the "Unit Status Reports" page in CMTS and submit the Unit Status Report for the required period.*



**Exhibit 4:**

**Texas Administrative Code**

TITLE 10           COMMUNITY DEVELOPMENT  
PART 1            TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
CHAPTER 10       UNIFORM MULTIFAMILY RULES  
SUBCHAPTER E    POST AWARD AND ASSET MANAGEMENT REQUIREMENTS  
RULE §10.406    Ownership Transfers (§2306.6713)

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(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice and a completed Ownership Transfer packet, if applicable, to the Department at least 45 calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Except as otherwise provided herein, the Executive Director's prior written approval of any such transfer is required. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section.

(b) Exceptions. The following exceptions to the ownership transfer process outlined herein apply:

(1) A Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new Principals or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(2) Transfers that are the result of an involuntary removal of the general partner by the investment limited partner do not require advance approval but must be reported to the Department as soon as possible due to the sensitive timing and nature of this decision. In the event the investment limited partner has proposed a new general partner or will permanently replace the general partner, a full Ownership Transfer packet must be submitted.

(3) Changes to the investment limited partner, non-Controlling limited partner, or other non-Controlling partners affiliated with the investment limited partner do not require Executive Director approval. A General Partner's acquisition of the interest of the investment limited partner does not require Executive Director approval, unless some other change in ownership is occurring as part of the same overall transaction.

(4) Changes resulting from foreclosure do not require advance approval but acquiring parties must notify the Department as soon as possible of the revised ownership structure and ownership contact information.

(c) General Requirements.

(1) Any new Principal in the ownership of a Development must be eligible under §11.202 of Subchapter C (relating to Ineligible Applicants and Applications). In addition, Principals will be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee).

(2) Changes in Developers or Guarantors must be addressed as non-material amendments to the application under §10.405 of this subchapter.

(3) To the extent an investment limited partner or its Affiliate assumes a Controlling interest in a Development Owner, such acquisition shall be subject to the Ownership Transfer requirements set forth herein. Principals of the investment limited partner or Affiliate will be considered new Principals and will be reviewed as stated under paragraph (1) of this subsection.

(4) Simultaneous transfer or concurrent offering for sale of the General Partner's and Limited Partner's control and interest will be subject to the Ownership Transfer requirements set forth herein and will trigger a Right of First Refusal, if applicable.

(d) Transfer Actions Warranting Debarment. If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure or the Department at risk for financial exposure as a result of non-compliance, staff may make a recommendation to the Board for the

debarment of the entity and/or its Principals and Affiliates pursuant to the Department's debarment rule. In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration by the Executive Award and Review Committee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), prior to recommending any new financing or allocation of credits.

(e) Transfers Prior to 8609 Issuance or Construction Completion. Prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) an Applicant may request an amendment to its ownership structure to add Principals. 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. A development sponsor, General Partner or Development Owner may not sell the Development in whole or voluntarily end their Control prior to the issuance of 8609s.

(f) Nonprofit Organizations. If the ownership transfer request is to replace a nonprofit organization within the Development ownership entity, the replacement nonprofit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Nonprofit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Nonprofit Organization that meets the requirements of §42(h)(5) of the Code and Tex. Gov't Code §2306.6706, if applicable, and can demonstrate planned participation in the operation of the Development on a regular, continuous, and substantial basis.

(2) If the LURA requires ownership or material participation in ownership by a nonprofit organization or CHDO, the Development Owner must show that the transferee is a nonprofit organization or CHDO, as applicable, that complies with the LURA.

(3) Exceptions to the above may be made on a case by case basis if the Development is past its Compliance Period/Federal Affordability Period, was not reported to the IRS as part of the Department's Nonprofit Set Aside in any HTC Award year, and follows the procedures outlined in §10.405(b)(1) - (5) of this chapter (relating to LURA Amendments that require Board Approval). The Board must find that:

(A) The selling nonprofit is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(B) The participation by the nonprofit was substantive and meaningful during the full term of the Compliance Period but is no longer substantive or meaningful to the operations of the Development; and

(C) The proposed purchaser is an affiliate of the current Owner or otherwise meets the Department's standards for ownership transfers.

(g) Historically Underutilized Business (HUB) Organizations. If a HUB is the general partner or special limited partner of a Development Owner and it determines to sell its ownership interest, after the issuance of 8609's, the purchaser of that partnership interest or the general or special limited partner is not required to be a HUB as long as the procedure described in §10.405(b)(1) of this chapter (relating to Non-Material LURA Amendments) has been followed and approved.

(h) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances pertaining to the transfer and the effects of approval or denial. Documentation must be submitted as directed in the Post Award Activities Manual, which includes but is not limited to:

(1) A written explanation outlining the reason for the request;

(2) Ownership transfer information, including but not limited to the type of sale, amount of Development reserves to transfer in the event of a property sale, and the prospective closing date;

(3) Pre and post transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §11.204(13)(A) of Subchapter C;

(4) A list of the names and contact information for transferees and Related Parties;

(5) Previous Participation information for any new Principal as described in §11.204(13)(B) of Subchapter C;

(6) Agreements among parties associated with the transfer;

(7) Owners Certifications with regard to materials submitted further described in the Post Award Activities Manual;

(8) Detailed information describing the organizational structure, experience, and financial capacity of any party holding a controlling interest in any Principal or Controlling entity of the prospective Development Owner;

(9) Evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least 30 calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30 day period has expired;

(10) Any required exhibits and the list of exhibits related to specific circumstances of transfer or Ownership as detailed in the Post Award Activities Manual.

(i) Once the Department receives all necessary information under this section and as required under the Post Award Activities Manual, staff shall initiate a qualifications review of a transferee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation and Executive Award Review and Advisory Committee), to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter and §11.202 of Subchapter C (relating to Ineligible Applicants and Applications).

(j) Credit Limitation. As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) In cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) In cases where the general partner is being replaced if the award of credits was made at least five years prior to the transfer request date.

(k) Penalties, Past Due Fees and Underfunded Reserves. The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring). The Development Owner, as on record with the Department, will be liable for any penalties or fees imposed by the Department even if such penalty can be attributable to the new Development Owner unless such ownership transfer is approved by the Department. In the event a transferring Development has a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in §10.404(a) (relating to Replacement Reserve Accounts), or that appears insufficient to meet capital expenditure needs as indicated by the number or cost of repairs included in a PCA, the prospective Development Owner may be required to establish and maintain a replacement reserve account or increase the amount of regular deposits to the replacement reserve account by entering into a Reserve Agreement with the Department. The Department may also request a plan and timeline relating to needed repairs or renovations that will be completed by the departing and/or incoming Owner as a condition to approving the Transfer.

(l) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by the corresponding ownership transfer fee as outlined in §11.901 of this chapter (relating to Fee Schedule, Appeals, and other Provisions).

Source Note: The provisions of this §10.406 adopted to be effective January 5, 2017, 41 TexReg 10569; amended to be effective January 4, 2018, 42 TexReg 7610; amended to be effective December 30, 2018, 43 TexReg 8297

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**BOARD ACTION REQUEST**  
**BOND FINANCE DIVISION**  
**NOVEMBER 5, 2020**

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 12, concerning the Multifamily Housing Revenue Bond Rules, and an order adopting new 10 TAC Chapter 12 concerning the Multifamily Housing Revenue Bond Rules, and directing its publication in the *Texas Register*

**RECOMMENDED ACTION**

**WHEREAS**, the Texas Department of Housing and Community Affairs (the Department) is authorized to issue multifamily housing revenue bonds for the State of Texas;

**WHEREAS**, the Department developed the Multifamily Housing Revenue Bond Rules to establish the procedures and requirements relating to the issuance of bonds;

**WHEREAS**, the proposed repeal and new 10 TAC Chapter 12 were published in the September 18, 2020, issue of the *Texas Register* for public comment; and

**WHEREAS**, the public comment period ended October 16, 2020, and only one comment was received relating to this rule;

**NOW, therefore, it is hereby**

**RESOLVED**, that the final order adopting the repeal and new 10 TAC Chapter 12 regarding the Multifamily Housing Revenue Bond Rules, together with the preamble presented to this meeting, are approved for publication in the *Texas Register*, and

**FURTHER RESOLVED** that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed for and on behalf of the Department, to cause the amendments to the Multifamily Housing Revenue Bond Rules, together with the preamble in the form presented to this meeting, to be published in the *Texas Register* and in connection therewith, make non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

**BACKGROUND**

The Board approved the proposed changes to Chapter 12 regarding the 2021 Multifamily Housing Revenue Bond Rules (the Bond Rules) at the Board meeting of September 3, 2020, to be published in the *Texas Register* for public comment. The Department received only one comment relating to the Bond Rules. Staff is recommending the Bond Rules be adopted with no changes; however, should

there be changes made to the 2021 QAP by the Board that would affect the Bond Rules, staff will make those changes required for consistency.

## **Attachment 1: Preamble, including required analysis, for repeal of 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules**

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules (the Bond Rules). 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 proposed 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. Wilkinson 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 readoption making changes to an existing activity, the issuance of Private Activity Bonds (PAB).
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 making changes to an existing activity, the issuance of PABs.
7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.
8. The repeal will not negatively or 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 or authorize a takings 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).

Bobby Wilkinson, Executive 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 and more germane rule for administering the issuance of PAB. 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. Wilkinson 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 September 18, 2020, and October 16, 2020. No comment was received.

The Board adopted the final order adopting the repeal on November 5, 2020.

STATUTORY AUTHORITY. The repeal is made 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 12, Multifamily Housing Revenue Bond Rule**



**Attachment 2: Preamble, including required analysis, for adopting new 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules**

The Texas Department of Housing and Community Affairs (Department" adopts, without changes from the published draft, new 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules (Bond Rules). The purpose of the new section is to provide compliance with Tex. Gov't Code §2306.359 and to update the rule to: clarify that development owners can select from supportive services identified in subsequent Qualified Allocation Plans adopted by the Department upon written consent from the Department and allow applicants to submit the full tax credit application (when the Department is the issuer) prior to receipt of a bond reservation at the discretion of staff, clarify that any market rate units proposed would be limited to 140% of area median income pursuant to statute, and include parameters for closing fees for transactions considered to be a re-issuance.

Tex. Gov't Code §2001.0045(b) does not apply to the action on this rule pursuant to item (9), which excepts rule changes necessary to implement legislation. The rule provides compliance with Tex. Gov't Code §2306.359, which requires the Department to provide for specific scoring criteria and underwriting considerations for multifamily private activity bond activities.

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. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule will be in effect:

1. The rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, the issuance of Private Activity Bonds ("PAB").
2. The 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 rule does not require additional future legislative appropriations.
4. The rule changes will not result in an increase in fees paid to the Department, but may, under certain circumstances, result in a decrease in fees paid to the Department regarding Tax-Exempt Bond Developments.
5. The 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 rule does not increase or decrease the number of individuals subject to the rule's applicability.
8. The rule will not negatively or 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, §2306.359. Although these rules mostly pertain to the filing of a bond pre-application, some stakeholders have reported that their average cost of filing a full Application is between \$50,000 and \$60,000; which may vary depending on the specific type of Application, location of the Development Site, and other non-state of Texas funding sources utilized. The proposed rules do not, on average result in an increased cost of filing an application as compared to the existing program rules.

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 entities applying for multifamily PAB. Only those small or micro-businesses that participate in this program are subject to this rule. There are approximately 100 to 150 businesses, which could possibly be considered small or micro-businesses, subject to the rule for which the economic impact of the rule would be a flat fee of \$8,500 which includes the filing fees associated with submitting a bond pre-application.

The Department bases this estimate on the potential number of Applicants and their related parties who may submit applications to TDHCA for PAB (and accompanying housing tax credits). There could be additional costs associated with pre-applications depending on whether the small or micro-businesses outsource how the application materials are compiled. The filing fees associated with a full application for PAB which is layered with LIHTC may range from \$480 to \$3,600 which is based on \$30 per unit, and all Applicants are required to propose constructing, at a minimum, 16 Units. The rule places a limit on the maximum number of Units that can be proposed, at 120 Units.

These fee costs are not inclusive of external costs required by the basic business necessities underlying any real estate transaction, from placing earnest money on land, conducting an Environmental Site Assessment, conducting a market study, potentially retaining counsel, hiring an architect and an engineer to construct basic site designs and elevations, and paying any other related, third-party fees for securing the necessary financing to construct multifamily housing.

There are approximately 1,300 rural communities potentially subject to the new rule for which the economic impact of the rule is projected to be \$0. 10 TAC Chapter 12 places no financial burdens on rural communities, as the costs associated with submitting an Application are born entirely by private parties. In an average year the volume of applications for PAB that are located in rural areas is not more than 20% of all PAB applications received. In those cases, a rural community securing a PAB

Development will experience an economic benefit, not least among which is the increased property tax revenue from a large multifamily Development.

3. The Department has determined that because there are rural PAB awardees, this program helps promote construction activities and long term tax base in rural areas of Texas. Aside from the fees and costs associated with submitting an Application, there is a probable positive economic effect on small or micro-businesses or rural communities that receive PAB awards and successfully use those awards to construct multifamily housing, although the specific impact is not able to be quantified in advance.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX GOV'T CODE §2007.043. The 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 rule may provide a possible positive economic effect on local employment in association with this rule since PAB Developments, layered with housing tax credits, often involve a typical minimum investment of \$10 million in capital, and more commonly an investment from \$20 million to \$30 million. Such a capital investment has direct, indirect, and induced effects on the local and regional economies and local employment. However, because the exact location of where program funds or developments are directed is not determined in rule, and is driven by real estate demand, there is no way to predict during rulemaking where these positive effects may occur. Furthermore, while the Department believes that any and all impacts are positive, that impact is not able to be quantified for any given community until PABs and LIHTCs are actually awarded to a proposed Development, given the unique characteristics of each proposed multifamily Development.

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 significant construction activity is associated with any PAB Development layered with LIHTC and each apartment community significantly increases the property value of the land being developed, there are no probable negative effects of the rule on particular geographic regions. If anything, positive effects will ensue in those communities where developers receive PAB awards.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(5). Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the rule is in effect, the public benefit anticipated as a result of the new section will be an updated and more germane rule for administering the issuance of PABs and corresponding allocation of housing tax credits. There is no change to the economic cost to any individuals required to comply with the new section because the same processes described by the rule have already been in place through the rule found at this section being repealed. The average cost of filing a pre-application and application remain unchanged based

on these rule changes. The rules do not, on average, result in an increased cost of filing an application as compared to the existing program rules.

f. FISCAL NOTE REQUIRED BY TEX GOV'T CODE §2001.024(a)(4). Mr. Wilkinson 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 same processes described by the rule have already been in place through the rule found at this section being repealed.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comments between September 18, 2020 and October 16, 2020. Only one comment was received.

The Board adopted the final order adopting the new on November 5, 2020.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government 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.

#### SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS

Public comments were accepted between September 18, 2020 and October 16, 2020, with comments received from: (148) BETCO Housing Lab.

#### §12.9(b) – Federal Set-Aside Requirements

##### COMMENT SUMMARY:

Commenter (148) summarized that the proposed changes to this section restrict market rate units to 140% of the area median income and questioned whether the units would officially be considered income restricted units if the rents are capped.

##### STAFF RESPONSE:

The changes made to this section reflect the requirements contained in Tex. Gov't Code, Chapter 2306 as it relates to bonds issued by the Department. The Department is required to ensure units are occupied by eligible households, and such households are defined as low-income and moderate income. Moderate income is further defined as being limited to households at 140% of the area median income. For transactions that propose market rate units, and propose to use bond proceeds to construct such units, these units would need to be restricted to 140% of area median income and included in the Bond Regulatory and Land Use Restriction Agreement as restricted units.

*Staff recommends no change based on this comment.*

### **§12.1. General.**

**(a) Authority.** The rules in this chapter apply to the issuance of multifamily housing revenue bonds (Bonds) by the Texas Department of Housing and Community Affairs (Department). The Department is authorized to issue Bonds pursuant to Tex. Gov't Code, Chapter 2306. Notwithstanding anything in this chapter to the contrary, Bonds which are issued to finance the Development of multifamily rental housing are subject to the requirements of the laws of the State of Texas, including but not limited to Tex. Gov't Code, Chapters 1372 and 2306, and federal law pursuant to the requirements of Internal Revenue Code (Code), §142.

**(b) General.** The purpose of this chapter is to state the Department's requirements for issuing Bonds, the procedures for applying for Bonds and the regulatory and land use restrictions imposed upon Bond financed Developments. The provisions contained in this chapter are separate from the rules relating to the Department's administration of the Housing Tax Credit program. Applicants seeking a Housing Tax Credit Allocation should consult Chapter 11 of this title (relating to the Housing Tax Credit Program Qualified Allocation Plan) for the current program year. In general, the Applicant will be required to satisfy the eligibility and threshold requirements of the Qualified Allocation Plan (QAP) in effect at the time the Certificate of Reservation is issued by the Texas Bond Review Board (TBRB). If the applicable QAP contradicts rules set forth in this chapter, the applicable QAP will take precedence over the rules in this chapter except in an instance of a conflicting statutory requirement, which shall always take precedence.

**(c) Costs of Issuance.** The Applicant shall be responsible for payment of all costs related to the preparation and submission of the pre-application and Application, including but not limited to, costs associated with the publication and posting of required public notices and all costs and expenses associated with the issuance of the Bonds, regardless of whether the Application is ultimately approved or whether Bonds are ultimately issued. At any point during the process, the Applicant is solely responsible for determining whether to proceed with the Application and the Department disclaims any and all responsibility and liability in this regard.

**(d) Taxable Bonds.** The Department may issue taxable Bonds and the requirements associated with such Bonds, including occupancy requirements, shall be determined by the Department on a case by case basis. Taxable bonds will not be eligible for an allocation of tax credits.

**(e) Waivers.** Requests for any permitted waivers of program rules must be made in accordance with §11.207 of this title (relating to Waiver of Rules).

### **§12.2. Definitions.**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any capitalized terms not specifically mentioned in this section shall have the meaning as defined in Tex. Gov't Code, Chapter 2306, §§141, 142, and 145 of the Internal Revenue Code, and Chapter 11 of this title (relating to Housing Tax Credit

Program Qualified Allocation Plan).

(1) Institutional Buyer--Shall have the meaning prescribed under 17 CFR §230.501(a), but excluding any natural person or any director or executive officer of the Department (17 CFR §230.501(a)(4) - (6)), or as defined by 17 CFR §230.144(a), promulgated under the Securities Act of 1933, as amended.

(2) Persons with Special Needs--Shall have the meaning prescribed under Tex. Gov't Code, §2306.511.

(3) Bond Trustee--A financial institution, usually a trust company or the trust department in a commercial bank, that holds collateral for the benefit of the holders of municipal securities. The Bond Trustee's obligations and responsibilities are set forth in the Indenture.

### **§12.3. Bond Rating and Investment Letter.**

**(a) Bond Ratings.** All publicly offered Bonds issued by the Department to finance Developments shall have a debt rating the equivalent of at least an "A" rating assigned to long-term obligations by Standard & Poor's Ratings Services, or Moody's Investors Service, Inc. If such rating is based upon credit enhancement provided by an institution other than the Applicant or Development Owner, the form and substance of such credit enhancement shall be subject to approval by the Board, evidenced by a resolution authorizing the issuance of the credit enhanced Bonds.

**(b) Investment Letters.** Bonds rated less than "A" or Bonds which are unrated must be placed with one or more Institutional Buyers and must be accompanied by an investor letter acceptable to the Department. Subsequent purchasers of such Bonds must also be qualified as Institutional Buyers and must execute and deliver to the Department an investor letter in a form satisfactory to the Department. Bonds rated less than "A" and Bonds which are unrated shall be issued in physical form, in minimum denominations of one hundred thousand dollars (\$100,000), and must carry a legend requiring any purchasers of the Bonds to be Institutional Buyers and sign and deliver to the Department an investor letter in a form acceptable to the Department.

### **§12.4. Pre-Application Process and Evaluation.**

**(a) Pre-Inducement Questionnaire.** Prior to the filing of a pre-application, the Applicant shall submit the Pre-Inducement Questionnaire, in the form prescribed by the Department, so the Department can have a preliminary understanding of the proposed Development plan before a pre-application and corresponding fees are submitted. After reviewing the pre-inducement questionnaire, Department staff will follow-up with the Applicant to discuss the next steps in the process and may schedule a pre-inducement conference call or meeting. Prior to the submission of a pre-application, it is essential that the Department and Applicant communicate regarding the Department's objectives and policies in the development of affordable housing throughout the State using Bond financing. The acceptance of the questionnaire by the Department does not constitute a pre-application or Application and does not bind the Department to any formal action regarding an inducement resolution.

**(b) Neighborhood Risk Factors.** If the Development Site has any of the characteristics described in §11.101(a)(3)(B) of this title (relating to Neighborhood Risk Factors), the Applicant must disclose the presence of such characteristics to the Department. Disclosure may be done at time of pre-application and handled in connection with the inducement or it can be addressed at the time of Application submission. The Applicant understands that any determination made by staff or the Board at the time of bond inducement regarding Site eligibility based on the documentation presented, is preliminary in nature. Should additional information related to any of the Neighborhood Risk Factors become available while the Tax-Exempt Bond Development Application is under review, or the information by which the original determination was made changes in a way that could affect eligibility, then such information will be re-evaluated and presented to the Board. The Application may be subject to termination should staff conclude that the Development Site has any characteristics found in §11.101(a)(3)(B) of this title (relating to Neighborhood Risk Factors) and the Applicant failed to disclose.

**(c) Pre-Application Process.** An Applicant who intends to pursue Bond financing from the Department shall submit a pre-application by the corresponding pre-application submission deadline, as set forth by the Department. The required pre-application fee as described in §12.10 of this chapter (relating to Fees) must be submitted with the pre-application in order for the pre-application to be considered accepted by the Department. Department review at the time of the pre-application is limited and not all issues of eligibility, fulfillment of threshold requirements in connection with the full Application, and documentation submission requirements pursuant to Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan) are reviewed. The Department is not responsible for notifying an Applicant of potential areas of ineligibility or other deficiencies at the time of pre-application. If the Development meets the criteria as described in §12.5 of this chapter (relating to Pre-Application Threshold Requirements), the pre-application will be scored and ranked according to the selection criteria as described in §12.6 of this chapter (relating to Pre-Application Scoring Criteria).

**(d) Scoring and Ranking.** The Department will rank the pre-application according to score within each priority defined by Tex. Gov't Code, §1372.0321. All Priority 1 pre-applications will be ranked above all Priority 2 pre-applications which will be ranked above all Priority 3 pre-applications. This priority ranking will be used throughout the calendar year. The selection criteria, as further described in §12.6 of this chapter, reflect a structure which gives priority consideration to specific criteria as outlined in Tex. Gov't Code, §2306.359. Should two or more pre-applications receive the same score, the tie breaker will go to the pre-application with the highest number of points achieved under §12.6(8) of this chapter (relating to Underserved Area) to determine which pre-application will receive preference in consideration of a Certificate of Reservation.

**(e) Inducement Resolution.** After the pre-applications have been scored and ranked, the pre-application will be presented to the Department's Board for consideration of an inducement resolution declaring the Department's initial intent to issue Bonds with respect to the Development. Approval of the inducement resolution does not guarantee final Board approval of the Bond Application. Department staff may recommend that the Board not approve an

inducement resolution for a pre-application or that an inducement resolution be approved despite the presence of neighborhood risk factors not fully evaluated by staff. The Applicant recognizes the risk involved in moving forward should this be the case and the Department assumes no responsibility or liability in that regard. Each Development is unique, and therefore, making the final determination to issue Bonds is often dependent on the issues presented at the time the full Application is considered by the Board.

**§12.5. Pre-Application Threshold Requirements.**

The threshold requirements of a pre-application include the criteria listed in paragraphs (1) - (8) of this section. As the Department reviews the pre-application the assumptions as reflected in Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) will be utilized even if not reflected by the Applicant in the pre-application.

(1) Submission of the required tabs of the Uniform Application as prescribed by the Department in the Multifamily Bond Pre-Application Procedures Manual;

(2) Submission of the completed Bond Pre-Application Supplement in the form prescribed by the Department;

(3) Completed Bond Review Board Residential Rental Attachment for the current program year;

(4) Site Control, evidenced by the documentation required under §11.204(10) of this title (relating to Required Documentation for Application Submission). The Site Control must be valid through the date of the Board meeting at which the inducement resolution is considered and must meet the requirements of §11.204(10) of this title at the time of Application;

(5) Boundary survey or plat clearly identifying the location and boundaries of the subject Property;

(6) Organizational Chart showing the structure of the Development Owner and of any Developer and Guarantor, providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner, Developer and Guarantor, as applicable. The List of Organizations form, as provided in the pre-application, must include all Persons identified on the organizational charts, and further identify which of those Persons listed exercise Control of the Development;

(7) Evidence of Entity Registration or Reservation with the Texas Office of the Secretary of State; and

(8) A certification, as provided in the pre-application, that the Applicant met the requirements and deadlines for public notifications as identified in §11.203 of this title (relating to Public Notifications (§2306.6705(9))). In general, notifications should not be older than three months prior to the date of Application submission. Re-notification will be required by Applicants who



have submitted a change from pre-application to Application that reflects a total Unit increase of greater than 10% or a 5% increase in density (calculated as Units per acre) as a result of a change in the size of the Development Site. In addition, should the jurisdiction of the official holding any position or role described in §11.203 of this title change between the submission of a pre-application and the submission of an Application, Applicants are required to notify the new entity no later than the Full Application Delivery Date.

#### **§12.6. Pre-Application Scoring Criteria.**

This section identifies the scoring criteria used in evaluating and ranking pre-applications. The criteria identified below include those items required under Tex. Gov't Code, §2306.359 and other criteria considered important by the Department. Any scoring items that require supplemental information to substantiate points must be submitted in the pre-application, as further outlined in the Multifamily Bond Pre-Application Procedures Manual. Applicants proposing multiple sites will be required to submit a separate pre-application for each Development Site, unless staff determines that one pre-application is more appropriate based on the specifics of the transaction. Each individual pre-application will be scored on its own merits and the final score will be determined based on an average of all of the individual scores. Ongoing requirements, as selected in the pre-application, will be reflected in the Land Use Restriction Agreement.

(1) Income and Rent Levels of the Tenants. Pre-applications may qualify for up to (10 points) for this item.

(A) Priority 1 designation includes one of clauses (i) - (iii) of this subparagraph. (10 points)

(i) set aside 50% of Units rent capped at 50% AMGI and the remaining 50% of Units rent capped at 60% AMGI; or

(ii) set aside 15% of Units rent capped at 30% AMGI and the remaining 85% of Units rent capped at 60% AMGI; or

(iii) set aside 100% of Units rent capped at 60% AMGI for Developments located in a census tract with a median income that is higher than the median income of the county, MSA, or PMSA in which the census tract is located.

(B) Priority 2 designation requires the set aside of at least 80% of the Units capped at 60% AMGI (7 points).

(C) Priority 3 designation. Includes any qualified residential rental development. Market rate Units can be included under this priority (5 points).

(2) Cost of Development per Square Foot. (1 point) For this item, costs shall be defined as either the Building Cost or the Hard Costs voluntarily included in Eligible Basis, as represented in the Development Cost Schedule, as originally provided in the pre-application. This calculation does not include indirect construction costs. Pre-applications that do not exceed \$95 per square foot

of Net Rentable Area will receive one point. Rehabilitation will automatically receive (1 point).

(3) Unit Sizes. (5 points) The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Points for this item will be automatically granted for Applications involving Rehabilitation (excluding Reconstruction).

- (A) Five-hundred-fifty (550) square feet for an Efficiency Unit;
- (B) Six-hundred-fifty (650) square feet for a one Bedroom Unit;
- (C) Eight-hundred-fifty (850) square feet for a two Bedroom Unit;
- (D) One-thousand-fifty (1,050) square feet for a three Bedroom Unit; and
- (E) One-thousand, two-hundred-fifty (1,250) square feet for a four Bedroom Unit.

(4) Extended Affordability. (2 points) A pre-application may qualify for points under this item for Development Owners that are willing to extend the State Restrictive Period for a Development to a total of 35 years.

(5) Unit and Development Construction Features. A minimum of (9 points) must be selected, as certified in the pre-application, for providing specific amenity and quality features in every Unit at no extra charge to the tenant. The amenities and corresponding point structure is provided in §11.101(b)(6)(B) of this title (relating to Unit, Development Construction, and Energy and Water Efficiency Features). The points selected at pre-application and/or Application will be required to be identified in the LURA and the points selected must be maintained throughout the State Restrictive Period. Applications involving scattered site Developments must have a specific amenity located within each Unit to count for points. Rehabilitation Developments will start with a base score of (3 points).

(6) Common Amenities. All Developments must provide at least the minimum threshold of points for common amenities based on the total number of Units in the Development as provided in subparagraphs (A) - (F) of this paragraph. The common amenities include those listed in §11.101(b)(5) of this title and must meet the requirements as stated therein. The Owner may change, from time to time, the amenities offered; however, the overall points as selected at Application must remain the same.

- (A) Developments with 16 to 40 Units must qualify for (4 points);
- (B) Developments with 41 to 76 Units must qualify for (7 points);
- (C) Developments with 77 to 99 Units must qualify for (10 points);
- (D) Developments with 100 to 149 Units must qualify for (14 points);
- (E) Developments with 150 to 199 Units must qualify for (18 points); or
- (F) Developments with 200 or more Units must qualify for (22 points).

(7) Resident Supportive Services. (8 points) By electing points, the Applicant certifies that the Development will provide supportive services, which are listed in §11.101(b)(7) of this title, appropriate for the residents and that there will be adequate space for the intended services. The provision and complete list of supportive services will be included in the LURA and must be

maintained throughout the State Restrictive Period. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. Should the QAP in subsequent years provide different services than those listed in §11.101(b)(7)(A) – (E), the Development Owner may be allowed to select services as listed therein upon written consent from the Department and any services selected must be of similar value to the service it is intending to replace. The Development Owner will be required to substantiate such service(s) at the time of compliance monitoring, if requested by staff. The services provided should be those that will directly benefit the Target Population of the Development and be accessible to all. No fees may be charged to the residents for any of the services. Services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one scoring item. These services are intended to be provided by a qualified and reputable provider in the specified industry such that the experience and background of the provider demonstrates sufficient knowledge to be providing the service. In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider. Where applicable, the services must be documented by a written agreement with the provider.

(8) Underserved Area. An Application may qualify to receive up to (2 points) if the Development Site meets the criteria described in §11.9(c)(5)(A) - (H) of this title. The pre-application must include evidence that the Development Site meets this requirement.

(9) Development Support/Opposition. (Maximum +24 to -24 points) Each letter will receive a maximum of +3 to -3 points and must be received 10 business days prior to the Board's consideration of the pre-application. Letters must clearly state support or opposition to the specific Development. State Representatives or Senators as well as local elected officials must be in office when the pre-application is submitted and represent the district containing the proposed Development Site. Letters of support from State or local elected officials that do not represent the district containing the proposed Development Site will not qualify for points. Neutral letters that do not specifically refer to the Development or do not explicitly state support will receive (zero points). A letter that does not directly express support but expresses it indirectly by inference (i.e., "the local jurisdiction supports the Development and I support the local jurisdiction") counts as a neutral letter except in the case of State elected officials. A letter from a State elected official that does not directly indicate support by the official, but expresses support on behalf of the official's constituents or community (i.e., "My constituents support the Development and I am relaying their support") counts as a support letter.

- (A) State Senator and State Representative of the districts whose boundaries include the proposed Development Site;
- (B) Mayor of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction);
- (C) All elected members of the Governing Body of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction);
- (D) Presiding officer of the Governing Body of the county in which the Development Site is located;

- (E) All elected members of the Governing Body of the county in which the Development Site is located;
- (F) Superintendent of the school district in which the Development Site is located; and
- (G) Presiding officer of the board of trustees of the school district in which the Development Site is located.

(10) Preservation Initiative. (10 points) Preservation Developments, including Rehabilitation proposals on Properties which are nearing expiration of an existing affordability requirement within the next two years or for which there has been a rent restriction requirement in the past 10 years may qualify for points under this item. Evidence must be submitted in the pre-application.

(11) Declared Disaster Areas. (7 points) A pre-application may receive points if the Development Site is located in an area declared a disaster area under Tex. Gov't Code §418.014 at the time of submission, or at any time within the two-year period preceding the date of submission.

#### **§12.7. Full Application Process.**

**(a) Application Submission.** Once the inducement resolution has been approved by the Board, an Applicant who elects to proceed with submitting a full Application to the Department must submit the complete tax credit Application pursuant to §11.201 of this title (relating to Procedural Requirements for Application Submission). While a Certificate of Reservation is required under §11.201 of this title (relating to Procedural Requirements for Application Submission) prior to submission of the complete tax credit Application, staff may allow the Application to be submitted prior to the issuance of a Certificate of Reservation depending on circumstances associated with the Development Site, structure of the transaction, volume cap environment, or other factors in the Department's sole discretion.

**(b) Eligibility Criteria.** The Department will evaluate the Application for eligibility and threshold at the time of full Application pursuant to Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan). If there are changes to the Application at any point prior to closing that have an adverse effect on the score and ranking order and that would have resulted in the pre-application being placed below another pre-application in the ranking, the Department will terminate the Application and withdraw the Certificate of Reservation from the Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). The Development and the Applicant must satisfy the requirements set forth in Chapter 11 of this title in addition to Tex. Gov't Code, Chapter 1372, the applicable requirements of Tex. Gov't Code Chapter 2306, and the Code. The Applicant will also be required to select a Bond Trustee from the Department's approved list as published on its website.

**(c) Bond Documents.** Once the Application has been submitted and the Applicant has deposited funds to pay initial costs, the Department's bond counsel shall draft Bond documents.

**(d) Public Hearings.** The Department will hold a public hearing to receive comments pertaining to

the Development and the issuance of the Bonds. A representative of the Applicant or member of the Development Team must be present at the public hearing and will be responsible for conducting a brief presentation on the proposed Development and providing handouts at the hearing that should include at minimum, a description of the Development, maximum rents and income restrictions. If the proposed Development is Rehabilitation, the presentation should include the proposed scope of work that is planned for the Development. The handouts must be submitted to the Department for review at least two days prior to the public hearing. Publication of all notices required for the public hearing shall be at the sole expense of the Applicant, as well as any facility rental fees or required deposits.

**(e) Approval of the Bonds.** Subject to the timely receipt and approval of commitments for financing, an acceptable evaluation for eligibility, the satisfactory negotiation of Bond documents, and the completion of a public hearing, the Board, upon presentation by Department staff, will consider the approval of the final Bond resolution relating to the issuance, final Bond documents and in the instance of privately placed Bonds, the pricing, terms and interest rate of the Bonds. The process for appeals and grounds for appeals may be found under §1.7 of this title (relating to Appeals Process). To the extent applicable to each specific Bond issuance, the Department's conduit multifamily Bond transactions will be processed in accordance with 34 TAC Part 9, Chapter 181, Subchapter A (relating to Bond Review Board Rules) and Tex. Gov't Code, Chapter 1372.

**(f) Local Permits.** Prior to closing on the Bond financing, all necessary approvals, including building permits from local municipalities, counties, or other jurisdictions with authority over the Development Site must have been obtained or evidence that the permits are obtainable subject only to payment of certain fees. For Rehabilitation Developments, in instances where such permits will be not received prior to bond closing, the Department may, on a limited and case-by-case basis allow for the closing to occur, subject to receipt of confirmation, acceptable to the Department, by the lender and/or equity investor that they are comfortable proceeding with closing.

#### **§12.8. Refunding Application Process.**

**(a) Application Submission.** Owners who wish to refund or modify tax-exempt bonds that were previously issued by the Department must submit to the Department a summary of the proposed refunding plan or modifications. To the extent such modifications constitute a re-issuance under state law the Applicant shall then be required to submit a refunding Application in the form prescribed by the Department pursuant to the Bond Refunding Application Procedures Manual.

**(b) Bond Documents.** Once the Department has received the refunding Application and the Applicant has deposited funds to pay initial costs, the Department's bond counsel will draft the necessary Bond documents.

**(c) Public Hearings.** Depending on the proposed modifications to existing Bond covenants a public hearing may be required. Such hearing must take place prior to obtaining Board approval

and must meet the requirements pursuant to §12.7(d) of this chapter (relating to Full Application Process) regarding the presence of a member of the Development Team and providing a summary of proposed Development changes.

**(d) Rule Applicability.** Refunding Applications must meet the applicable requirements pursuant to Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan). At the time of the original award the Application would have been subject to eligibility and threshold requirements under the QAP in effect the year the Application was awarded. Therefore, it is anticipated the Refunding Application would not be subject to the site and development requirements and restrictions pursuant to §11.101 of this title (relating to Site and Development Requirements and Restrictions). The circumstances surrounding a refunding Application are unique to each Development; therefore, upon evaluation of the refunding Application, the Department is authorized to utilize its discretion in the applicability of the Department's rules as it deems appropriate.

### **§12.9. Occupancy Requirements.**

**(a) Filing and Term of Regulatory Agreement.** A Bond Regulatory and Land Use Restriction Agreement will be filed in the property records of the county in which the Development is located for each Development financed from the proceeds of Bonds issued by the Department. The Regulatory Agreement shall include provisions relating to the Qualified Project Period, the State Restrictive Period, including any points claimed under §12.6(4) of this chapter for extending such term, and shall include provisions relating to Persons with Special Needs. The minimum term of the Regulatory Agreement will be based on the criteria as described in paragraphs (1) - (3) of this subsection, as applicable:

- (1) The longer of 30 years, from the date the Development Owner takes legal possession of the Development;
- (2) The end of the remaining term of the existing federal government assistance pursuant to Tex. Gov't Code, §2306.185; or
- (3) The period required by the Code.

### **(b) Federal Set Aside Requirements.**

(1) Developments which are financed from the proceeds of Private Activity Bonds must be restricted under one of the two minimum set-asides as described in subparagraphs (A) and (B) of this paragraph. Regardless of an election that may be made under Section 42 of the Code relating to income averaging, a Development will be required under the Bond Regulatory and Land Use Restriction Agreement to meet one of the two minimum set-asides described in subparagraphs (A) and (B) of this paragraph. Any proposed market rate Units shall be limited to 140% of the area median income and be considered restricted units under the Bond Regulatory Agreement for purposes of using Bond proceeds to construct such Units.

(A) At least 20% of the Units within the Development shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 50% of the area median income; or

(B) At least 40% of the Units within the Development shall be occupied or held vacant and available for occupancy at all times by persons or families whose income does not exceed 60% of the area median income.

(2) The Development Owner must, at the time of Application, indicate which of the two federal set-asides will apply to the Development and must also designate the selected priority for the Development in accordance with Tex. Gov't Code, §1372.0321. Units intended to satisfy set-aside requirements must be distributed equally throughout the Development, and must include a reasonably proportionate amount of each type of Unit available in the Development.

(3) No tenant qualifying under either of the minimum federal set-asides shall be denied continued occupancy of a Unit in the Development because, after commencement of such occupancy, such tenant's income increases to exceed the qualifying limit. However, should a tenant's income, as of the most recent determination thereof, exceed 140% of the applicable federal set-aside income limit and such tenant constitutes a portion of the set-aside requirement of this section, then such tenant shall only continue to qualify for so long as no Unit of comparable or smaller size is rented to a tenant that does not qualify as a Low-Income Tenant.

#### **§12.10. Fees.**

**(a) Pre-Application Fees.** The Applicant is required to submit, at the time of pre-application, the following fees: \$1,000 (payable to TDHCA), \$2,500 (payable to the Department's bond counsel) and \$5,000 (payable to the Texas Bond Review Board (TBRB) pursuant to Tex. Gov't Code, §1372.006(a)). These fees cover the costs of pre-application review by the Department, its bond counsel and filing fees associated with the Certificate of Reservation to the TBRB.

**(b) Application Fees.** At the time of Application the Applicant is required to submit a tax credit application fee of \$30 per Unit based on the total number of Units and a bond application fee of \$20 per Unit based on the total number of Units, unless otherwise modified by a specific program NOFA. Such fees cover the costs associated with Application review and the Department's expenses in connection with providing financing for a Development. For Developments proposed to be structured as a portfolio the bond application fees may be reduced on a case by case basis at the discretion of Department staff.

**(c) Closing Fees.** The closing fee for Bonds, other than refunding Bonds, is equal to 50 basis points (0.005) of the issued principal amount of the Bonds, unless otherwise modified by a program NOFA. The Applicant will also be required to pay at closing of the Bonds the first two years of the administration fee equal to 20 basis points (0.002) of the issued principal amount of the Bonds, with the first year prorated based on the actual closing date, and a Bond compliance fee equal to \$25/Unit (excludes market rate Units). Such compliance fee shall be applied to the third year

following closing.

**(d) Application and Issuance Fees for Refunding Applications.** For refunding an Application the application fee will be \$10,000 unless the refunding is not required to have a public hearing, in which case the fee will be \$5,000. The closing fee for refunding Bonds is equal to 25 basis points (0.0025) of the issued principal amount of the refunding Bonds. If applicable, administration and compliance fees due at closing may be prorated based on the current billing period of such fees. If additional volume cap is being requested other fees may be required as further described in the Bond Refunding Applications Procedures Manual. Transactions previously issued that involved a financing structure that would constitute a re-issuance under state law, but do not fit under §12.8, will be required to pay a closing fee that shall not exceed 25 basis points (0.0025) of the re-issued principal amount of the bonds which may be reduced in the sole determination of the Department as commensurate with the review by staff in obtaining Board approval at the time of conversion.

**(e) Administration Fee.** The annual administration fee is equal to 10 basis points (0.001) of the outstanding bond amount at the inception of each payment period and is paid as long as the Bonds are outstanding, unless otherwise modified by a specific program NOFA.

**(f) Bond Compliance Fee.** The Bond compliance monitoring fee is equal to \$25/Unit (excludes market rate Units), and is paid for the duration of the State Restrictive Period under the Regulatory Agreement, regardless of whether the Bonds have been paid off and are no longer outstanding.





October 9, 2020

Marni Holloway, Director of Multifamily Finance  
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Dear Ms. Holloway,

On behalf of the staff at BETCO Housing Lab, we appreciate the opportunity to submit recommendations for modifications to the 2021 Qualified Allocation Plan (QAP) and Uniform Multifamily Rules. BETCO Housing Lab is an affordable housing consulting firm, which provides multifamily development services to a wide range of clients who develop affordable housing across the state of Texas. Please consider the following recommendations to specific provisions of the draft 2021 Qualified Allocation Plan & Uniform Multifamily Rules.

#### Comments related to the Qualified Allocation Plan 2021 Draft

1. Subchapter A – Pre-Application, Definitions, Threshold Requirements & Competitive Scoring, Section 11.1(d) (108) Rehabilitation

*Comment: Move “Reconstructed Units will be considered New Construction for purposes of calculating the Replacement Reserves under 10TAC 11.302(d)(2)(l).” to the Reconstruction definition, Section 11.1(d)(107)*

Justification: We would like to inquire the reason for the proposed language. Also, we believe this language would be best included under the “Reconstruction” definition, as opposed to the “Rehabilitation” definition since it pertains to Reconstructed Units and Adaptive Reuse qualifies under this language, which is specifically excluded in the preceding language.

2. Subchapter A – Pre-Application, Definitions, Threshold Requirements & Competitive Scoring, Section 11.1(d)(122)(B)(v) Supportive Housing, Tenant Selection Criteria

*Comment: First Preference - (1) Remove the proposed tenant selection criteria language*

*Second Preference - (2) Have Tenant Selection Criteria that fully complies with Section 10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of criminal history screening criteria.*

Lora Myrick (512) 785-3710

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Third Preference - (3) If TDHCA staff believe that a more refined rule is required, we respectfully request that TDHCA consider replacing it with this revision, which more closely reflects the criteria of certain HUD programs:

**11.1 (d)122(B)(v):** have Tenant Selection Criteria that fully comply with §10.802 of this title (regarding Written Policies and Procedures), which require a process for evaluation of prospective residents against a clear set of criminal history screening criteria credit, criminal conviction, and prior eviction history that may disqualify a potential resident.

(I) The criminal screening criteria must, at minimum, include: not allow residents to reside in the Development that are on the National or Texas Sex Offender website or that have been convicted for the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); and

(-a-) Permanent denial based on criminal history at application or recertification for lifetime registered sex offenders, or any conviction for murder related offense, sexual assault, kidnapping, or arson or felony manufacture of methamphetamines; and

(-b-) Temporary denial for a minimum of three years two years from conviction based on criminal history at application or recertification of any for a violent or armed felony conviction, for discharge/display or firearm or illegal/deadly weapon, armed offense, stalking, obstruction or retaliation, violation of a protective order, or similar offense involving harm to others;

(-c-) Temporary denial for a minimum of two years for non-violent felonies;  
and

(-d-) Temporary denial for a minimum of one year for Class A misdemeanors

(II) The criminal screening criteria may include provisions for mitigation of that waive temporary or permanent denials, such as including documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others, with personal knowledge of the tenant. The criteria may include provision for individual review of permanent denials if the conviction is more than 20 years old and the prospective resident has no additional felony convictions in the last 20 years.

(III) Disqualifications in a property's Tenant Selection Criteria cannot be a total prohibition, unless such a prohibition is required by federal statute or regulation, or this subparagraph (i.e. the Development must have an appeal process for other required criteria). As part of the appeal process the prospective resident must be allowed to demonstrate that information in a third-party database is incorrect.



Justification: We have been in communication with Supportive Housing Developers and concur with their recommendations to changes to the proposed language. We agree that requiring owners to have a clear, publicly available tenant selection criterion is a needed component to a rental housing screening process. However, we feel strongly that determination of the most appropriate criteria is best left to the individual owners, based on the specifics of their developments and communities. Additionally, we are concerned that this proposed language creates a burden on property owners who may have to adhere to this criterion for the full affordability period or go through the process to request a waiver to the requirement. Criminal screening criteria continues to evolve and it would be a mistake to have detailed requirements fixed into the program.

3. Subchapter A – Pre-Application, Definitions, Threshold Requirements & Competitive Scoring, Section 11.8(c) Pre-Application Results

*Comment: Modify language to: “Applicants that may be requesting a Multifamily Direct Loan from the Department may submit a Request for Preliminary Determination with the Pre-Application and up to Full Application, as applicable.”*

Justification: At Pre-Application, applicants are still working through unit mix selection and determining equity pricing, so it is uncertain if there would be a need to apply for MFDL. We are recommending to request preliminary determination up to full application, when more information would be known.

4. Subchapter A – Pre-Application, Definitions, Threshold Requirements & Competitive Scoring, Section 11.9(e)(2) Cost of Development per Square Foot

*Comment: We would like to thank the Department for increases to the cost per square foot.*

5. Subchapter B – Site and Development Requirements and Restrictions, Section 11.101(a)(2) Undesirable Site Features

*Comment: We are interested in the purpose for submitting Requests for pre-determinations of Site eligibility re: Undesirable Site Features prior to pre-application, particularly if under review, the pre-determination is not binding. Additionally, does the pre-determination hold under peer review?*

6. Subchapter B – Site and Development Requirements and Restrictions, Section 11.101(a)(3)(iv) Neighborhood Risk Factors

*Comment: Modify language to: “Elderly Developments, Developments encumbered by a TDHCA LURA on the first day of the Application Acceptance Period or date the pre-*



*application is submitted (if applicable), and Supportive Housing SRO Developments or Supportive Housing Developments where all Units are Efficiency Units and/or one bedroom are exempt and are not required to provide mitigation for this subparagraph, but are still required to provide rating information in the Application and disclose the presence of the Neighborhood Risk Factor.*

**Justification:** The need for affordable housing with supportive services are in high need in order to continue reducing homelessness across the state. Not only individuals but also people with a spouse/partner are also in need of supportive housing to be able to access needed services and the current language limit the ability for couples to receive the best housing option for them.

7. Subchapter C – Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waivers of Rules, Section 11.204(8)(E)(ii) Development Costs

*Comment: We recommend removing the proposed language, “and the source of their cost estimate” or provide examples what is acceptable.*

**Justification:** Every LIHTC application is slightly different and a preliminary cost estimate may not be accurate to true costs in the construction phase, particularly if there are large market changes between application and the construction phase. Obtaining construction costs is difficult – we want to ensure the estimate provided is (1) correct per the Department’s request, and (2) indicate that the estimate is merely an estimate and is subject to change once real costs are available during the construction phase.

8. Subchapter C – Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waivers of Rules, Section 11.204(8)(F) Rental Assistance/Subsidy

*Comment: Typo – add back “must be provided” from the strikethrough language.*

9. Subchapter D – Underwriting and Loan Policy, Section 11.302 (d)(4)(D)(i)

*Comment: We like the thank the Department for the ability to change priority for reduction to debt service in the event the DCR is less than the required minimum.*

10. Table of Contents

*Comment: Please could staff provide a Table of Contents.*

**Justification:** It is helpful to navigate the rules and it streamlines the document for both the Department and the Applicant.



### Comments related to the Qualified Allocation Plan 2021 Draft - Multifamily Housing Revenue Bonds

#### 11. Section 12.9(b), Federal Set Aside Requirements

*Comment: The proposed language restricts market rate units to 140% of the area median income. If the rents are capped, are they officially considered income restricted units? And if they are income restricted units, are they now considered apart of eligible basis?*

### Comments related to the Qualified Allocation Plan 2021 Draft - Multifamily Housing Direct Loan Rule

#### 12. Section 13.5(g)(2)(A), Eligibility Criteria and Determinations

*Comment: Please provide clarification between the difference between "funds or resources from the Department". It seems like they would be one in the same.*

#### 13. Section 13.8(e), Criteria for Permanent Refinance Loans

*Comment: The proposed language is not very clear. It is unclear when the 90% will be funded - 30 days after TDHCA loan closing or will it be funded at the table if it is paying off another loan. Also, it is unclear when the Department will release the remaining 10% of the loan to repay existing debt.*

Thank you for the opportunity to provide public comment to the draft 2021 Qualified Allocation Plan and Uniform Multifamily Rules, Multifamily Housing Revenue Bonds and Direct Loan Rules. If you have any questions or would like to discuss these items further, please do not hesitate to contact me directly at (512) 785-3710 or via email at [lora@betcohousinglab.com](mailto:lora@betcohousinglab.com).

Sincerely,

Lora Myrick, President  
BETCO Housing Lab

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**BOARD ACTION REQUEST**

**SINGLE FAMILY AND HOMELESS PROGRAMS DIVISION**

**NOVEMBER 5, 2020**

Presentation, discussion, and possible action on Orders repealing all sections of 10 TAC Chapter 23, Single Family HOME Program, and Orders adopting new 10 TAC Chapter 23, Single Family HOME Program, concerning HOME single family activities, and directing their publication in the Texas Register

**RECOMMENDED ACTION**

**WHEREAS**, the repeal of the existing 10 TAC Chapter 23, Single Family HOME Program Rules and a new proposed 10 TAC Chapter 23 were approved in draft form at the Board meeting of September 3, 2020, and published for public comment in the *Texas Register*; and

**WHEREAS**, public comment on the proposed changes was accepted from September 18, 2020, through October 19, 2020, and no public comment was received;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Governing Board hereby adopts the new 10 TAC Chapter 23, Single Family HOME Program, and directs their publication in the *Texas Register*, together with their preamble, in the form presented to this meeting; and

**FURTHER 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 cause the adoption in the form presented to this meeting and as published in the Texas Register, except for a technical correction to a citation in 10 TAC §23.28(9), and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

**BACKGROUND**

The purpose of repealing 10 TAC Chapter 23, Single Family HOME Program rule and proposing a new 10 TAC Chapter 23, is to conform to the 2020-2024 State of Texas Consolidated Plan, codify new procedures, update and clarify current rules, and streamline processes. Changes were made to every Subchapter; therefore, the Department is repealing and adopting a new Chapter instead of amending the existing Chapter.

The Department held a roundtable discussion on July 24, 2020, regarding the Single Family HOME Program. The roundtable discussion included changes to the Single Family HOME Program approved in the consolidated plan and the proposed changes to HOME Single Family rule. Comments and suggestions received from the roundtable discussions were taken into consideration during the preparation of the proposed HOME Rule. The proposed changes to the HOME Rule were approved in draft form at the TDHCA board meeting on September 3, 2020, and were published for public comment in the *Texas Register* issue dated September 18, 2020, to allow for public comment. Public comments were accepted in writing and via e-mail through October 19, 2020, and no comment was received.

Attached are the proposed preambles, the proposed repeal and proposed new 10 TAC Chapter 23, Single Family HOME Program rules.



**Attachment 1: Preamble, including required analysis, for adopting the repeal of 10 TAC Chapter 23, Single Family HOME Program**

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 23, Single Family HOME Program. 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. Bobby Wilkinson, Executive 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 readoption making changes to an existing activity: administration of the HOME 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 workload 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; however, the repeal does eliminate the application fee in §23.25(a)(4) that had been \$30, which will provide for a reduction in costs for those participants participating in the activity governed by this rule.

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 an existing activity, the administration of the HOME Program.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively affect this state's economy, however, the repeal does eliminate application fees that may have been a barrier to participation, and which may 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 or 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. Wilkinson 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 and more germane rule that conforms with the State's 2020-2024 Consolidated Plan 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. Wilkinson 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 September 18, 2020, and October 19, 2020. Comments regarding the proposed repeal were accepted in writing and via e-mail; no comments were received.

The Board adopted the final order adopting the repeal on November 5, 2020.

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.

#### SUBCHAPTER A, GENERAL GUIDANCE

§23.1 Applicability and Purpose

§23.2 Definitions

#### SUBCHAPTER B, AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, REVIEW AND AWARD PROCEDURES, GENERAL ADMINISTRATIVE REQUIREMENTS, AND RESALE AND RECAPTURE OF FUNDS

§23.20 Availability of Funds and Regional Allocation Formula

§23.21 Application Forms and Materials and Deadlines

§23.22 Contract Award Application Review Process for Open and Competitive Application Cycles

§23.23 Reservation System Participant Review Process

§23.24 Administrative Deficiency Process

§23.25 General Threshold and Selection Criteria

§23.26 Contract Benchmarks and Limitations

§23.27 Reservation System Participant (RSP) Agreement

§23.28 General Administrative Requirements

§23.29 Resale and Recapture Provisions

#### SUBCHAPTER C HOMEOWNER REHABILITATION ASSISTANCE PROGRAM

§23.30 Homeowner Rehabilitation Assistance (HRA) Threshold and Selection Criteria

§23.31 Homeowner Rehabilitation Assistance (HRA) General Requirements

§23.32 Homeowner Rehabilitation Assistance (HRA) Administrative Requirements

#### SUBCHAPTER D, HOMEBUYER ASSISTANCE PROGRAM

§23.40 Homebuyer Assistance (HBA) Threshold and Selection Criteria

§23.41 Homebuyer Assistance (HBA) General Requirements

§23.42 Homebuyer Assistance (HBA) Administrative Requirements

#### SUBCHAPTER E, CONTRACT FOR DEED PROGRAM

§23.50 Contract for Deed (CFD) Threshold and Selection Criteria

§23.51 Contract for Deed (CFD) General Requirements

§23.52 Contract for Deed (CFD) Administrative Requirements

SUBCHAPTER F, TENANT-BASED RENTAL ASSISTANCE PROGRAM

§23.60 Tenant-Based Rental Assistance (TBRA) Threshold and Selection Criteria

§23.61 Tenant-Based Rental Assistance (TBRA) General Requirements

§23.62 Tenant-Based Rental Assistance (TBRA) Administrative Requirements

SUBCHAPTER G, SINGLE FAMILY DEVELOPMENT PROGRAM

§23.70 Single Family Development (SFD) Threshold and Selection Criteria

§23.71 Single Family Development (SFD) General Requirements

§23.72 Single Family Development (SFD) Administrative Requirements

SUBCHAPTER H, HOMEBUYER ASSISTANCE WITH NEW CONSTRUCTION (HANC) OR REHABILITATION

§23.80 Homebuyer Assistance with New Construction (HANC) or Rehabilitation Threshold and Selection Criteria

§23.81 Homebuyer with New Construction or Rehabilitation (HANC) General Requirements

§23.82 Homebuyer with New Construction (HANC) Administrative Requirements

## **Attachment 2: Preamble for adopting new 10 TAC Chapter 23, Single Family HOME Program**

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 23, Single Family HOME Program, without changes to the proposed text as published in the September 18, 202, issue of the Texas Register (45 TexReg 6547), except for a technical correction to a citation in 10 TAC §23.28(9). The purpose of the new sections is to conform to the 2020-2024 State of Texas Consolidated Plan and to update the rule to update definitions to better align HOME Program administration to federal requirements.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed 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. Bobby Wilkinson, Executive 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 it does eliminate the Homebuyer Assistance program activity to align with the 2020-2024 State of Texas Consolidated Plan. This rule also relates to changes in the administration of other Single Family HOME Program activities, including Homeowner Reconstruction Assistance, Contract for Deed, Tenant-Based Rental Assistance, Single Family Development, and Homebuyer Assistance with New Construction.
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, however, the rule change does reduce the Application Fee from \$30 to \$0, which will provide for a reduction in costs for those participants complying with this rule.
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 expand or repeal an existing regulation, but can be considered to "limit" the existing regulations on this activity because the proposed rule removes regulations related to the Homebuyer Assistance activity and rehabilitation of existing housing. However, this potentially limiting clarification to the rule is necessary to ensure compliance with the State of Texas 2020-2024 Consolidated Plan.
7. The new rule will not increase or decrease the number of individuals subject to the rule's applicability; and
8. The new rule will not negatively affect the state's economy, and may be considered to have a positive effect on the state's economy because changes at §23.25(a)(4) eliminate the requirement for an application fee, potentially increasing the number of applicants participating in the Single Family HOME Program.

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.

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 approximately 60 rural communities subject to the rule for which the economic impact of the rule is projected to be \$4,000,000 during the first year the rule is in effect.

3. The Department has determined that because the rule both eliminates an application fee and increases the funding limitation for construction activities, and because the applicants are primarily in rural parts of Texas, the proposed rule would assist in infusing funds into the local construction market, and may result in a possible positive economic effect on small or micro-businesses or rural communities, although the specific impact is not able to be quantified.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate or 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 rule may provide a possible positive economic effect on local employment because increased funding limitations for construction activities may create employment opportunities in the construction sector and supportive businesses; however, because participation in the Single Family HOME Program is not compulsory for communities, there is no way to determine during rulemaking where the positive effects may occur. The impact is not able to be quantified for any given community.

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 participation in the Single Family HOME Program is at the discretion of the local government or other eligible subrecipients, 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). Bobby Wilkinson, Executive 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 conforms to the State of Texas 2020-2024 Consolidated Plan and federal regulations. There will not be any economic cost to any individuals required to comply with the new section because the HOME Program provides reimbursement to those entities subject to the rule for the cost of compliance with the rule.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson 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 Single Family HOME Program is a federally funded program, and no increase in the requirement to match federal funds is proposed in the rule.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between September 18, 2020, and October 19, 2020. Comments regarding the proposed rule were accepted in writing and via e-mail; no comments were received.

The Board adopted the final order adopting the new rule on November 5, 2020.

STATUTORY AUTHORITY. The new sections are adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described, herein, the adopted new sections affect no other code, article, or statute.

## **SUBCHAPTER A. GENERAL GUIDANCE**

### **10 TAC §23.1, §23.2**

#### §23.1.Applicability and Purpose.

(a) Applicability. This Chapter governs the use and administration of all HOME single family Activities funds provided to the Texas Department of Housing and Community Affairs (the "Department") by the U.S. Department of Housing and Urban Development (HUD) pursuant to Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990 as amended (42 U.S.C. §§12701 - 12839) and HUD regulations at 24 CFR Part 92, as amended. Chapter 20 of this Title relating to Single Family Programs Umbrella Rule and Chapters 1 and 2 of this Title will apply to all single family activities, including Single Family Development. Unless otherwise noted herein or required by law, all provisions of this Chapter apply to any Application for a Contract award, or any Reservation submitted or received on or after the date of adoption of this Chapter. Existing Agreements executed within the preceding 12 months from the date of adoption of this Chapter or current pending Applications may be amended in writing at the request of the Administrator or Applicant, and with Department approval, so that all provisions of this Chapter apply to the Agreement or Application. Amendments proposing only partial adoption of this Chapter are prohibited. No amendment adopting this Chapter shall be granted if, in the discretion of the Department, any of the provisions of this Chapter conflict with the Notice of Funding Availability (NOFA) under which the existing Agreement was awarded or Application was submitted. The Governing Board may waive rules subject to this Chapter for good cause to meet the purpose of the HOME Program as described further in subsection (b) of this section, provided the waiver does not conflict with the federal regulations governing the use of these funds, or impact federally imposed obligation or expenditure deadlines governing the HOME Program.

(b) Purpose. The State's HOME Program is designed to:

(1) focus on the areas with the greatest housing need described in the State Consolidated Plan;

(2) provide funds for home ownership and rental housing through acquisition, Reconstruction, New Construction, and Tenant-Based Rental Assistance;

(3) promote partnerships among all levels of government and the private sector, including nonprofit and for-profit organizations; and

(4) provide low, very low, and extremely low-income families with affordable, decent, safe, and sanitary housing.

## §23.2.Definitions.

These words when used in this Chapter shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions may be found in Tex. Gov't Code Chapter 2306 or Chapter 20 of this Title relating to Single Family Programs Umbrella Rule.

(1) Area Median Family Income--The income limits published annually by the U.S. Department of Housing and Urban Development (HUD) for the Housing Choice Voucher Program that is used by the Department to determine the eligibility of Applicants for the HOME Program, also referred to as AMFI.

(2) CFR--Code of Federal Regulations.

(3) Commitment of Funds--Occurs when the funds are awarded to an Administrator for a specific Activity approved by the Department and set up in the Integrated Disbursement and Information System (IDIS) established by HUD.

(4) Construction Completion Date--The Construction Completion Date shall be the date of completion of all improvements as stated on the affidavit of completion, provided that the affidavit is filed within ten days of the stated date of completion or the date of filing as outlined in Tex Prop. Code §53.106.

(5) Date of Assistance--The date that assistance is provided to the Household. For Tenant-Based Rental Assistance, this is the start date of the rental subsidy. For Homeowner Reconstruction Assistance and Contract for Deed, this is the date of the loan closing or date of execution of grant agreement. For Single Family Development and Homebuyer Assistance with New Construction, this is the date that the Household executes the purchase agreement.

(6) Development Site--The area, or if scattered site, areas on which the development is proposed to be located.

(7) Direct Activity Costs--The total costs of hard construction costs, demolition costs, aerobic septic systems, refinancing costs (as applicable), acquisition and closing costs for acquisition of real property, and rental and utility subsidy and deposits.

(8) HOME Final Rule--The regulations with amendments promulgated at 24 CFR, Part 92 as published by HUD for the HOME Investment Partnerships Program at 42 U.S.C. §§12701 - 12839.

(9) Homeownership--Ownership in fee simple title in a one to four unit dwelling or in a condominium unit, or equivalent form of ownership approved by the Department. Homeownership is not right to possession under a contract for deed, installment contract, or land contract that has not converted into a deed for title ownership.

(10) Identity of Interest--An acquisition will be considered to be an Identity of Interest transaction when the purchaser has any financial interest whatsoever in the seller or lender or is subject to common

control, or any family relationship by virtue of blood, marriage, or adoption exists between the purchaser and the seller or lender.

(11) Match--Funds contributed to an Activity that meet the requirements of 24 CFR §§92.218 - 92.220. Match contributed to an Activity does not include mortgage revenue bonds, non HOME-assisted projects, and cannot include any other sources of Department funding unless otherwise approved in writing by the Department.

(12) New Construction--Construction of a new Single Family Housing Unit which involves:

(A) Construction on a lot that was not the site of a Single Family Housing Unit on the date HOME assistance was requested;

(B) Construction of a new Single Family Housing Unit following acquisition; or

(C) Construction of a site-built Single Family Housing Unit that replaces a manufactured housing unit.

(13) Person--Any individual, partnership, corporation, association, unit of government, community action agency, or public or private organization of any character.

(14) Persons with Special Needs--Individuals or categories of individuals determined by the Department to have unmet housing needs as provided in the Consolidated Plan and the State's One Year Action Plan.

(15) Predevelopment Costs--Costs consistent with 24 CFR §92.212 related to a specific eligible Activity including:

(A) Predevelopment housing project costs that the Department determines to be customary and reasonable, including but not limited to consulting fees, costs of preliminary financial applications, legal fees, architectural fees, engineering fees, engagement of a development team, and site control;

(B) Pre-construction housing project costs that the Department determines to be customary and reasonable, including but not limited to, the costs of obtaining firm construction loan commitments, architectural plans and specifications, zoning approvals, engineering studies and legal fees; and

(C) Predevelopment costs do not include general operational or administrative costs.

(16) Principal--A Person, or Persons, that will exercise Control over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

(A) Partnerships: Principals include all General Partners, special limited partners, and Principals with ownership interest;



(B) Corporations: Principals include any officer authorized by the board of directors to act on behalf of the corporation, including the president, vice president, secretary, treasurer, and all other executive officers, and each stock holder having a ten percent or more interest in the corporation; and

(C) Limited liability companies: Principals include all managing members, members having a ten percent or more interest in the limited liability company or any officer authorized to act on behalf of the limited liability company.

(17) Reconstruction--Has the same meaning as the defined term in 24 CFR §92.2.

(18) Reservation System Participant (RSP)--Administrator who has executed a written Agreement with the Department that allows for participation in the Reservation System.

(19) Service Area--The city(ies), county(ies) and/or place(s) identified in the Application and/or Agreement that the Administrator will serve.

(20) Third Party--A Person who is not:

(A) An Applicant, Administrator, Borrower, General Partner, Developer, Development Owner, or General Contractor; or

(B) An Affiliate, Affiliated Party to the Applicant, Administrator, Borrower, General Partner, Developer, Development Owner, or General Contractor; or

(C) A Person receiving any portion of the administration, contractor fee, or developer fee.

## **SUBCHAPTER B. AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, REVIEW AND AWARD PROCEDURES, GENERAL ADMINISTRATIVE REQUIREMENTS, AND RESALE AND RECAPTURE OF FUNDS**

### **10 TAC §§23.20 - 23.29**

#### §23.20.Availability of Funds and Regional Allocation Formula.

Funds made available through an open Application cycle and subject to regional allocation formula shall be made available to each region and subregion for a time period to be specified in the applicable NOFA, after which the funds remaining shall collapse and be made available statewide.

#### §23.21.Application Forms and Materials and Deadlines.

(a) The Department will produce an Application to satisfy the Department's requirements to be qualified to administer HOME activities. The Application will be available on the Department's website.

(b) The Department must receive all Applications by the deadline specified in the NOFA.

#### §23.22.Contract Award Application Review Process for Open Application Cycles.

An Application received by the Department in response to an open Application cycle NOFA will be assigned a "Received Date." An Application will be prioritized for review based on its "Received Date." Application acceptance dates may be staggered under an open Application cycle to prioritize Applications which propose to serve areas identified in Tex. Gov't Code §2306.127 as priority for certain communities. An Application with outstanding administrative deficiencies under Section 23.24 of this Chapter, may be suspended from further review until all administrative deficiencies have been cured or addressed to the Department's satisfaction. Applications that have completed the review process may be presented to the Board for approval with priority over Applications that continue to have administrative deficiencies at the time Board materials are prepared, regardless of "Received Date." If all funds available under a NOFA are awarded, all remaining Applicants will be notified and the remaining Applications will not be processed.

#### §23.23.Reservation System Participant Review Process.

An Application for a Reservation System Participant (RSP) Agreement shall be reviewed and if approved under Chapter 1, Subchapter C of this Title, as amended or superseded, concerning Previous Participation and the Executive Award and Review Advisory Committee, and not denied under Section 23.24 of this Chapter, will be drafted and processed in the order in which it was accepted to be executed and made effective.

#### §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 must 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 Executive Director or authorized designee, 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) 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., central time, on the seventh day following the date of the deficiency notice, the application may 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.

#### §23.25.General Threshold Criteria.

(a) General Threshold. All Applicants and Applications to administer a HOME Program award from the Department must submit or comply with the following:

(1) An Applicant certification of compliance with state rules promulgated by the Department, and federal laws, rules and guidance governing the HOME Program as provided in the Application.

(2) A Resolution from the Applicant's direct governing body which includes:

(A) Authorization of the submission of the Application specifying the NOFA under which funds are requested for Contract award Applications;

(B) Commitment and amount of cash reserves, if applicable, for use during the Contract or RSP Agreement term;

(C) Source of funds for Match obligation and Match dollar amount, if applicable;

(D) Name and title of the person authorized to represent the organization and who also has signature authority to execute a Contract and grant agreement or loan documents, as applicable, unless otherwise stated; and

(E) Date that the resolution was passed by the governing body, which must be within six months preceding Application submission for Reservation System Participation Agreement Applications, and no earlier than the date of the Department's Governing Board approval of the NOFA for Contract award Applications.

(3) An Applicant must be registered in the System for Award Management (SAM) and have a current Data Universal Numbering System (DUNS) number.

(4) An Application must be substantially complete when received by the Department. An Application will be terminated if an entire tab of the Application is missing; has excessive omissions of documentation

from the threshold or selection 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. Such Application will be terminated without being processed as an administrative deficiency. To the extent that a review was able to be performed, specific reasons for the Department's termination will be included in the notification sent to the Applicant but, because of the suspended review, may not include an all inclusive list of deficiencies in the Application.

§23.26.Contract Benchmarks and Limitations.

(a) Contract Award Funding Limits. Limits on the total amount of a Contract award will be established in the NOFA.

(b) Contract Award Terms. Homeowner Reconstruction Assistance awards will have a Contract term of not more than 21 months, exclusive of any applicable affordability period or loan term. Single Family Development awards will have a Contract term of not more than 24 months, exclusive of any applicable affordability period or loan term. Tenant-Based Rental Assistance awards will have a Contract term of not more than 36 months.

(c) Contract Award Benchmarks. Administrators must have attained environmental clearance for the contractually required number of Households served within six months of the effective date of the Contract. Contract Administrators must submit to the Department complete Activity setup information for the Commitment of Funds of all contractually required Households in accordance with the requirements herein within nine months from the effective date of the Contract. All remaining funds will be deobligated and reallocated in accordance with Chapter 1 of this Title relating to Reallocation of Financial Assistance.

(d) Voluntary deobligation. The Administrator may fully deobligate funds in the form of a written request signed by the signatory, or successor thereto, of the Contract. The Administrator may partially deobligate funds under a Contract in the form of a written request from the signatory if the letter also deobligates the associated number of targeted Households, funds for administrative costs, and Match and the partial deobligation would not have impacted the award of the Contract. Voluntary deobligation of a Contract does not limit an Administrator's ability to participate in an open application cycle.

(e) The Department may request information regarding the performance or status under a Contract prior to a Contract benchmark or at various times during the term of a Contract. Administrator must respond within the time limit stated in the request. Prolonged or repeated failure to respond may result in suspension of funds and ultimately in termination of the Contract by the Department.

(f) Pre-Contract Costs.

(1) The Administrator may be reimbursed for eligible administrative and Activity soft costs incurred before the effective date of the Contract in accordance with 24 CFR §92.212 and at the sole discretion of the Department.

(2) A Community Housing Development Organization may be reimbursed for Predevelopment Costs as defined in this Chapter for an Activity funded under Single Family Development.

(3) In no event will the Department reimburse expenses incurred more than six months prior to Governing Board approval of the Administrator's award.(g) Amendments to Contract awards will be processed in accordance with Chapter 20 of this Title, relating to Single Family Programs Umbrella Rule.

§23.27.Reservation System Participant (RSP) Agreement.

(a) Terms of Agreement. The term of an RSP Agreement will not exceed 36 months. Execution of an RSP Agreement does not guarantee the availability of funds under a reservation system. Reservations submitted under an RSP agreement will be subject to the provisions of this Chapter in effect as of the date of submission by the Administrator.

(b) Limits on Number of Reservations. Except for Activities submitted under the Disaster set-aside, RSP Administrators may have no more than five Reservations per county within the RSP's Service Area submitted to the Department for approval at any given time, except that Tenant-Based Rental Assistance Reservations submitted for approval under an RSP Agreement is limited to 30 at any given time.

(c) Extremely Low-Income Households. Except for Households submitted under the Disaster set-aside, each RSP will be required to serve at least one extremely low-income Household out of every four Households submitted and approved for assistance. For purposes of this subsection, extremely low-income is defined as families that are either at or below 30 percent AMFI for the county in which they will reside or have an income that is lower than the statewide 30 percent income limit without adjustments to HUD limits.

(d) Match. Administrators must meet the Match requirement per Activity approved for assistance.

(e) Completion of Construction. For Activities involving construction, construction must be complete within 12 months from the Commitment of Funds for the Activity.

(f) Household commitment contract term. The term of a Household commitment contract may not exceed 12 months, except that the term for Tenant-Based Rental Assistance may not exceed 24 months. Household commitment contracts may commence after the end date of an RSP Agreement only in cases when the Administrator has submitted a Reservation on or before the termination date of the RSP Agreement.

(g) Amendments to Household commitment contracts may be considered by the Department provided the approval does not conflict with the federal regulations governing use of these funds, or impact federally imposed obligation or expenditure deadlines.

(1) The Executive Director's authorized designee may approve an amendment that extends the term of a Household commitment contract by not more than three months, except that the term of a Household

commitment contract for Tenant-Based Rental Assistance may not be extended to exceed a total contract term of 24 months.

(2) The Executive Director's authorized designee may approve an amendment to a Household commitment contract to increase Activity funds within the limitations set forth in this Chapter.

(3) The Executive Director may approve amendments to a Household commitment contract, except amendments to extend the contract term of a Household Commitment contract by more than 12 months.

(h) Pre-agreement costs. The Administrator may be reimbursed for eligible administrative and Activity soft costs incurred before the effective date of the RSP Agreement in accordance with 24 CFR §92.212 and at the sole discretion of the Department. In no event will the Department reimburse expenses incurred more than six months prior to the effective date of the RSP Agreement.

(i) Administrator must remain in good standing with the Department, the state of Texas, and HUD. If an Administrator is not in good standing, participation in the Reservation System will be suspended and may result in termination of the RSP Agreement.

#### §23.28.General Administrative Requirements.

Unless otherwise provided in this Chapter, the Administrator or Developer must comply with the requirements described in paragraphs (1) - (21) of this section, for the administration and use of HOME funds:

(1) Complete training, as applicable.

(2) Provide all applicable Department Housing Contract System access request information and documentation requirements.

(3) Establish and maintain sufficient records at its regular place of business and make available for examination by the Department, HUD, the U.S. General Accounting Office, the U.S. Comptroller, the State Auditor's Office of Texas, the Comptroller of Public Accounts, or any of their duly authorized representatives, throughout the applicable record retention period.

(4) For non-Single Family Development Contracts, develop and establish written procurement procedures that comply with federal, state, and local procurement requirements including:

(A) Develop and comply with written procurement selection criteria and committees, including appointment of a procurement officer to manage any bid process;

(B) Develop and comply with a written code of conduct governing employees, officers, or agents engaged in administering HOME funds;

(C) Ensure consultant or any procured service provider does not participate in or direct the process of procurement for services. A consultant cannot assist in their own procurement before or after an award is made;

(D) Ensure that procedures established for procurement of building construction contractors do not include requirements for the provision of general liability insurance coverage in an amount to exceed the value of the contract and do not give preference for contractors in specific geographic locations;

(E) Ensure that building construction contractors are procured in accordance with State and Federal regulations for single family HOME Activities;

(F) Ensure that professional service providers (consultants) are procured using an open competitive procedure and are not procured based solely on the lowest priced bid; and

(G) Ensure that any Request for Proposals or Invitation for Bid include:

(i) an equal opportunity disclosure and a notice that bidders are subject to search for listing on the Excluded Parties List;

(ii) bidders' protest rights and an outline of the procedures bidders must take to address procurement related disputes;

(iii) a conflict of interest disclosure;

(iv) a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description must include complete, adequate, and realistic specifications;

(v) for sealed bid procedures, disclose the date, time and location for public opening of bids and indicate a fixed-price contract;

(vi) must not have a term of services greater than five years; and

(vii) for competitive proposals, disclose the specific election/evaluation criteria.

(5) In instances where a potential conflict of interest exists, follow procedures to submit required documentation to the Department sufficient to submit an exception request to HUD for any conflicts prohibited by 24 CFR §92.356. 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 by newspaper publication, 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 HOME funds will be committed to or reserved to assist a Household impacted by the conflict of interest regulations until HUD has granted an exception to the conflict of interest provisions.

(6) Perform environmental clearance procedures, as required, before acquiring any Property or before performing any construction activities, including demolition, or before the occurrence of the loan closing, if applicable.

(7) Develop and comply with written Applicant intake and selection criteria for program eligibility that promote and comply with Fair Housing requirements and the State's One Year Action Plan.

(8) Complete Applicant intake and Applicant selection. Notify each Applicant Household in writing of either acceptance or denial of HOME assistance within 60 days following receipt of the intake application.

(9) Determine the income eligibility of a Household using the "Annual Income" as defined at 24 CFR §5.609, by using the list of income included in HUD Handbook 4350.3 (or most recent version), and excluding from income those items listed in HUD's Updated List of Federally Mandated Exclusions from Income.

(10) Complete an updated income eligibility determination of a Household if the date of certification is more than six months prior to the Date of Assistance.

(11) For single family Activities involving construction, perform initial inspection in accordance with Chapter 20 of this Title (relating to Single Family Programs Umbrella Rule). Property inspections must include photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms. The inspection must be signed and dated by the inspector and the Administrator.

(12) Submit a substantially complete request for the Commitment or Reservation of Funds, loan closing preparation, and for disbursements. Administrators must upload all required information and verification documentation in the Housing Contract System. Requests determined to be substantially incomplete will not be reviewed and may be disapproved by the Department. Expenses for which reimbursement is requested must be documented as incurred. If the Department identifies administrative deficiencies during review, the Department will allow a cure period of 14 days beginning at the start of the first day following the date the Administrator or Developer is notified of the deficiency. If any administrative deficiencies remain after the cure period, the Department, in its sole discretion, may disapprove the request. Disapproved requests will not be considered sufficient to meet the performance benchmark and shall not constitute a Reservation of Funds.

(13) Submit signed program documents timely as may be required for the completion of a Commitment or Reservation of Funds, and for closing preparation of the loan or grant documents. Department reserves the right to cancel or terminate Activities when program documents are not executed timely, in the Department's sole and reasonable discretion.

(14) Not proceed or allow a contractor to proceed with construction, including demolition, on any Activity or development without first completing the required environmental clearance procedures,



preconstruction conference and receiving notice to proceed, if applicable, and execution of grant agreement or loan closing with the Department, whichever is applicable.

(15) Submit any Program Income received by the Administrator or Developer to the Department within 14 days of receipt; any fund remittance to the Department, including refunds, must include a written explanation of the return of funds, the Contract number, name of Administrator or Developer, Activity address and Activity number, and must be sent to the Department's accounting division.

(16) Submit required documentation for project completion reports no later than 60 days after the completion of the Activity.

(17) For Contract awards, submit certificate of Contract Completion within 14 days of the Department's request.

(18) Submit to the Department reports or information regarding the operations related to HOME funds provided by the Department.

(19) Submit evidence with the final draw for construction related activities that the builder has provided a one-year warranty specifying at a minimum that materials and equipment used by the contractor will be new and of good quality unless otherwise required, the work will be free from defects other than those inherent in the work as specified, and the work will conform to the requirements of the contract documents.

(20) Provide the Household all warranty information for work performed by the builder and any materials purchased for which a manufacturer or installer's warranty is included in the price.

(21) If required by state or federal law, place the appropriate bonding requirement in any contract or subcontract entered into by the Administrator or Developer in connection with a HOME award may result in termination of the RSP Agreement.

#### §23.29. Resale and Recapture Provisions.

(a) Recapture is the primary method the Department will use to recoup HOME funds under 24 CFR §92.254(a)(5)(ii).

(b) To ensure continued affordability, the Department has established the recapture provisions described in paragraphs (1) - (4) of this subsection and further defined in 24 CFR §92.254(a)(5)(ii).

(1) In the event that a federal affordability period is required and the assisted property is rented, leased, or no member of the Household has it as the Principal Residence, the entire HOME investment is subject to recapture. The Department will include any loan payments previously made when calculating the amount subject to recapture. Loan forgiveness is not the same thing as loan payments for purposes of this subsection.

(2) In the event that a federal affordability period is required and the assisted property is sold, including through a short sale, deed in lieu of foreclosure, or foreclosure, prior to the end of the affordability period, the Department will recapture the available amount of net proceeds based on the requirements of 24 CFR §92.254, and as outlined in the State's One Year Action Plan.

(3) The Household can sell the unit to any willing buyer at any price. In the event of sale to a qualified low-income purchaser of a HOME-assisted unit, the qualified low-income purchaser may assume the existing HOME loan and assume the recapture obligation entered into by the original buyer if no additional HOME assistance is provided to the low-income purchaser. In cases in which the subsequent homebuyer needs HOME assistance in excess of the balance of the original HOME loan, the HOME subsidy (the direct subsidy as described in 24 CFR §92.254) to the original homebuyer must be recaptured. A separate HOME subsidy must be provided to the new homebuyer, and a new affordability period must be established based on that assistance to the buyer.

(4) If there are no net proceeds from the sale, no repayment will be required of the Household and the balance of the loan shall be forgiven as outlined in the State's applicable One Year Action Plan.

(c) The Department has established the resale provisions described in paragraphs (1) - (7) of this subsection, only in the event that the Department must impose the resale provisions of 24 CFR §92.254(a)(i).

(1) Resale is defined as the continuation of the affordability period upon the sale or transfer, rental or lease, refinancing, and no member of the Household is occupying the property as their Principal Residence.

(2) In the event that a federal affordability period is required and the assisted property is rented or leased, or no member of the Household has it as the Principal Residence, the HOME investment must be repaid.

(3) In the event that a federal affordability period is required and the assisted property is sold or transferred in lieu of foreclosure to a qualified low-income buyer at an affordable price, the HOME loan balance shall be transferred to the subsequent qualified buyer and the affordability period shall remain in force to the extent allowed by law.

(4) The resale provisions shall remain in force from the date of loan closing until the expiration of the required affordability period.

(5) The Household is required to sell the home at an affordable price to a reasonable range of low-income homebuyers that will occupy the home as their Principal Residence. Affordable to a reasonable range of low-income buyers is defined as targeting Households that have income between 70 and 80 percent AMFI and meet all program requirements.

(A) The seller will be afforded a fair return on investment defined as the sum of down payment and closing costs paid from the initial seller's cash at purchase, closing costs paid by the seller at sale, the

principal payments only made by the initial homebuyer in excess of the amount required by the loan, and any documented capital improvements in excess of \$500.

(B) Fair return on investment is paid to the seller at sale once first mortgage debt is paid and all other conditions of the initial written agreement are met. In the event there are no funds for fair return, then fair return does not exist. In the event there are partial funds for fair return, then the appropriate partial fair return shall remain in force.

(6) The appreciated value is the affordable sales price less first mortgage debt less fair return.

(A) If appreciated value is zero, or less than zero, then no appreciated value exists.

(B) The initial homebuyer's investment of down payment and closing costs divided by the Department's HOME investment equals the percentage of appreciated value that shall be paid to the initial homebuyer or persons as otherwise directed by law. The balance of appreciated value shall be paid to the Department.

(7) The property qualified by the initial Household will be encumbered with a lien for the full affordability period.

(d) In the event the housing unit transfers by devise, descent, or operation of law upon the death of the assisted homeowner, forgiveness of installment payments under the loan may continue until maturity or the penalty amount for noncompliance under the conditional grant agreement may be waived, if the new Household qualifies for assistance in accordance with this subchapter. If the new Household does not qualify for assistance in accordance with this Chapter, forgiveness of installment payments will cease and repayment of scheduled payments under the loan will commence and continue until maturity or payment of a penalty amount under the conditional grant agreement may be required in accordance with the terms of the conditional grant agreement.

(e) Forgiveness of installment payments under the loan may continue until maturity or the penalty amount under conditional grant agreement may be waived by the Department if the housing unit is sold by the decedent's estate to a purchasing Household that qualifies for assistance in accordance with this Chapter.

(f) Grants subject to conditional grant agreements are not subject to the entire penalty amount in the event the property is no longer the Principal Residence of any Household member.

## **SUBCHAPTER C. HOMEOWNER RECONSTRUCTION ASSISTANCE PROGRAM**

### **10 TAC §§23.30 - 23.32**

#### §23.30.Homeowner Reconstruction Assistance (HRA) Threshold and Selection Criteria.

(a) Match requirement. Excluding Applications under the disaster relief and persons with disabilities set asides, Match shall be required based on the tiers described in paragraphs (1) and (2) of this subsection:

(1) Zero percent of Direct Activity Costs, exclusive of Match, is required as Match:

(A) when the Service Area includes the entire unincorporated area of a county and where the population of Administrator's Service Area is less than or equal to 20,000 persons; or

(B) when the Service Area does not include the entire unincorporated area of a county and the population of the Administrator's Service Area is less than or equal to 3,000 persons.

(2) One percent of Direct Activity Costs, exclusive of Match, is required as Match for every 1,000 in population to a maximum of 15 percent.

(b) The Department shall use population figures from the most recently available U.S. census bureau's American Community Survey (ACS) as of the date of submission of the Application to determine the applicable Match. The Department may incentivize or provide preference to Applicants committing to provide additional Match above the requirement of this subsection. Such incentives may be established as selection criteria in the NOFA.

(c) Documentation is required of a commitment of at least \$40,000 in cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. The amount of the cash reserve commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(1) financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(2) evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in this subsection.

(d) Selection criteria for this activity will be outlined in the NOFA.

#### §23.31.Homeowner Reconstruction Assistance (HRA) General Requirements.

(a) Program funds may be used for the following under this subchapter:

(1) Reconstruction of housing on the same site meeting the following conditions:

(A) Replacement of an owner-occupied site-built house with either a new site-built house or a new Manufactured Housing Unit (MHU) on the same site;

(B) Replacement of an owner-occupied MHU with a new MHU on the same site;

(C) A unit that is not owner-occupied has been destroyed may be eligible for Reconstruction under subparagraph (A) or (B) of this paragraph if:

(i) the unit was the Principal Residence of the Household as of the date of destruction where evidence of the Household's Principal Residence is established by a homestead exemption from the local taxing jurisdiction and Household certification in effect at the date of destruction; and

(ii) HOME funds are committed within 12 months of the date of destruction.

(2) New Construction of housing meeting the following conditions:

(A) Construction of site-built housing on the same site to replace an existing owner-occupied MHU;

(B) Replacement of existing owner-occupied housing with an MHU or construction of site-built housing on another site contingent upon written approval of the Department; or

(C) Replacement of a housing unit determined to be uninhabitable within four years of submission of a Reservation for funds on the same site or another site when:

(i) the unit has been rendered uninhabitable as a direct result of a natural or man-made disaster, a condemnation order from the unit of local government, or a determination from the unit of local government that the unit presents an imminent threat to life, health, and safety of occupants; and

(ii) the Household's Principal Residence is established by a homestead exemption from the local taxing jurisdiction as of the date of the disaster, condemnation order, or determination of uninhabitability through a Certification.

(b) If a housing unit has an existing mortgage loan and Department funds are provided in the form of a loan, the Department will require a first lien position if the existing mortgage loan has an outstanding balance that is less than the investment of HOME funds and any of the statements described in paragraphs (1) - (3) of this subsection are true:

(1) A federal affordability period is required;

(2) Any existing mortgage has been in place for less than three years from the date the Household applies for assistance; or

(3) The HOME loan is structured as a repayable loan.

(c) The Household must be current on any existing mortgage loans or home equity loans. If the Department's assistance is provided in the form of a loan, the property cannot have any existing home equity loan liens.

(d) Direct Activity Costs, exclusive of Match funds, are limited to the amounts described in this subsection; however, not more than once per year, the Board in its sole discretion, may increase or decrease by up to five percent of the limitation for Direct Activity Costs. Total Activity costs may not exceed HUD Subsidy Limits. Dollar amounts in a Household commitment contract are set at the time of contract execution and may not be adjusted through this process. Current dollar amounts under this subsection will be reflected on the Department's website.

(1) Reconstruction and New Construction of site-built housing: the lesser of \$120 per square foot of conditioned space or \$135,000 or for Households of five or more Persons the lesser of \$120 per square foot of conditioned space or \$150,000 for a four-bedroom unit;

(2) Replacement with energy efficient MHU: \$90,000; and

(3) Limits established in this subsection may be updated not more than annually at the discretion of the Board.

(e) In addition to the Direct Activity Costs allowable under subsection (d) of this section, a sum not to exceed \$15,000 may be requested and if approved, used to pay for any or all of the following, as applicable:

(1) Necessary environmental mitigation as identified during the Environmental review process;

(2) Installation of an aerobic septic system; and

(3) Homeowner requests for accessibility features.

(f) Activity soft costs eligible for reimbursement for Activities of the following types are limited to:

(1) Reconstruction or New Construction of site-built housing: no more than \$12,000 per housing unit;

(2) Replacement with an MHU: no more than \$3,500 per housing unit; and

(3) Third-party Activity soft costs related to costs incurred in connection with an Activity under this section, such as required housing counseling, appraisals, title reports or insurance, tax certificates, recording fees, surveys, and first year hazard and flood insurance are not subject to a maximum per Activity.

(g) Funds for administrative costs are limited to no more than four percent of the Direct Activity Costs, exclusive of Match funds.

(h) For New Construction Activities, 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.

(i) For Reconstruction Activities, the assistance to an eligible Household will be in the form of a grant agreement with a five year affordability period.

(j) To ensure affordability, the Department will impose resale and recapture provisions established in this Chapter.

(k) 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. MHUs must be installed according to the manufacturer's instructions and in accordance with Federal and State laws and regulations.

(l) Unless an exception is requested by the Household and approved by the Division Director prior to submission of the Activity, each unit must meet the design and quality requirements described in paragraphs (1) - (4) of this subsection:

(1) 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 LED 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 no less than two bedrooms. Each unit must contain complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation;

(3) Each bedroom must be no less than 100 square feet; have a length or width no less than 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 feet deep and three feet wide and high enough to contain at least five feet of hanging space; and

(4) 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.

(m) Housing proposed to be constructed under this subchapter must meet the requirements of Chapters 20 and 21 of this Title 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.

(2) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

#### §23.32.Homeowner Reconstruction Assistance (HRA) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator must submit the true and complete information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs (1) - (20) of this subsection:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Activity funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested, a maximum of five percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Direct Activity Cost and Soft Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance;

(4) A copy of the Household's intake application on a form prescribed by the Department;

(5) Certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. In instances where the total Household income is within \$3,000 of the 80 percent AMFI, all documentation used to determine the income of the Household;

(6) Project cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion;

(7) When assistance is provided in the form of a loan, provide written consent from all Persons who have a valid lien or ownership interest in the Property;

(8) In the instance of relocation from one site to another site, the Household must document Homeownership of the existing unit to be replaced and must establish Homeownership of the lot on which the replacement housing unit will be constructed. The Household must agree to the demolition of the existing housing unit. HOME Activity funds cannot be used for the demolition of the existing unit and any funding used for the demolition is not eligible Match; however, solely for a Activity under this paragraph, the Administrator Match obligation may be reduced by the cost of such demolition without any Contract amendment;

(9) Identification of any Lead-Based Paint (LBP);

(10) For housing units located within the 100-year floodplain or otherwise required to carry flood insurance by federal or local regulation, certification from the Household that they understand the flood insurance requirements;

(11) Consent to demolish from any existing mortgage lien holders and consent to subordinate to the Department's loan, if applicable;



(12) If applicable, documentation to address or resolve any potential conflict of interest, Identity of Interest, duplication of benefit, or floodplain mitigation;

(13) A title commitment or policy or a down date endorsement to an existing title policy evidencing the Household's ownership of the property;

(A) For New Construction Activities, a title commitment or down-date endorsement to an existing title policy the effective date title commitment must be no more than 60 days prior to of the date of Activity submission. Title commitments for loan projects that expire prior to the loan closing date must be updated and must not have any adverse changes; and

(B) For Reconstruction Activities, a title report or a title commitment dated not more than six months prior to the date of Activity submission;

(14) Documents evidencing ownership, such as a warranty deed, life estate, or 99-year leasehold;

(15) If the housing to be replaced is an MHU, a Statement of Ownership and Location (SOL) for the MHU;

(16) Tax certificate that evidences a current paid status, and in the case of delinquency, evidence of an approved payment plan with the taxing authority and evidence that the payment plan is current;

(17) In the instances of replacement with an MHU, information necessary to draft loan documents or grant agreements to issue SOL;

(18) Life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship;

(19) For disaster relief set-aside Activities, evidence that the housing unit occupied by the eligible Household was damaged as a direct result of a federal, state, or locally declared disaster that occurred less than four years prior to the submission of the Activity; and

(20) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Loan closing or grant agreement. In addition to the documents required under subsection (a) of this section, the Administrator must submit the appraisal or other valuation method approved by the Department which establishes the post construction value of improvements for Activities involving construction prior to the issuance of grant or loan documents by the Department.

(c) Disbursement of funds. The Administrator must comply with all of the requirements described in paragraphs (1) - (12) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator's compliance with requirements described in paragraphs (1) - (12) of this subsection, may be required with a request for disbursement:

(1) For construction costs associated with a loan, a down date endorsement to the title policy not older than the date of the last disbursement of funds or 45 days, whichever is later. For release of retainage the down date endorsement must be dated at least 40 days after the Construction Completion Date;

(2) For construction costs associated with a grant agreement, an interim lien waiver or final lien waiver. For release of retainage the release on final payment must be dated at least 40 days after the Construction Completion Date;

(3) If applicable, a maximum of 50 percent of Activity funds for an Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Activity funds disbursed;

(4) Property inspections, including photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and Administrator;

(5) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and accounting for, funds provided; that no Person that would benefit from the award of HOME funds; that it has satisfied any applicable cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service; and that the service does not violate any conflict of interest provisions;

(6) The executed grant agreement or original, executed, legally enforceable loan documents and statement of location, if applicable, for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official;

(7) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness for expenditures submitted for reimbursement. The Department may request Administrator to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator as may be necessary or advisable for compliance with all program requirements;

(8) The request for funds for administrative costs must be proportionate to the amount of Direct Activity Costs requested or already disbursed;

(9) Include the withholding of ten percent of hard construction costs for retainage. Retainage will be held until at least 40 days after the Construction Completion Date;

(10) For final disbursement requests, submission of documentation required for Activity completion reports and evidence that the demolition or, if an MHU, salvage and removal of all dilapidated housing units on the lot, certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot for which ownership was established and on and within the same lot secured by the loan or grant agreement, if applicable, and evidence of floodplain mitigation;

(11) The final request for disbursement must be submitted to the Department with support documentation no later than 60 days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract; and

(12) For costs associated with insurance policies, including title policies and homeowner insurance policies, charged as Activity costs, evidence of payment of the cost must be submitted with the retainage request.

#### **SUBCHAPTER D. CONTRACT FOR DEED PROGRAM**

##### **10 TAC §§23.40 - 23.42**

##### §23.40.Contract for Deed (CFD) Threshold and Selection Criteria.

Documentation that the Applicant can commit at least \$40,000 in cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. The amount of the cash reserve commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(1) financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(2) evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in this subsection.

##### §23.41.Contract for Deed (CFD) General Requirements.

(a) Program funds may be utilized for Acquisition or refinance, and New Construction, of single family housing units occupied by the purchaser as shown on an executory contract for conveyance.

(b) The Household's income must not exceed 80 percent AMFI.

(c) The Department shall limit the availability of funds for CFD for a minimum of 60 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.

(d) The Department will require a first lien position.

(e) Direct Activity Costs, exclusive of Match funds, are limited to the amounts described in this subsection; however, not more than once per year, the Board in its sole discretion, may increase or decrease by up to five percent of the limitation for Direct Activity Costs. Total Activity costs may not exceed HUD Subsidy Limits. Dollar amounts in a Household commitment contract are set at the time of contract execution and may not be adjusted through this process. Current dollar amounts under this subsection will be reflected on the Department's website.

(1) 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 \$120 per square foot of conditioned space or \$135,000, or for Households of five or more Persons the lesser of \$120 per square foot of conditioned space or \$150,000 for a four-bedroom unit; and

(3) Replacement with an energy efficient MHU: \$90,000.

(f) In addition to the Direct Activity Costs allowable under subsection (e) of this section, a sum not to exceed \$15,000 may be used to pay for any or all of the following, as applicable:

(1) Necessary environmental mitigation as identified during the Environmental review process;

(2) Installation of an aerobic septic system; and

(3) Homeowner requests for accessibility features.

(g) Activity soft costs eligible for reimbursement for Activities of the following types are limited to:

(1) Acquisition or refinance, and New Construction of site-built housing: no more than \$13,500 per housing unit; and

(2) Acquisition or refinance, and replacement with an MHU: no more than \$5,000 per housing unit.

(h) Funds for administrative costs are limited to no more than four percent of the Direct Activity Costs, exclusive of Match funds.

(i) 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 years, regardless of the amount of HOME assistance.

(j) To ensure affordability, the Department will impose resale or recapture provisions established in this Chapter.

(k) Site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes, standards, ordinances, zoning requirements, and the standards outlined in 24 CFR §92.251(a)(2) as applicable. MHUs must be installed according to the manufacturer's instructions and in accordance with Federal and State laws and regulations.

(l) Unless an exception is requested by the Household and approved by the Division Director prior to submission of the Activity, each unit must meet the design and quality requirements described in paragraphs (1) - (4) of this subsection:

(1) 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 LED 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 no less than two bedrooms. Each unit must contain complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation;

(3) Each bedroom must be no less than 100 square feet, have a length or width no less than eight 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 feet deep and three feet wide and high enough to contain at least five feet of hanging space; and

(4) 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.

(m) 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.

(2) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

§23.42.Contract for Deed (CFD) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator must submit true and correct information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs (1) - (15) of this subsection:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Activity funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested, a maximum of five percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Activity and soft costs limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance;

(4) A copy of the Household's intake application on a form prescribed by the Department;

(5) Certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. In instances the total Household income is within \$3,000 of the 80 percent AMFI, all documentation used to determine the income of the Household;

(6) Project cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion;

(7) Identification of Lead-Based Paint (LBP);

(8) For housing units located within the 100-year floodplain or otherwise required to carry flood insurance by federal or local regulation, certification from the Household that they understand the flood insurance requirements;

(9) If applicable, documentation to address or resolve any potential Conflict of Interest, Identity of Interest, duplication of benefit, or floodplain mitigation;

(10) Appraisal which includes post construction improvements for Activities involving construction;

(11) A title commitment to issue a title policy that evidences the property will transfer with no tax lien, child support lien, mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. The effective date of the title commitment must be no more than 60 days prior to the date of Activity submission. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;

(12) In the instances of replacement with an MHU, information necessary to draft loan documents and issue Statement of Ownership and Location (SOL);

(13) Life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship;

(14) A copy of the recorded executory contract and a current payoff statement; and

(15) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Disbursement of funds. The Administrator must comply all of the requirements described in paragraphs (1) - (12) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator's compliance with requirements described in paragraphs (1) - (12) of this subsection may be required with a request for disbursement:

(1) For construction costs, a down date endorsement to the title policy not older than the date of the last disbursement of funds or 45 days, whichever is later. For release of retainage the down date endorsement must be dated at least 40 days after the Construction Completion Date;

(2) If applicable, a maximum of 50 percent of Activity funds for an Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Activity funds disbursed;

(3) Property inspections, including photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and Administrator;

(4) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursal of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) Original, executed, legally enforceable loan documents, and statement of location, as applicable, for each assisted Household containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official. This provision is not applicable for funds made available at the loan closing;

(6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request Administrator or Developer to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to

establish such additional requirements for payment of HOME funds to Administrator as may be necessary or advisable for compliance with all program requirements;

(7) The request for funds for administrative costs must be proportionate to the amount of Direct Activity Costs requested or already disbursed;

(8) Table funding requests must be submitted to the Department with complete documentation no later than 14 days prior to the anticipated loan closing date. Such a request must include a draft closing disclosure, title company payee identification information, the Administrator or Developer's authorization for disbursement of funds to the title company, request letter from title company to the Comptroller of Public Accounts with bank account wiring instructions, and invoices for costs being paid at closing;

(9) include the withholding of ten percent of hard construction costs for retainage. Retainage will be held until at least 40 days after the Construction Completion Date;

(10) For final disbursement requests, submission of documentation required for Activity completion reports and evidence that the demolition or, if an MHU, salvage and removal of all dilapidated housing units on the lot, certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot secured by the loan, and evidence of floodplain mitigation;

(11) The final request for disbursement must be submitted to the Department with support documentation no later than 60 days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract; and

(12) For costs associated with insurance policies, including title policies and homeowner's insurance policies charged as Activity costs, evidence of payment of the cost must be submitted with the retainage request.

## **SUBCHAPTER E. TENANT-BASED RENTAL ASSISTANCE PROGRAM**

### **10 TAC §§23.50 - 23.52**

#### §23.50.Tenant-Based Rental Assistance (TBRA) Threshold and Selection Criteria.

All Applicants and Applications must submit Documentation of a commitment of at least \$15,000 for cash reserves to facilitate administration of the program and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. The amount of the cash reserve commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:



(1) financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(2) evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in this subsection; and

(3) evidence that the Service Area for a Contract or RSP Agreement includes the entire rural or urban area of a county as identified in the Application, excluding Participating Jurisdictions. However, Service Areas must include Participating Jurisdictions as applicable if the Agreement includes access to the Persons with Disabilities set-aside.

§23.51.Tenant-Based Rental Assistance (TBRA) General Requirements.

(a) Households assisted under the general set-aside must participate in a self-sufficiency program, as described in the Administrator's policies and procedures.

(b) The amount of assistance will be determined using the HUD Housing Choice Voucher method.

(c) A Household certifying to zero income must also complete a questionnaire that includes a series of questions regarding how basic hygiene, dietary, transportation, and other living needs are met.

(d) The minimum Household contribution toward gross monthly rent must be ten percent of the Household's adjusted monthly income. The maximum Household contribution toward gross monthly rent at initial occupancy is limited to 40 percent of the Household's gross monthly income. (e) Activity funds are limited to:

(1) Rental subsidy: Each rental subsidy term is limited to no more than 24 months. Total lifetime assistance to a Household may not exceed 36 months cumulatively, except that a maximum of 24 additional months of assistance, for a total of 60 months cumulatively may be approved if:

(A) the Household has applied for a Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program, and is placed on a waiting list during their TBRA participation tenure; and

(B) the Household has not been removed from the waiting list for the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program due to failure to respond to required notices or other ineligibility factors; and

(C) the Household has not been denied participation in the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance

Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program while they were being assisted with HOME TBRA; and

(D) the Household did not refuse to participate in the Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program when a voucher was made available.

(2) Security deposit: no more than the amount equal to two month's rent for the unit.

(3) Utility deposit in conjunction with a TBRA rental subsidy.

(f) The payment standard is determined at the Date of Assistance. The payment standard utilized by the Administrator must be:

(1) For metropolitan counties and towns, the current U.S. Department of Housing and Urban Development (HUD) Small Area Fair Market Rent for the Housing Choice Voucher Program;

(2) For nonmetropolitan counties and towns, the current HUD Fair Market Rent for the Housing Choice Voucher Program;

(3) For a HOME assisted unit, the current applicable HOME rent; or

(4) The Administrator may submit a written request to the Department for approval of a different payment standard. The request must be evidenced by a market study or documentation that the PHA serving the market area has adopted a different payment standard. An Administrator may request a Reasonable Accommodation as defined in Section 1.204 of this Title for a specific Household if the Household, because of a disability, requires the features of a specific unit, and units with such features are not available in the Service Area at the payment standard.

(g) Administrators must select the method under which funds for administrative costs and Activity soft costs may be reimbursed prior to execution of an RSP agreement or at Application for an award of funds. Administrators of an existing RSP Agreement may request an amendment to an existing Agreement in accordance with Section 23.1 of this Chapter. Applicants and Administrators may choose from one of the following options, and in any case funds for Administrative costs may be increased by an additional one percent of Direct Activity Costs if Match is provided in an amount equal to five percent or more of Direct Activity Costs:

(1) Funds for Administrative costs are limited to four percent of Direct Activity Costs, excluding Match funds, and Activity soft costs are limited to \$1,200 per Household assisted. Activity soft costs may reimburse expenses for costs related to determining Household income eligibility, including recertification, and conducting Housing Quality Standards (HQS) inspections. All costs must be reasonable and customary for the Administrator's Service Area; or

(2) Funds for Administrative costs are limited to eight percent of Direct Activity Costs, excluding Match funds, and Administrator may not be reimbursed for Activity soft costs.

(h) Administrators must have a written agreement with Owner that the Owner will notify the Administrator within one month if a tenant moves out of an assisted unit prior to the lease end date.

(i) Administrator must not approve a unit if the owner is by consanguinity, affinity, or adoption the parent, child, grandparent, grandchild, sister, or brother of any member of the assisted Household, unless the Administrator determines that approving the unit would provide Reasonable Accommodation for a Household member who is a Person with Disabilities. This restriction against Administrator approval of a unit only applies at the time the Household initially receives assistance under a Contract or Agreement, but does not apply to Administrator approval of a recertification with continued tenant-based assistance in the same unit.

(j) Administrators must maintain Written Policies and Procedures established for the HOME Program in accordance with Section 10.802 of this Title, except that where the terms Owner, Property, or Development are used Administrator or Program will be substituted, as applicable. Additionally, the procedures in subsection (l) of this section (relating to the Violence Against Women Act (if in conflict with the provisions in Section 10.802 of this Title)) will govern.

(k) Administrators serving a Household under a Reservation Agreement may not issue a Certificate of Eligibility to the Household prior to reserving funds for the Activity.

(l) Administrators are required to comply with regulations and procedures outlined in the Violence Against Women Act (VAWA), and provide tenant protections as established in the Act.

(1) An Administrator of Tenant-Based Rental Assistance must provide all Applicants (at the time of admittance or denial) and Households (before termination from the Tenant-Based Rental Assistance program or from the dwelling assisted by the Tenant-Based Rental Assistance Coupon Contract) the Department's "Notice of Occupancy Rights under the Violence Against Women Act", (based on HUD form 5380) and also provide to Households "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking" (HUD form 5382) prior to execution of a Rental Coupon Contract and before termination of assistance from the Tenant-Based Rental Assistance program or from the dwelling assisted by the Tenant-Based Rental Assistance coupon contract.

(2) Administrator must notify the Department within three days when tenant submits a Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and/or alternate documentation to Administrator and must submit a plan to Department for continuation or termination of assistance to affected Household members.

(3) Notwithstanding any restrictions on admission, occupancy, or terminations of occupancy or assistance, or any Federal, State or local law to the contrary, Administrator may "bifurcate" a rental coupon contract, or otherwise remove a Household member from a rental coupon contract, without regard to whether a Household member is a signatory, in order to evict, remove, terminate occupancy

rights, or terminate assistance to any individual who is a recipient of TBRA and who engages in criminal acts of physical violence against family members or others. This action may be taken without terminating assistance to, or otherwise penalizing the person subject to the violence.

§23.52.Tenant-Based Rental Assistance (TBRA) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator must submit the documents described in paragraphs (1) - (10) of this subsection, with a request for the Commitment or Reservation of Funds:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Direct Activity Costs, Activity soft costs, administrative costs requested, Match to be provided, evidence that Direct Activity Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance;

(4) A copy of the Household's intake application on a form prescribed by the Department;

(5) Certification of the income eligibility of the Household signed by the Administrator, and all Household members age 18 or over, and including the date of the income eligibility determination. Administrator must submit documentation used to determine the income and rental subsidy of the Household;

(6) Identification of Lead-Based Paint (LBP);

(7) If applicable, documentation to address or resolve any potential conflict of interest or duplication of benefit;

(8) Project address within 90 days of preliminary set up approval, if applicable;

(9) For Households assisted under the Disaster set-aside, verification that the household was displaced or is at-risk of displacement as a direct result of a Federal, State, or Locally declared disaster approved by the Department within four years of the date of Activity submission; and

(10) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Disbursement of funds. The Administrator must comply with all of the requirements described in paragraphs (1) - (7) of this subsection for a request for disbursement of funds. Submission of documentation related to the Administrator compliance with requirements described in paragraphs (1) - (7) of this subsection may be required with a request for disbursement:

(1) If required or applicable, a maximum of 50 percent of Direct Activity Costs for an Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of

Match, including the date of provision, in accordance with the percentage of Direct Activity Costs disbursed;

(2) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(3) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness of each expenditure submitted for reimbursement. The Department may request Administrator to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to the Administrator or Developer as may be necessary or advisable for compliance with all Program Requirements;

(4) With the exception of a maximum of 25 percent of the total funds available for administrative costs, the request for funds for administrative costs must be proportionate to the amount of Direct Activity Costs requested or already disbursed;

(5) Requests may come in not more than 15 days in advance of the first day of the following month;

(6) For final disbursement requests, submission of documentation required for Activity completion reports; and

(7) The final request for disbursement must be submitted to the Department with support documentation no later than 60 days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract.

## **SUBCHAPTER F. SINGLE FAMILY DEVELOPMENT PROGRAM**

### **10 TAC §§23.60 - 23.62**

#### §23.60.Single Family Development (SFD) Threshold and Selection Criteria.

All Applicants and Applications must submit or comply with this section.

(1) An Application for Community Housing Development Organization (CHDO) certification. Applicants must meet the requirement for CHDO certification as defined in Section 13.2 of this Title (relating to the Multifamily Direct Loan Rule).

(2) The Applicant must provide:

(A) evidence of a line of credit or equivalent tool of at least \$80,000 from a financial institution that will be available for use during the proposed development activities; or

(B) a letter from a third party Certified Public Accountant (CPA) verifying the capacity of the owner or developer to provide at least \$80,000 as a short term loan for development; and

(C) a letter from the developer's or owner's bank(s) confirming funds amounting to at least \$80,000 is available.

(3) A proposed development plan that is consistent with the requirements of this Chapter, all other federal and state rules, and includes:

(A) a floor plan and front exterior elevation for each proposed unit which reflects the exterior building composition;

(B) a FEMA Issued Flood Map that identifies the location of the proposed site(s);

(C) letters from local utility providers, on company letterhead, confirming each site has access to the following services: water and wastewater, sewer, electricity, garbage disposal and natural gas, if applicable;

(D) documentation of site control of each proposed lot: A recorded warranty deed with corresponding executed settlement statement; or a contract or option for the purchase of the proposed lots that is valid for at least 120 days from the date of application submission; and

(E) an "as vacant" appraisal of at least one of the proposed lots if: The Applicant has an Identity of Interest with the seller or current owner of the property; or any of the proposed property is part of a newly developed or under-development subdivision in which at least three other third-party sales cannot be evidenced. The purchase price of any lot in which the current owner has an Identity of Interest must not exceed the appraised value of the vacant lot at the time of Activity submission. The appraised value of the lot may be included in the sales price for the homebuyer transaction.

(4) The Department may prioritize Applications or otherwise incentivize Applications that partner with other lenders to provide permanent purchase money financing for the purchase of units developed with funds provided under this subchapter.

#### §23.61.Single Family Development (SFD) General Requirements.

(a) Program funds under this subchapter may be used for the Development of new single family housing for homeownership that complies with affordability requirements as defined at 24 CFR §92.254.

(b) Program funds under this subchapter are only eligible to be administered by a CHDO certified as such by the Department. A separate grant for CHDO operating expenses may be awarded to CHDOs that receive a Contract award if funds are provided for this purpose in the NOFA. A CHDO may not receive

more than one grant of CHDO operating funds in an amount not to exceed \$50,000 within any one year period, and may not draw more than \$25,000 in CHDO operating funds in any twelve month period from any source, including CHDO operating funds from other HOME Participating Jurisdictions.

(c) The Household's income must not exceed 80 percent AMFI.

(d) Each unit must meet the design and quality requirements described in paragraphs (1) - (5) of this subsection:

(1) Current applicable International Residential Code, local codes, ordinances, and zoning ordinances in accordance with 24 CFR§92.251(a);

(2) 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; Disposal and Energy-Star or equivalently rated dishwasher (must only be provided as an option to each Household); Oven/Range; Exhaust/vent fans (vented to the outside) in bathrooms; Energy-Star or equivalently rated lighting in all rooms, which may include LED bulbs. The living room and each bedroom must contain at least one ceiling lighting fixture and wiring must be capable of supporting ceiling fans; and Paved off-street parking for each unit to accommodate at least one mid-sized car and access to on-street parking for a second car;

(3) Contain no less than two bedrooms. Each unit must contain complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation;

(4) Each bedroom must be no less than 100 square feet; have a length or width no less than 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 feet deep and three feet wide and high enough to contain at least five feet of hanging space; and

(5) 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.

(e) Housing proposed to be constructed under this subchapter must meet the requirements in Chapters 20 and 21 of this Title and plans submitted with the Application must be certified by a licensed architect or engineer.

(f) The total hard construction costs are limited to \$120 per square foot of conditioned space and \$135,000 for units with three or fewer bedrooms and the lesser of \$120 per square foot of conditioned space or \$150,000 units with four or more bedrooms. Not more than once per year, the Board in its sole discretion, may increase or decrease by up to 5 percent of the limitation for hard construction costs. Total Activity costs may not exceed HUD Subsidy Limits. Current dollar amounts under this subsection will be reflected on the Department's website.

(g) In addition to the Direct Activity Costs allowable under subsection (f) of this section, a sum not to exceed \$15,000 may be used to pay for any or all of the following, as applicable:

(1) Necessary environmental mitigation as identified during the Environmental review process;

(2) Installation of an aerobic septic system; and

(3) Homebuyer requests for accessibility features.

(h) Developer fees (including consulting fees) are limited to 15 percent of the total hard construction costs. The developer fee will be reduced by one percent per month or partial month that the construction period exceeds the original term of the construction period financing.

(i) General Contractor Fees are limited to 15 percent of the total hard construction costs. The General Contractor is defined as one who contracts for the construction of an entire development Activity, rather than a portion of the work. The General contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. A prime subcontractor will also be treated as a General Contractor, and any fees payable to the prime subcontractor will be treated as fees to the General Contractor, in the scenarios described in paragraphs (1) and (2) of this subsection:

(1) Any subcontractor, material supplier, or equipment lessor receiving more than 50 percent of the contract sum in the construction contract will be deemed a prime subcontractor; or

(2) If more than 75 percent of the contract sum in the construction contract is subcontracted to three or fewer subcontractors, material suppliers, and equipment lessors, such parties will be deemed prime subcontractors.

(j) Construction period financing for each unit shall be structured as a zero percent interest loan with a 12-month term. The maximum construction loan amount may not exceed the total development cost less developer fees/profit, closing costs associated with the permanent mortgage financing, and ineligible Activity costs. Prior to construction loan closing, a sales contract must be executed with a qualified homebuyer.

(k) In the instance that the total development cost equals more than 100 percent of the appraised value, the portion of the development cost that exceeds 100 percent of the appraised value will be granted to the developer to buy down the purchase price. Reasonable and customary seller closing costs may be provided with HOME funds as a grant to the Developer.

(l) Direct assistance to the buyer will be structured as a first and/or second lien loan(s):

(1) A first-lien, fully amortizing, repayable loan with a 30-year term may be provided by the Department and will initially be evaluated at zero percent interest. The loan amount will not exceed the total development cost combined with reasonable and customary buyer's closing costs. Should the estimated



housing payment, including all funding sources, be less than the minimum required housing payment for the minimum term, the Department may charge an interest rate to the homebuyer such that the total estimated housing payment is no less than the required minimum housing payment. In no instance shall the interest rate charged to the homebuyer exceed five percent, and such result may deem the applicant as overqualified for assistance.

(A) The total Mortgage Loan may include costs incurred for the total development cost and Mortgage Loan Closing Costs, exclusive of Match funds.

(B) The total Debt-to-Income Ratio shall not exceed the limitations set forth in Chapter 20 of this Title.

(C) For buyers whose income is equal to or less than 50 percent AMFI, the minimum required housing payment shall be no less than 15 percent of the household's gross income. For homebuyers whose income exceeds 50 percent AMFI, the minimum required housing payment shall be no less than 20 percent of the household's gross income.

(2) Downpayment and closing costs assistance is limited to the lesser of downpayment required by a third-party lender and reasonable and customary buyer's closing costs, or the amount required to ensure affordability of the HOME financing. Downpayment and closing cost assistance may not exceed ten percent of the total development cost and shall be structured as a five or ten-year deferred, forgivable loan with a subordinate lien, in accordance with the required federal affordability period.

(3) A first lien conventional mortgage not provided by the Department must meet the mortgage financing requirements outlined in Chapter 20 of this Title.

(m) Earnest money is limited to no more than \$1,000, which may be credited to the homebuyer at closing, but may not be reimbursed as cash.

(n) If a Household should become ineligible or otherwise cease participation and a replacement Household is not located within 90 days of the end of the construction period, all additional funding, closings, and draws on the award will cease and the Department will require the Applicant to repay any outstanding construction debt in full.

(o) The Division Director may approve the use of alternative floor plans or lots from those included in the approved Application, provided the requirements of this section can still be met and such changes do not materially affect the total budget.

(p) To ensure affordability, the Department will impose resale or recapture provisions established in this Chapter.

§23.62.Single Family Development (SFD) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator must submit true and correct information, certified as such, with a request for the Commitment of Funds as described in paragraphs (1) - (12) of this subsection:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Activity funds specifying the acquisition cost, construction costs, contractor fees, and developer fees, as applicable. A maximum of five percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Activity Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance;

(4) A copy of the Household's intake application on a form prescribed by the Department;

(5) Certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. All documentation used to determine the income of the Household must be provided;

(6) Project cost estimates, construction contracts, and other construction documents necessary, in the Department's sole determination, to ensure applicable property standard requirements will be met at completion;

(7) Identification of Lead-Based Paint (LBP) if site remediation is needed;

(8) Executed sales contract and documentation that the first lien mortgage meets the eligibility requirements;

(9) Evidence that the housing unit will be located outside the 100-year floodplain;

(10) If applicable, documentation to address or resolve any potential conflict of interest, Identity of Interest, duplication of benefit, or floodplain mitigation;

(11) Appraisal, which includes post construction improvements; and

(12) Any other documentation necessary to evidence that the Activity meets the program requirements.

(b) Construction Loan closing. The Administrator must submit the documents described in paragraphs (1) - (2) of this subsection, with a request for the preparation of loan closing with the request for the Commitment of Funds:

(1) A title commitment to issue a title policy that evidences the property will transfer with no tax lien, child support lien, mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest and that the definition of

Homeownership will be met. The effective date of the title commitment must be no more than 60 days prior to the date of project submission. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close; and

(2) Within 90 days after the loan closing date, the Administrator must submit to the Department the original recorded deed of trust and transfer of lien, if applicable. Failure to submit these documents within 90 days after the loan closing date will result in the Department withholding payment for disbursement requests.

(c) Disbursement of funds. The Administrator must comply with the requirements described in paragraphs (1) - (11) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Administrator compliance with requirements described in paragraphs (1) - (11) of this subsection may be required with a request for disbursement:

(1) For construction costs, an interim construction binder advance endorsement not older than the date of the last disbursement of funds or 45 days, whichever is later. For release of retainage a down date endorsement to the mortgagee policy issued to the homebuyer dated at least 40 days after the Construction Completion Date;

(2) If required or applicable, a maximum of 50 percent of Direct Activity Costs for an Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Activity funds disbursed;

(3) Property inspections, including photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms with date and property address reflected on each photo. The inspection must be signed and dated by the inspector and Administrator or Developer;

(4) Certification that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and accounting for, funds provided, no Person that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith; that each request for disbursement of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions;

(5) Original, executed, legally enforceable loan documents containing remedies adequate to enforce any applicable affordability requirements. Original documents must evidence that such agreements have been recorded in the real property records of the county in which the housing unit is located and the original documents must be returned, duly certified as to recordation by the appropriate county official;

(6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness for expenditures submitted for reimbursement. The Department may request Administrator or Developer to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to

establish such additional requirements for payment of HOME funds to Administrator or Developer as may be necessary or advisable for compliance with all Program Requirements;

(7) Table funding requests must be submitted to the Department with complete documentation no later than 14 days prior to the anticipated loan closing date. Such a request must include a draft settlement statement, title company payee identification information, the Administrator or Developer's authorization for disbursement of funds to the title company, request letter from title company to the Comptroller of Public Accounts with bank account wiring instructions, and invoices for costs being paid at closing;

(8) Include the withholding of ten percent of hard construction costs for retainage. Retainage will be held until at least 40 days after the Construction Completion Date;

(9) For final disbursement requests, submission of documentation required for Activity completion reports;

(10) The final request for disbursement must be submitted to the Department with support documentation no later than 60 days after the termination date of the Contract in order to remain in compliance with Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract; and

(11) For costs associated with insurance policies, including title policies and homeowner's insurance policies, charged as Activity costs, evidence of payment of the cost must be submitted with the retainage request.

## **SUBCHAPTER G. HOMEBUYER ASSISTANCE WITH NEW CONSTRUCTION (HANC)**

### **10 TAC §§23.70 - 23.72**

#### §23.70.Homebuyer Assistance with New Construction (HANC) Threshold and Selection Criteria.

(a) Threshold Match requirement. The Department shall use population figures from the most recently available U.S. Census Bureau's American Community Survey (ACS) as of the date that an Application is first submitted under the NOFA to determine the applicable Threshold Match requirement. The Department may incentivize or provide preference to Applicants committing to provide additional Threshold Match above the requirement of this subsection. Such incentives may be established as selection criteria in the NOFA. Excluding Applications under the disaster relief and persons with disabilities set asides, Threshold Match shall be required based on the tiers described in paragraphs (1) and (2) of this subsection:

(1) No Threshold Match is required when:

(A) the Service Area includes the entire unincorporated area of a county and where the population of Administrator's Service Area is less than or equal to 20,000 persons; or

(B) the Service Area does not include the entire unincorporated area of a county, and the population of the Administrator's Service Area is less than or equal to 3,000 persons.

(2) One percent of Direct Activity Costs, exclusive of Match, is required as Match for every 1,000 in population up to a maximum of 15 percent.

(b) Cash Reserve Threshold Requirement. When HOME funds will be utilized for construction activities, documentation, as described in paragraphs (1) and (2) of this subsection, must be submitted at the time of Application that demonstrates that the Applicant has at least \$40,000 in cash reserves. The cash reserves may be utilized to facilitate administration of the program, and to ensure the capacity to cover costs prior to reimbursement or costs determined to be ineligible for reimbursement. The amount of the cash reserve commitment must be included in the Applicant's resolution. To meet this requirement, Applicants must submit:

(1) financial statements indicating adequate local unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the Applicant's bank(s) or financial institution(s) indicating that current account balances are sufficient; or

(2) evidence of an available line of credit or equivalent in an amount equal to or exceeding the requirement in this subsection.

(c) Other Threshold and/or Selection criteria for this Activity may be outlined in the NOFA.

#### §23.71.Homebuyer Assistance with New Construction (HANC) General Requirements.

(a) Eligible Activities must meet the ownership requirement in paragraph (1) of this subsection and an Activity described in paragraph (2) of this subsection:

(1) Ownership requirement. A site must be owned by the beneficiary or the HOME Activity must include one of the two following Activities:

(A) Acquisition of existing single family housing or a parcel; or

(B) Refinance of non-owner occupied real property parcel not prohibited for single family housing by zoning or restrictive covenants.

(2) All Activities must include New Construction of a unit of single family housing not occupied by the Household prior to assistance; New Construction described in this subsection includes the purchase and installation of a new unit of Manufactured Housing (MHU).

(b) The unit of housing in any of the Activities described in subsection (a) of this section must be occupied by the assisted Household as their principal residence for a minimum of 15 years from the Construction Completion Date.

(c) If the assisted property is owned by the Household prior to participation, the Household must be current on any existing Mortgage Loans and taxes, and the property cannot have any existing home equity loan liens. HOME funds may not be utilized to refinance loans made or insured by any federal program.

(d) The purchase price of acquired property and the post-improvement value of the unit may not exceed the limitations set forth in 24 CFR §92.254. Compliance with the purchase price limitation must be evidenced prior to loan closing. Compliance with the post-improvement value limitation must be evidenced with a final appraisal of the completed project prior to release of retainage.

(e) Activity Costs. Total Activity Costs, exclusive of Match funds, are limited to an amount not to exceed the federal subsidy limitations defined in 24 CFR §92.250. Direct Activity Costs, exclusive of Match and leverage, for construction are limited to:

(1) Construction of new site-built housing: The Direct Activity Costs are not restricted beyond the Total Activity Costs as identified in this subsection; and

(2) Placement of an energy efficient MHU: \$90,000.

(f) In addition to the Direct Activity Costs allowable under subsection (e) of this section, a sum not to exceed \$15,000 and not causing the total subsidy to exceed the limitations set forth by 24 CFR §92.250 may be requested and, if approved, used to pay for any or all of the following, as applicable:

(1) Necessary environmental mitigation as identified during the Environmental review process;

(2) Installation of an aerobic septic system; and

(3) Homebuyer requests for accessibility features.

(g) Activity soft costs eligible for reimbursement are limited to:

(1) New Construction of site-built housing: no more than \$13,500 per housing unit; or

(2) Replacement with an MHU: no more than \$5,000 per housing unit.

(h) Funds for administrative costs are limited to no more than four percent of the Direct Activity Costs, exclusive of Match funds.

(i) Homebuyers may choose to obtain financing for the acquisition or construction, or any combination thereof, from a third-party lender so long as the loan meets the requirements of Section 20.13 of this Title (relating to Loan, Lien and Mortgage Requirements for Activities).

(j) Direct assistance will be structured as a fully amortizing, repayable loan and will initially be evaluated at zero percent interest. The minimum loan term shall be equal to the required federal affordability

period based on the HOME investment, and shall be calculated by setting the total estimated housing payment (including principal, interest, property taxes, insurance, and any other homebuyer assistance), equal to at least the minimum required housing payment. Should the estimated housing payment, including all funding sources, be less than the minimum required housing payment for the minimum term, the Department may charge an interest rate to the homebuyer such that the total estimated housing payment is no less than the required minimum housing payment. In no instance shall the interest rate charged to the homebuyer exceed five percent and such result may deem the applicant as overqualified for assistance. The term shall not exceed 30 years and not be less than 15 years.

(1) The total Mortgage Loan may include costs incurred for Acquisition or Refinance, Mortgage Loan closing costs, and Direct Activity Costs, exclusive of Match funds.

(2) The total Debt-to-Income Ratio shall not exceed the limitations set forth in Chapter 20 of this Title.

(3) For buyers whose income is equal to or less than 50 percent AMFI, the minimum required housing payment shall be no less than 15 percent of the household's gross income. For homebuyers whose income exceeds 50 percent AMFI, the minimum required housing payment shall be no less than 20 percent of the household's gross income.

(k) Earnest money may be credited to the homebuyer at closing, but may not be reimbursed as cash. HOME funds may be used to pay other reasonable and customary closing costs that are HOME eligible costs.

(l) To ensure affordability, the Department will impose recapture provisions established in this Chapter.

(m) For 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, New Construction housing is required to meet 24 CFR §92.251(a)(2) as applicable. MHUs must be installed according to the manufacturer's instructions and in accordance with Federal and State laws and regulations.

(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) To the extent that a set of architectural plans are generated and used by an Applicant for more than one home site, the Department will reimburse only for the first time a set of architectural plans is used, unless any subsequent site specific fees are paid to a Third Party architect, or a licensed engineer for the reuse of the plans on that subsequent specific site.

(2) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

§23.72.Homebuyer Assistance with New Construction (HANC) Administrative Requirements.

(a) Commitment or Reservation of Funds. The Administrator must submit the true and complete information, certified as such, with a request for the Commitment or Reservation of Funds as described in paragraphs (1) - (15) of this subsection:

(1) Head of Household name and address of housing unit for which assistance is being requested;

(2) A budget that includes the amount of Activity funds specifying the acquisition costs, construction costs, soft costs and administrative costs requested, a maximum of five percent of hard construction costs for contingency items, proposed Match to be provided, evidence that Direct Activity Cost and Soft Cost limitations are not exceeded, and evidence that any duplication of benefit is addressed;

(3) Verification of environmental clearance from the Department;

(4) A copy of the Household's intake application on a form prescribed by the Department;

(5) Certification of the income eligibility of the Household signed by the Administrator and all Household members age 18 or over, and including the date of the income eligibility determination. All documentation used to determine the income of the Household must be provided;

(6) Project cost estimates, construction contracts, and other construction documents necessary to ensure applicable property standard requirements will be met at completion;

(7) Identification of any Lead-Based Paint (LBP) if activity involves an existing unit and certification that LBP will be mitigated as required by 24 CFR §92.355;

(8) Evidence that the housing unit will be located outside of the 100-year floodplain;

(9) If applicable, documentation to address or resolve any potential conflict of interest, Identity of Interest, or duplication of benefit;

(10) Information necessary to draft Mortgage Loan documents, including issuance of an SOL;

(11) Life event documentation, as applicable, and all information necessary to prepare any applicable affidavits such as marital status and heirship;

(12) Documentation of homebuyer completion of a homebuyer counseling program/class provided by a HUD certified housing counselor;

(13) For Activities involving acquisition of real property:

A title commitment to issue a title policy that evidences that the property will transfer with no tax lien, child support lien, mechanics or materialman's lien or any other restrictions or encumbrances that impair



the good and marketable nature of title to the ownership interest and that the definition of Homeownership will be met. The effective date of the title commitment must be no more than 60 days prior to the date of project submission. Commitments that expire prior to execution of closing must be updated at closing and must not have any adverse changes in order to close;

(B) Executed sales contract; and

(C) A loan estimate or letter from any other lender confirming that the loan terms and closing costs will be consistent with the executed sales contract, the first lien Mortgage Loan requirements, and the requirements of this Chapter;

(14) For Activities that do not involve acquisition of real property:

(A) A title commitment or policy, or a down date endorsement to an existing title policy, and the actual documents, or legible copies thereof, establishing the Household's ownership, such as a warranty deed or ground lease for a 99-year leasehold. The effective date of the title commitment must be no more than 60 days prior to of the date of project submission. Title commitments for loan projects that expire prior to the loan closing date must be updated and must not have any adverse changes. These documents must evidence the definition of Homeownership is met;

(B) A tax certificate that evidences a current paid status;

(C) Written consent from all Persons who have a valid lien or ownership interest in the Property;

(D) Consent to demolish from any existing Mortgage Loan lien holders and consent to subordinate to the Department's loan, if applicable; and

(15) Any other documentation necessary to evidence that the Activity meets the Program requirements.

(b) Loan closing. In addition to the documents required under subsection (a) of this section, the Administrator must submit the appraisal or other valuation method approved by the Department which establishes the post construction value of improvements prior to the issuance of loan documents by the Department.

(c) Disbursement of funds. The Administrator must comply with all of the requirements described in paragraphs (1) - (11) of this subsection, for a request for disbursement of funds to reimburse eligible costs incurred. Submission of additional documentation related to the Administrator's compliance with requirements described in paragraphs (1) - (11) of this subsection, may be required with a request for disbursement:

(1) For construction costs that are part of a loan subject to the requirements of this subsection, a down date endorsement to the title policy not older than the date of the last disbursement of funds or 45 days, whichever is later, is required. For release of retainage, the down date endorsement must be dated at least 40 days after the Construction Completion Date;

(2) If applicable, a maximum of 50 percent of Activity funds for an Activity may be drawn before providing evidence of Match. Thereafter, each Administrator must provide evidence of Match, including the date of provision, in accordance with the percentage of Activity funds disbursed;

(3) Property inspections, including photographs of the front and side elevation of the housing unit and at least one picture of the kitchen, family room, one of the bedrooms and one of the bathrooms with date and property address reflected on each photo, are required to be submitted. The inspection must be signed and dated by the inspector and Administrator;

(4) Certification of the following is required:

(A) That its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of, and accounting for, funds provided;

(B) That no Person that would benefit from the award of HOME funds has satisfied the Applicant's cash reserve obligation or made promises in connection therewith;

(C) That each request for disbursement of HOME funds is for the actual cost of providing a service; and

(D) That the service does not violate any conflict of interest provisions;

(5) Original, fully executed, legally enforceable loan documents for each assisted Household containing remedies adequate to enforce any applicable affordability requirements are required. Certified copies of fully executed, recorded loan documents that are required to be recorded in the real property records of the county in which the housing unit is located must be returned to the Department, duly certified as to recordation by the appropriate county official. This documentation prior to disbursement is not applicable for funds made available at the loan closing;

(6) Expenditures must be allowable and reasonable in accordance with federal, state, and local rules and regulations. The Department shall determine the reasonableness for expenditures submitted for reimbursement. The Department may request Administrator to make modifications to the disbursement request and is authorized to modify the disbursement procedures set forth herein and to establish such additional requirements for payment of HOME funds to Administrator as may be necessary or advisable for compliance with all program requirements;

(7) The request for funds for administrative costs must be proportionate to the amount of Direct Activity Costs requested or already disbursed;

(8) Disbursement requests must include the withholding of ten percent of hard construction costs for retainage. Retainage will be held until at least 40 days after the Construction Completion Date;

(9) For final disbursement requests, the following is required:

(A) Submission of documentation required for Activity completion reports and evidence that the demolition or, if an MHU, salvage and disposal of all dilapidated housing units on the lot;

(B) Certification or other evidence acceptable to Department that the replacement house, whether site-built or MHU, was constructed or placed on and within the same lot for which ownership was established and on and within the same lot secured by the loan; and

(C) A final appraisal of the property after completion of improvements;

(10) The final request for disbursement must be submitted to the Department with support documentation no later than 60 days after the termination date of the Contract in order to remain in compliance with the Contract and eligible for future funding. The Department shall not be obligated to pay for costs incurred or performances rendered after the termination date of a Contract; and

(11) For costs associated with insurance policies, including title policies and homeowner insurance policies charged as Activity costs, evidence of payment of the cost must be submitted with the retainage request.

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BOARD ACTION REQUEST  
PROGRAMS DIVISION  
NOVEMBER 5, 2020

Presentation, Discussion and Possible Action on the statutory four-year rule review and re-adoption of 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.406 Fidelity Bond Requirement, §1.407 Inventory Report, and §1.408 Travel; and directing their publication for adoption in the Texas Register

RECOMMENDED ACTION

WHEREAS, Tex. Gov't Code §2001.039 requires a state agency to review a rule not later than the fourth anniversary of the date on which the rule has taken effect and every four years thereafter and that review must include an assessment of whether the reasons for initially adopting the rule continue to exist;

WHEREAS, 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.406 Fidelity Bond Requirement, §1.407 Inventory Report, and §1.408 Travel, were adopted to be effective December 4, 2016, and therefore are due for review under Tex. Gov't Code §2001.039;

WHEREAS, these rules have been assessed and the Department has confirmed that the reasons for the initial adoption of the rule continue to exist;

WHEREAS, the Department continues to receive a variety of federal funds subject to Uniform Guidance, that need continued rule guidance, and the Department has determined that the need for these rule continues; and

WHEREAS, at this time no revisions are needed to these rules and staff therefore proposed the re-adoption without amendments to these the rules, which was made available for public comment from September 18, 2020, to October 19, 2020, and for which no comment was received;

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 cause the rules, in the form presented to this meeting, to be published in the Texas Register for adoption, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

## BACKGROUND

Tex. Gov't Code §2001.039 requires that a state agency review a rule not later than the fourth anniversary of the date on which the rule has taken effect and every four years thereafter and that review must include an assessment of whether the reasons for initially adopting the rule continue to exist.

The Department has reviewed 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §§1.406 Fidelity Bond Requirement, 1.407 Inventory Report, and 1.408 Travel, and determined that the reason for the initial adoption of the rules continues to exist. As such, the Department proposed re adoption without amendments for these rules. The proposed re adoption was noted in the Texas Register's Rules Review section for public comment from September 18, 2020, to October 19, 2020. No comment was received.

The rules are recommended for re adoption.

Attachment A: Preamble and adoption of rule review of 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.406 Fidelity Bond Requirement, §1.407 Inventory Report, and §1.408 Travel

The Texas Department of Housing and Community Affairs (the "Department") files this notice of adoption of rule review for 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.406 Fidelity Bond Requirement, §1.407 Inventory Report, and §1.408 Travel. The purpose of the action is to conduct a rule review in accordance with Tex. Gov't Code §2001.039, which requires a state agency to review its rules every four years.

At this time, the Department has determined there continues to be a need for these rules, which is to provide guidance to subrecipients of the Department relating to reporting inventory and travel. The Department has also determined that no changes to these rules as currently in effect are necessary. These rules were noted in the Texas Register's Review of Agency Rules section without publication of the text.

SUMMARY OF PUBLIC COMMENT. Public comment on the rule was accepted from September 18, 2020, to October 19, 2020. No comment was received.

#### §1.406 Fidelity Bond Requirements

The Department is required to assure that fiscal control and accounting procedures for federally funded entities will be established to assure the proper disbursement and accounting for the federal funds paid to the state. In compliance with that assurance the Department requires program Subrecipients to maintain adequate fidelity bond coverage. A fidelity bond is a bond indemnifying the Subrecipient against losses resulting from the fraud or lack of integrity, honesty or fidelity of one or more of its employees, officers, or other persons holding a position of trust.

(1) In administering Contracts, Subrecipients shall observe their regular requirements and practices with respect to bonding and insurance. In addition, the Department may impose bonding and insurance requirements by Contract.

(2) If a Subrecipient is a non-governmental organization, the Department requires an adequate fidelity bond. If the amount of the fidelity bond is not prescribed in the contract, the fidelity bond must be for a minimum of \$10,000 or an amount equal to the contract if less than \$10,000. The bond must be obtained from a company holding a certificate of authority to issue such bonds in the State of Texas.

(3) The fidelity bond coverage must include all persons authorized to sign or counter-sign checks or to disburse sizable amounts of cash. Persons who handle only petty cash (amounts of less than \$250) need not be bonded, nor is it necessary to bond officials who are authorized to sign payment vouchers, but are not authorized to sign or counter-sign checks or to disburse cash.

(4) The Subrecipient must receive an assurance letter from the bonding company or agency stating the type of bond, the amount and period of coverage, the positions covered, and the annual cost of the bond. Compliance must be continuously maintained thereafter. A copy of the actual policy shall remain on file with the Subrecipient and shall be subject to monitoring by the Department.

(5) Subrecipients are responsible for filing claims against the fidelity bond when a covered loss is discovered.

(6) The Department may take any one or more of the actions described in Chapter 2, of this Part, titled "Enforcement" in association with issues identified as part of filing claims against the fidelity bond.

#### §1.407 Inventory Report

(a) The Department requires the submission of an inventory report for all Contracts on an annual basis to be submitted to the Department, no later than 45 days after the end of the Contract Term, or a more frequent period as reflected in the Contract. Real Property and Equipment must be inventoried and reported on the Department's required form. The form and instructions are found on the Department's website.

(b) Real property and Equipment purchased with funds under a Contract with the Department must be inventoried and reported to the Department during the Contract term.

#### §1.408 Travel

The governing body of each Subrecipient must adopt travel policies that adhere to 2 CFR Part 200, for cost allowability. The Subrecipient must follow either the federal travel regulations or State of Texas travel rules and regulations found on the Comptroller of Public Accounts website at [www.cpa.state.tx.us](http://www.cpa.state.tx.us), as applicable.



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BOARD ACTION REQUEST  
PROGRAMS DIVISION  
NOVEMBER 5, 2020

Presentation, discussion, and possible action on an order adopting the repeal, and new rule, for 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.401 Definitions, §1.402 Cost Principles and Administrative Requirements, §1.403 Single Audit Requirements, §1.404 Purchase and Procurement Standards, §1.405 Bonding Requirements, §1.409 Records Retention, §1.410 Determination of Alien Status for Program Beneficiaries; and an order directing their publication for adoption in the Texas Register

RECOMMENDED ACTION

WHEREAS, the current rule relating to uniform guidance for recipients of federal and state funds from the Department, at 10 TAC Chapter 1, Subchapter D, requires re-review;

WHEREAS, staff has determined that the rule is in need of revisions, and such revisions are being proposed through the repeal of the current rule and a simultaneous new rule to be proposed in its place;

WHEREAS, staff recommends to the Board that there is a continuing need for this rule to exist, which is to ensure compliance with applicable state and federal regulations; and

WHEREAS, such proposed rulemaking was made available for public comment between September 18, 2020, to October 19, 2020, one comment was received, and the rule will be published in the Texas Register for adoption;

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 cause the actions herein in the form presented to this meeting, to be published in the Texas Register for adoption, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing including any requested revisions to the preambles.

## BACKGROUND

10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, has been identified by staff as needing revisions in several sections as described below:

- §1.401 Definitions: makes minor changes to several definitions;
- §1.402 Cost Principles and Administrative Requirements: clarifies what programs are applicable for this section;
- §1.403 Single Audit Requirements: clarifies when the Single Audit requirements apply;
- §1.404 Purchase and Procurement Standards: provides a more orderly list of procurement process documentation;
- §1.405 Bonding Requirements: clarifies when this section's requirements apply;
- §1.409 Records Retention: clarifies that any entity who performs services on behalf of a subrecipient, must also follow record retention requirements; and
- §1.410 Determination of Alien Status for Program Beneficiaries: clarifies the election process for subrecipients.

The summary of public comment received is provided in the preamble below. No changes were made in response to comment.

Attachment 1: Preamble, including required analysis, for adoption of the repeal of 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.401 Definitions, §1.402 Cost Principles and Administrative Requirements, §1.403 Single Audit Requirements, §1.404 Purchase and Procurement Standards, §1.405 Bonding Requirements, §1.409 Records Retention, and §1.410 Determination of Alien Status for Program Beneficiaries

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.401 Definitions, §1.402 Cost Principles and Administrative Requirements, §1.403 Single Audit Requirements, §1.404 Purchase and Procurement Standards, §1.405 Bonding Requirements, §1.409 Records Retention, and §1.410 Determination of Alien Status for Program Beneficiaries. The purpose of the repeal is to clarify requirements for participants of the Department's program.

Tex. Gov't Code §2001.0045(b) does not apply to the 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. Bobby Wilkinson has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to changes to existing guidance for program subrecipients.
2. The repeal 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 repeal does not require additional future legislative appropriations.
4. The repeal will 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 repeal will not expand, limit, or repeal an existing regulation.
7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.
8. The repeal will not negatively or 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 has evaluated the 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. Wilkinson 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 changed sections would be an updated and more germane 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. Wilkinson 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 SUMMARY. The public comment period was held from September 18, 2020, to October 19, 2020, to receive input on the proposed action. No comments on the repeal were received.

STATUTORY AUTHORITY. The repeal is made 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.

§1.401 Definitions

§1.402 Cost Principles and Administrative Requirements

§1.403 Single Audit Requirements

§1.404 Purchase and Procurement Standards

§1.405 Bonding Requirements

§1.409 Records Retention

§1.410 Determination of Alien Status for Program Beneficiaries

Attachment 2: Preamble, including required analysis, for adoption of new 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, §1.401 Definitions, §1.402 Cost Principles and Administrative Requirements, §1.403 Single Audit Requirements, §1.404 Purchase and Procurement Standards, §1.405 Bonding Requirements, §1.409 Records Retention, and §1.410 Determination of Alien Status for Program Beneficiaries

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds, which includes new §1.401 Definitions; §1.402 Cost Principles and Administrative Requirements; §1.403 Single Audit Requirements; §1.404 Purchase and Procurement Standards; §1.405 Bonding Requirements; §1.409 Records Retention; and §1.410 Determination of Alien Status for Program Beneficiaries.

The purpose of the new sections is to make clarifications regarding cross-cutting state and federal requirements applicable to those organizations participating in Department programs. The section changes include: minor changes to several definitions in §1.401 Definitions; clarifies what programs are applicable for this section in §1.402 Cost Principles and Administrative Requirements; clarifies when the Single Audit requirements apply in §1.403 Single Audit Requirements; provides a more orderly list of procurement process documentation in §1.404 Purchase and Procurement Standards; clarifies when this section's requirements apply in §1.405 Bonding Requirements; clarifies that any entity who performs services on behalf of a subrecipient, must also follow record retention requirements in §1.409 Records Retention; and clarifies the election process for subrecipients in §1.410 Determination of Alien Status for Program Beneficiaries.

Tex. Gov't Code §2001.0045(b) does not apply to the 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. Bobby Wilkinson has determined that, for the first five years the new sections would be in effect:

1. The new sections do not create or eliminate a government program but relates to changes to existing regulations applicable to Department subrecipients.
2. The new sections do 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 sections do not require additional future legislative appropriations.
4. The new sections 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 sections are not creating a new regulation, except that they are replacing sections being repealed simultaneously to provide for revisions.

6. The new sections will not expand, limit, or repeal an existing regulation.

7. The new sections will not increase or decrease the number of individuals subject to the rule's applicability.

8. The new sections will not negatively or 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 has evaluated the new sections and determined that the proposed actions 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 new sections do not contemplate or 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 new sections as to their possible effects on local economies and has determined that for the first five years the new sections 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. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the new sections.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENT. The public comment period was held from September 18, 2020, to October 19, 2020, to receive input on the proposed action. One comment from the Texas Association of Community Action Agencies (TACAA) was received. While TACAA did not recommend specific language revisions, they did recommend that the Department should simplify and streamline the process to avoid confusing instructions or misplacement of Single Audits transmitted to TDHCA, should designate only one single point of contact for the submission of Single Audits to TDHCA, and should provide Subrecipients written acknowledgement when a Single Audit is received at TDHCA within a reasonable amount of time (three business days) or auto-reply which will serve as proof to the Subrecipient of the Single Audit submission and to retain when and if questioned. Because the items requested are not addressed in the rule, but through internal policy of the Department, no responsive revisions are being made to the rule. The Compliance Division will consider the input as they perform their duties and implement policy relating to this section.

STATUTORY AUTHORITY. The new sections are made 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.

## 10 TAC Chapter 1, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds

### §1.401 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, 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 associated with the request, or assigned by federal or state law.

(1) Affiliate--Shall have the meaning assigned by the specific program or programs described in this title.

(2) Department--The Texas Department of Housing and Community Affairs.

(3) Equipment--tangible personal property having a useful life of more than one year or a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by entity for financial statement purposes, or \$5,000. Entities not subject to UGMS do not have to include information technology systems unless the item exceeds the lesser of the capitalization level established by entity for financial statement purposes, or \$5,000.

(4) Executive Award Review and Advisory Committee (EARAC)--the Committee established in Tex. Gov't Code chapter 2306, that recommends the award or allocation of any Department funds or resources.

(5) Professional services--for a unit of government is as defined by state law. For Private Nonprofit Organizations it means services:

(A) within the scope of the practice, as defined by state law, of:

- (i) accounting;
- (ii) architecture;
- (iii) landscape architecture;
- (iv) land surveying;
- (v) medicine;
- (vi) optometry;
- (vii) professional engineering;
- (viii) real estate appraising;
- (ix) professional nursing; or
- (x) legal services; or

(B) provided in connection with the professional employment or practice of a person who is licensed or registered as:

- (i) a certified public accountant;
- (ii) an architect;
- (iii) a landscape architect;
- (iv) a land surveyor;
- (v) a physician, including a surgeon;
- (vi) an optometrist;
- (vii) a professional engineer;



- (viii) a state certified or state licensed real estate appraiser;
- (ix) attorney; or
- (x) a registered nurse.

(6) Single Audit--The audit required by Office of Management and Budget (OMB), 2 CFR Part 200, Subpart F, or Tex. Gov't Code, chapter 783, Uniform Grant and Contract Management, as reflected in an audit report.

(7) Single Audit Certification Form--A form that lists the source(s) and amount(s) of Federal funds and/or State funds expended by the Subrecipient during their fiscal year along with the outstanding balance of any loans made with federal or state funds if there are continuing compliance requirements other than repayment of the loan.

(8) Subrecipient--Includes an entity receiving or applying for federal or state funds from the Department under Chapters 6, 7, or 20, or as identified by Contract or in this subchapter. Except as otherwise noted in this subchapter or by Contract, the definition does not include Applicants/Owners who have applied for and/or received funds under a program administered by the Multifamily Finance Division, except for CHDO Operating funds or TCAP-RF funds where the entity is funded through a grant or Subrecipient Contract. A Subrecipient may also be referred to as Administrator.

(9) Supplies--means tangible personal property other than "Equipment" in this section.

(10) Uniform Grant Management Standards (UGMS)--The standardized set of financial management procedures and definitions established by Tex. Gov't Code, chapter 783 regarding Uniform Grant and Contract Management to promote the efficient use of public funds by requiring consistency among grantor agencies in their dealings with grantees, and by ensuring accountability for the expenditure of public funds. State agencies are required to adhere to these standards when administering grants and other financial assistance agreements with cities, counties and other political subdivisions of the state. This includes all Public Organizations including public housing and housing finance agencies. In addition, Tex. Gov't Code Chapter 2105, regarding Administration of Block Grants, subjects subrecipients of federal block grants (as defined therein) to the Uniform Grant and Contract Management Standards.

#### §1.402 Cost Principles and Administrative Requirements

(a) Subrecipients shall comply with the cost principles and uniform administrative requirements set forth in UGMS provided, however, that all references therein to "local government" shall be construed to mean Subrecipient. Private Nonprofit Subrecipients of Emergency Solutions Grant (ESG), HOME Investments Partnership Program (HOME), Neighborhood Stabilization Program (NSP), National Housing Trust Fund (NHTF), and Department of Energy Weatherization Assistance Program (DOE WAP) do not have to comply with UGMS unless otherwise required by Notice of Funding Availability (NOFA) or Contract. For federal funds, Subrecipients will also follow 2 CFR Part 200, as interpreted by the federal funding agency.

(b) In order to maintain adequate separation of duties, the Subrecipient shall ensure that no individual has the ability to perform more than one of the functions described in paragraphs (1) - (5) that might result in a release of funds without appropriate controls:

- (1) Requisition authorization;
- (2) Encumbrance into software;
- (3) Check creation and/or automated payment disbursement;
- (4) Authorized signature/electronic signature; and
- (5) Distribution of paper check.

(c) For Subrecipients with fewer than five paid employees, demonstration of sufficient controls to similarly satisfy the separation of duties required by subsection (b) of this section, must be provided at the time that funds are applied for.

#### §1.403 Single Audit Requirements

(a) For this section, the word Subrecipient also includes Multifamily Development Owners who have applied for or received Direct Loan Funds, grants, or 811 PRA funds from the Department who are or have an Affiliate that is required to submit a Single Audit, i.e. units of government, nonprofit organizations.

(b) Procurement of a Single Auditor. A Subrecipient or Affiliate must procure their single auditor in the following manner unless subject to a different requirement in the Local Government Code:

(1) Competitive Proposal procedures whereby competitors' qualifications are evaluated and a contract awarded to the most qualified competitor. Proposals should be advertised broadly, which may include going outside the entity's service area, and solicited from an adequate number (usually two or more) of qualified sources. Procurements must be conducted in a manner that prohibits the use of in-state or local geographical preferences in the evaluation of bids or proposals;

(2) A Subrecipient may not use the sealed bid method for procurement of the Single Auditor. There is no requirement that the selected audit firm be geographically located near the Subrecipient. If a Subrecipient does not receive proposals from firms with appropriate experience or responses with a price that is not reasonable compared to the cost price analysis, the submissions must be rejected and procurement must be re-performed.

(c) A Subrecipient or Affiliate must confirm that it is contracting with an audit firm that is properly licensed to perform the Single Audit and is not on a limited scope status or under any other sanction, reprimand or violation with the Texas State Board of Public Accountancy. The Subrecipient must ensure that the Single Audit is performed in accordance with the limitations on the auditor's license.

(d) A Subrecipient is required to submit a Single Audit Certification form within two (2) months after the end of its fiscal year indicating the amount they expended in Federal and State funds during the fiscal year and the outstanding balance of any loans made with federal funds if there are continuing compliance requirements other than repayment of the loan.

(e) Subrecipients that expend \$750,000 or more in federal and/or state awards or have an outstanding loan balance associated with a federal or state resource of \$750,000 or more with continuing compliance requirements, or a combination thereof must have a Single Audit or program-specific audit conducted. If the Subrecipient's Single Audit is required by 2 CFR 200, subpart F, the report must be submitted to the Federal Audit Clearinghouse the earlier of 30 days after receipt of the auditor's report or nine (9) months after the end of its respective fiscal year. If a Single Audit is required but not under 2 CFR 200, subpart F, the report must be submitted to the Department the earlier of 30 days after receipt of the auditor's report or nine months after the end of its respective fiscal year.

(f) Subrecipients are required to submit a notification to the Department within five business days of submission to the Federal Audit Clearinghouse. Along with the notice, the Subrecipient must indicate if the auditor issued a management letter. If a management letter was issued by the auditor, a copy must be sent to the Department.

(g) The Department will review the Single Audit and issue a management decision letter for audit findings pertaining to the Federal award provided to the Subrecipient from the Department. If the Single Audit results in disallowed costs, those amounts must be repaid or an acceptable repayment plan must be

entered into with the Department in accordance with 10 TAC §1.21, Action by Department if Outstanding Balances Exist.

(h) In evaluating a Single Audit, the Department will consider both audit findings and management responses in its review. The Department will notify Subrecipients and Affiliates (if applicable) of any Deficiencies or Findings from within the Single Audit for which the Department requires additional information or clarification and will provide a deadline by which that resolution must occur.

(i) All findings identified in the most recent Single Audit will be reported to EARAC through the Previous Participation review process described in Subchapter C of this Chapter. The Subrecipient may submit written comments for consideration within five business days of the Department's management decision letter.

(j) If the Subrecipient disagrees with the auditors finding(s), and the issue is related to administration of one of the Department's programs, an appeal process is available to provide an opportunity for the auditee to explain its disagreement to the Department. This is not an appeal of audit findings themselves. The Subrecipient may submit a letter of appeal and documentation to support the appeal. The Department will take the documentation and written appeal into consideration prior to issuing a management decision letter. If the Subrecipient does not disagree with the auditor's finding, no appeal to the Department is available.

(k) In accordance with 2 CFR Part 200 and the State of Texas Single Audit Circular §.225, with the exception of nondiscretionary CSBG funds except as otherwise required by federal laws or regulations, the Department may suspend and cease payments under all active Contracts, or refrain from executing a new Contract for any Board awarded contracts, until the Single Audit is received. In addition, the Department may elect not to renew an entity in accordance with Section 1.411(f) of this Chapter, or not amend or enter into a new Contract with a Subrecipient until receipt of the required Single Audit Certification form or the submission requirements detailed in subparagraph (e) of this section.

(l) In accordance with Subchapter C of this Chapter (relating to Previous Participation Reviews), if a Subrecipient applies for funding or an award from the Department, findings noted in the Single Audit and the failure to timely submit a Single Audit Certification Form or Single Audit will be reported to EARAC.

#### §1.404 Purchase and Procurement Standards

(a) The procurement of all goods and services shall be conducted, to the maximum extent practical, in a manner providing full and open competition consistent with the standards of 2 CFR Part 200 and UGMS, as applicable.

(b) Subrecipients shall establish, and require its subrecipients/Subcontractors (as applicable by program regulations) to establish, written procurement procedures that when followed, result in procurements that comply with federal, state and local standards, and grant award contracts. Procedures must:

(1) include a cost or price analysis that provides for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Where appropriate, analyzing lease versus purchase alternatives, performing the proposed service in-house, and performing any other appropriate analysis to determine the most economical approach.

(2) require that solicitations for goods and services provide for a clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition, but must contain requirements that the bidder/offeror must fulfill and all other factors to be used in evaluating bids or

proposals. A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards. The specific features of "brand name or equal value" that bidders are required to meet must be listed in the solicitation.

(3) include a method for conducting technical evaluations of the proposals received and for selecting awardees.

(c) Documentation of procurement processes, to include but not be limited to the items in paragraphs (1) to (9) of this subsection, must be maintained by the Subrecipient in accordance with the record retention requirements of the applicable program:

(1) rationale for the type of procurement,

(2) cost or price analysis,

(3) procurement package,

(4) advertising,

(5) responses,

(6) selection process,

(7) contractor selection or rejection,

(8) certification of conflict of interest requirements being satisfied, and

(9) evidence that the awardee is not an excluded entity in the System for Award Management (SAM).

(d) In accordance with 34 Texas Administrative Code, Part 1, Chapter 20, Subchapter D, Division 1, each Subrecipient shall make a good faith effort to utilize the state's Historically Underutilized Business Program in contracts for construction, services (including consulting and Professional Services) and commodities purchases.

(e) The State of Texas conducts procurement for many materials, goods, and appliances. Use of the State of Texas Co-Op Purchasing Program does not satisfy the requirements of 2 CFR Part 200. For more detail about how to purchase from the state contract, please contact: State of Texas Co-Op Purchasing Program, Texas Comptroller of Public Accounts. If Subrecipients choose to use the Cooperative Purchasing Program, documentation of annual fee payment is required.

(f) All vehicles considered for purchase with state or federal funds must be pre-approved by the Department via written correspondence from the Department. Procurement procedures must include provisions for free and open competition. Any vehicle purchased without approval may result in disallowed costs.

#### §1.405 Bonding Requirements

(a) The requirements described in this subsection relate to construction or facility improvements in DOE WAP, HOME, CDBG, NSP, HHSP, EH Fund, TCAP-RF, and ESG Subrecipients, or other fund source required by state or federal law or regulation to have bonding for construction or facility improvements.

(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 Texas statutes, including but not limited to Tex. Gov't Code ch. 2253 and Tex. Local Gov't Code §252.044, §262.032, or §392.0525, as applicable.

#### §1.409 Records Retention

(a) For this section, the word Subrecipient also includes Multifamily Development Owners who have Direct Loan Funds or grants, or 811 PRA assistance. The Department requires Subrecipient organizations, and any entities who perform services and assistance on their behalf, to document client services and assistance. Subrecipient organizations must arrange for the security of all program-related computer files through a remote, online, or managed backup service. Confidential client files must be maintained in a manner to protect the privacy of each client and to maintain the same for future reference. Subrecipient organizations must store physical client files in a secure space in a manner that ensures confidentiality and in accordance with Subrecipient organization policies and procedures. To the extent that it is financially feasible, archived client files should be stored offsite from Subrecipient headquarters, in a secure space in a manner that ensures confidentiality and in accordance with organization policies and procedures.

(b) Records of client eligibility must be retained for five years starting from the date the household activity is completed, unless otherwise provided in federal regulations governing the program.

(c) Other records must be maintained as described in the Contract or the LURA, and in accordance with federal or state law for the programs described in the Chapters of this Part.

#### §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) or (c).

(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) 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, certain exemptions under PRWORA may exist on a case specific, or activity specific basis as further 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 Home 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. For existing Subrecipients, an election made under this subsection does not need to be restated annually, but will continue from the election made in the prior year unless the Subrecipient notifies the Department otherwise in writing before the deadline. For new Subrecipients, if the election must be made with the Application or if there is no Application before Contract execution. If the existing Subrecipient does not notify the Department of the election in writing by the deadline but refuses to abide by its election the Subrecipient will not be eligible to perform as a Subrecipient in the program as further provided for in paragraph (3) of this subsection. Failure by the

Subrecipient to select an option by the deadline is good cause for nonrenewal or termination 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.

(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 a Subrecipient's responsibilities under PRWORA, including but not limited to use of the SAVE system, in its Contract with the 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.

(h) A Subrecipient must establish that an individual is a U.S. Citizen, U.S. National, or Qualified Alien using the documents deemed acceptable by the Department, and which have been published on the Department's website. This information may be updated by the Department from time to time, and highly encourages Subrecipients or other concerned parties to contact the Department if revisions are suggested.

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**BOARD ACTION REQUEST**  
**COMMUNITY AFFAIRS DIVISION**  
**NOVEMBER 5, 2020**

Presentation, Discussion, and Possible Action on the 2021 Section 8 Payment Standards for the Housing Choice Voucher Program (HCVP)

**RECOMMENDED ACTION**

**WHEREAS**, the Department is designated as a Public Housing Authority (PHA) and operates a HCVP; and

**WHEREAS**, 24 CFR §982.503 requires PHAs to establish Payment Standards annually for areas served by its vouchers;

**NOW, therefore, it is hereby,**

**RESOLVED**, that the 2021 HCVP Payment Standards for the Department in its role as a PHA, and in accordance with 24 CFR §982.505, are hereby approved in the form presented to this meeting.

**BACKGROUND**

The U.S. Department of Housing and Urban Development (HUD) requires PHAs to adopt a payment standard schedule annually that establishes voucher payment standard amounts for each Fair Market Rent (FMR) area in the PHA jurisdiction. The PHA must establish payment standard amounts for each "unit size," defined as the number of bedrooms (one-bedroom, two-bedrooms, etc.) in each housing unit.

The Department, operating as a PHA, may establish the payment standard amount at any level between 90% and 110% of the published FMR for that unit size. The establishment of the standard is important because it essentially determines whether a household will be able to find a unit they can afford with the voucher. In areas where market rents are high and there is high demand for rental units it can be challenging for a voucher holder to find a unit. Increased FMRs will aid in areas where voucher holders have had difficulty in finding acceptable units or affording units in more desirable areas. Higher FMRs provide additional choices and opportunities to tenants in highly competitive rental markets.

The importance of trying to ensure that a household's voucher provides enough assistance to house them is balanced with the importance of beneficiaries of vouchers not being over-subsidized. Providing more assistance per household than is truly needed to find a decent, safe affordable housing unit means fewer total households can be assisted. It is through these payment standards that the balance is established.

The approach the Department has taken in setting the payment standards is by evaluating the HUD released FMRs against HUD's Small Area FMRs (SAFMRs). SAFMRs were created by HUD, in response to increasing demand for more localized measures of rents, and are published at the ZIP code level for all metro areas; it should be noted that not all areas served by TDHCA have published SAFMRs. HUD suggests that PHAs can use the SAFMRs as a guide to setting their payment standards so long as the payment standards still remain within the basic range (90%-110%) of the HUD published FMRs. By using the SAFMRs as a benchmark, clients are provided with access to a broader range of neighborhoods, thus allowing them the choice to move into areas with more employment, transportation and educational opportunities. HUD also considers the impact that the use of Small Area FMRs may have when payment standards can be reduced (to below 100% of the FMR) to prevent undue subsidy in lower-rent neighborhoods.

The Department has authority in 34 counties where it is required to set the payment standard. Staff has compared the counties in its jurisdiction to SAFMRs, when available, to generate recommended payment standards. Additionally, HUD requires that PHAs managing programs in the Dallas, TX HUD Metropolitan Fair Market Rent Area (FMR Area), which the Department does, utilize its published SAFMR instead of FMRs. HUD also allows PHAs managing programs in the San Antonio-New Braunfels, TX FMR Area and Fort Worth-Arlington, TX FMR Area to adopt SAFMR, and the Department is proposing to do so.

It should be noted that some ZIP codes cross county lines; HUD generates one SAFMR for that ZIP code, but because the FMRs for each county may vary, the resulting payment standard may be different in one part of the ZIP code than another, based on the following analysis being applied.

For 2021, staff recommends establishing the payment standard as follows:

- For ZIP codes in which the FMR falls below the SAFMR by more than 10%, staff adjusted the payment standard to 105% of FMR. These standards are identified in green.
- For ZIP codes in which the FMR falls above the SAFMR by more than 10%, staff adjusted the payment standard to 95% of FMR. These standards are identified in red.
- For ZIP codes in which the FMR falls between 90% to 110% of the SAFMR, staff set the payment standard at 97% of the FMR. These areas are identified in white.
- For ZIP codes in which no SAFMR is available by HUD, the HUD FMR was utilized at 100% of FMR. These areas are identified in gray.
- For counties within HUD's Dallas Metro FMR Area, Fort Worth-Arlington FMR Area or the San Antonio-New Braunfels Metro FMR Area, the Small Area FMRs are used at 100% of the SAFMR. These are identified in blue.

These new payment standards will become effective on January 1, 2021, and will be applied at the first annual reexamination following the effective date of the increase in the payment standard. This will affect the tenant upon a subsequent change to the Housing Assistance Payment (HAP) contract such as relocating to a new unit or a change in the family's household composition. The FMRs for unit sizes larger than four bedrooms are calculated by adding 15% of for each extra bedroom to the four-bedroom FMR. If a zip code is not reflected in the attached list, but is within the Department's jurisdiction, the payment standard will be 97% of the FMR. Household and property owners are being given notice at the date of this posting, approximately 30 days prior to the change.

Staff recommends adopting these Payment Standards because they allow current tenants continued affordability in the units they have selected and help new tenants find decent, safe, sanitary, and affordable units. In the case of the ZIP code in Galveston County, staff believes that the current posted FMRs are reflective of the reality "on the ground" in these areas. By utilizing the Payment Standard of 108% of FMR in the ZIP code, staff estimates that the number of households for whom the current payment standard fails to cover the contract will be reduced. Additionally, this change in the Payment Standard of these three ZIP codes will reduce the average deficit between the current proposed Payment Standard and the contract rent from more than \$200 to \$50. The attached Exhibit A details the Department's recommended 2021 Payment Standards.

For areas outside of these 34 counties, served by the Department's Project Access program, the Department will adopt the regular Section 8 payment standards in use by the applicable PHA for its Section 8 program, except that if the PHA has received a waiver from HUD to use a higher or lower Payment Standard the Department will apply the Payment Standard within its authority that is closest to the Payment Standard used by the applicable PHA. If there is no applicable PHA in the area, the Department will use 100% of the FMR or SAFMR (in an area that is required to use SAFMR).

The Department's VASH vouchers, operated at Freedom's Path at Kerrville, will utilize the FMR at 100% for Kerr County.

These Payment Standards are proposed based on HUD's publication of FMRs and SAFMRs in the Federal Register. If any FMR or SAFMR changes in the final version adopted by HUD, the Department will adopt HUD's final adopted FMR or SAFMR, but, will leave the payment standard rate as that adopted in this board action. If needed, a utility allowance will be established.

<b>Legend</b>
0 = Gray = Zip Codes with no SAFMR available. 100% FMR
1 = Red = FMR > 110% SAFMR. 95% FMR
2 = Green = FMR < 90% SAFMR. 105% FMR
3 = White = SAFMR between 90% and 110% FMR. 97% FMR
4 = Blue = San Antonio, Fort Worth Dallas MSA. 100% SAFMR
5 = Orange = Galveston County Zip Code 77539 108% FMR

<b>Atascosa</b>					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	\$603	\$773	\$881	\$1,096	\$1,417
78002	\$630	\$750	\$920	\$1,190	\$1,480
78005	\$530	\$670	\$780	\$980	\$1,240
78008	\$600	\$770	\$880	\$1,090	\$1,420
78011	\$550	\$710	\$810	\$1,010	\$1,300
78012	\$690	\$880	\$1,000	\$1,250	\$1,620
78026	\$700	\$890	\$1,020	\$1,270	\$1,640
78050	\$640	\$820	\$930	\$1,160	\$1,510
78052	\$510	\$640	\$750	\$950	\$1,200
78064	\$670	\$860	\$980	\$1,220	\$1,580
78065	\$510	\$660	\$770	\$950	\$1,210
78069	\$510	\$640	\$740	\$930	\$1,190
78073	\$570	\$690	\$840	\$1,080	\$1,350
78113	\$750	\$910	\$1,090	\$1,410	\$1,760
78114	\$700	\$840	\$1,030	\$1,340	\$1,660
78118	\$600	\$770	\$880	\$1,090	\$1,420
78264	\$730	\$880	\$1,070	\$1,380	\$1,720
<b>Austin</b>					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	\$650	\$810	\$956	\$1,242	\$1,641
77418	\$631	\$786	\$928	\$1,205	\$1,592
77426	\$631	\$786	\$928	\$1,205	\$1,592
77452	\$650	\$810	\$956	\$1,242	\$1,641
77473	\$683	\$786	\$928	\$1,205	\$1,592
77474	\$631	\$786	\$928	\$1,205	\$1,592
77485	\$683	\$786	\$928	\$1,205	\$1,592
77833	\$631	\$786	\$928	\$1,205	\$1,592
77835	\$631	\$786	\$928	\$1,205	\$1,592
78931	\$631	\$786	\$928	\$1,205	\$1,592
78933	\$631	\$786	\$928	\$1,205	\$1,592
78940	\$631	\$786	\$928	\$1,205	\$1,592
78944	\$631	\$786	\$928	\$1,205	\$1,592

<b>Legend</b>					
0 = Gray = Zip Codes with no SAFMR available. 100% FMR					
1 = Red = FMR > 110% SAFMR. 95% FMR					
2 = Green = FMR < 90% SAFMR. 105% FMR					
3 = White = SAFMR between 90% and 110% FMR. 97% FMR					
4 = Blue = San Antonio, Fort Worth Dallas MSA. 100% SAFMR					
5 = Orange = Galveston County Zip Code 77539 108% FMR					
78950	\$631	\$786	\$928	\$1,205	\$1,592
78954	\$631	\$786	\$928	\$1,205	\$1,592
<b>Bandera</b>					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	\$761	\$912	\$1,114	\$1,446	\$1,793
78003	\$720	\$860	\$1,050	\$1,360	\$1,680
78010	\$690	\$830	\$1,010	\$1,310	\$1,630
78023	\$1,110	\$1,330	\$1,620	\$2,110	\$2,610
78055	\$610	\$740	\$900	\$1,170	\$1,450
78063	\$680	\$820	\$1,000	\$1,300	\$1,610
78883	\$700	\$840	\$1,030	\$1,340	\$1,660
78884	\$500	\$600	\$730	\$960	\$1,190
78885	\$690	\$830	\$1,010	\$1,310	\$1,630
<b>Bosque</b>					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	\$538	\$557	\$734	\$913	\$1,032
76043	\$565	\$585	\$771	\$959	\$1,084
76457	\$538	\$557	\$734	\$913	\$1,032
76528	\$522	\$541	\$712	\$959	\$1,084
76633	\$565	\$585	\$771	\$959	\$1,084
76634	\$565	\$585	\$771	\$959	\$1,084
76637	\$538	\$557	\$734	\$913	\$1,032
76649	\$538	\$557	\$734	\$913	\$1,032
76652	\$538	\$557	\$734	\$913	\$1,032
76665	\$538	\$557	\$734	\$913	\$1,032
76671	\$538	\$557	\$734	\$913	\$1,032
76689	\$565	\$585	\$771	\$959	\$1,084
76690	\$565	\$585	\$771	\$959	\$1,084
<b>Caldwell</b>					

<b>Legend</b>					
0 = Gray = Zip Codes with no SAFMR available. 100% FMR					
1 = Red = FMR > 110% SAFMR. 95% FMR					
2 = Green = FMR < 90% SAFMR. 105% FMR					
3 = White = SAFMR between 90% and 110% FMR. 97% FMR					
4 = Blue = San Antonio, Fort Worth Dallas MSA. 100% SAFMR					
5 = Orange = Galveston County Zip Code 77539 108% FMR					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	\$1,059	\$1,212	\$1,434	\$1,848	\$2,207
78610	\$1,028	\$1,176	\$1,391	\$1,793	\$2,141
78616	\$1,007	\$1,152	\$1,363	\$1,756	\$2,097
78622	\$1,007	\$1,152	\$1,363	\$1,756	\$2,097
78632	\$1,007	\$1,152	\$1,363	\$1,756	\$2,097
78640	\$1,112	\$1,273	\$1,506	\$1,941	\$2,318
78644	\$1,007	\$1,152	\$1,363	\$1,756	\$2,097
78648	\$1,007	\$1,152	\$1,363	\$1,756	\$2,097
78655	\$1,007	\$1,152	\$1,363	\$1,756	\$2,097
78656	\$1,007	\$1,152	\$1,363	\$1,756	\$2,097
78661	\$1,007	\$1,152	\$1,363	\$1,756	\$2,097
78662	\$1,007	\$1,152	\$1,363	\$1,756	\$2,097
78666	\$1,007	\$1,152	\$1,363	\$1,756	\$2,097
78953	\$1,112	\$1,273	\$1,506	\$1,941	\$2,318
78959	\$1,007	\$1,152	\$1,363	\$1,756	\$2,097
<b>Chambers</b>					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	\$893	\$968	\$1,157	\$1,551	\$1,977
77514	\$849	\$920	\$1,100	\$1,474	\$1,879
77521	\$849	\$920	\$1,100	\$1,474	\$1,879
77523	\$867	\$939	\$1,123	\$1,505	\$1,918
77535	\$849	\$920	\$1,100	\$1,474	\$1,879
77560	\$849	\$920	\$1,100	\$1,474	\$1,879
77575	\$849	\$920	\$1,100	\$1,474	\$1,879
77580	\$867	\$939	\$1,123	\$1,505	\$1,918
77597	\$849	\$920	\$1,100	\$1,474	\$1,879
77661	\$849	\$920	\$1,100	\$1,474	\$1,879
77665	\$849	\$920	\$1,100	\$1,474	\$1,879
<b>Colorado</b>					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	\$555	\$574	\$757	\$1,035	\$1,101

<b>Legend</b>					
0 = Gray = Zip Codes with no SAFMR available. 100% FMR					
1 = Red = FMR > 110% SAFMR. 95% FMR					
2 = Green = FMR < 90% SAFMR. 105% FMR					
3 = White = SAFMR between 90% and 110% FMR. 97% FMR					
4 = Blue = San Antonio, Fort Worth Dallas MSA. 100% SAFMR					
5 = Orange = Galveston County Zip Code 77539 108% FMR					
77412	\$555	\$574	\$757	\$1,035	\$1,101
77434	\$555	\$574	\$757	\$1,035	\$1,101
77435	\$583	\$603	\$795	\$1,087	\$1,157
77442	\$555	\$574	\$757	\$1,035	\$1,101
77460	\$555	\$574	\$757	\$1,035	\$1,101
77470	\$555	\$574	\$757	\$1,035	\$1,101
77474	\$583	\$603	\$795	\$1,087	\$1,157
77475	\$555	\$574	\$757	\$1,035	\$1,101
77964	\$555	\$574	\$757	\$1,035	\$1,101
78933	\$583	\$603	\$795	\$1,087	\$1,157
78934	\$555	\$574	\$757	\$1,035	\$1,101
78935	\$555	\$574	\$757	\$1,035	\$1,101
78940	\$583	\$603	\$795	\$1,087	\$1,157
78943	\$555	\$574	\$757	\$1,035	\$1,101
78950	\$583	\$603	\$795	\$1,087	\$1,157
78951	\$555	\$574	\$757	\$1,035	\$1,101
78956	\$555	\$574	\$757	\$1,035	\$1,101
78962	\$555	\$574	\$757	\$1,035	\$1,101
<b>Comal</b>					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	\$761	\$912	\$1,114	\$1,446	\$1,793
78006	\$880	\$1,060	\$1,290	\$1,610	\$2,060
78015	\$1,160	\$1,390	\$1,700	\$2,170	\$2,720
78070	\$1,010	\$1,210	\$1,480	\$1,920	\$2,380
78108	\$1,140	\$1,370	\$1,670	\$2,170	\$2,690
78130	\$840	\$1,010	\$1,230	\$1,600	\$1,980
78131	\$850	\$1,020	\$1,250	\$1,620	\$2,010
78132	\$850	\$1,020	\$1,240	\$1,610	\$2,000
78133	\$770	\$930	\$1,130	\$1,470	\$1,820
78135	\$761	\$912	\$1,114	\$1,446	\$1,793
78154	\$940	\$1,120	\$1,370	\$1,780	\$2,200
78163	\$890	\$1,070	\$1,310	\$1,700	\$2,110
78266	\$1,140	\$1,370	\$1,670	\$2,170	\$2,690
78606	\$630	\$760	\$920	\$1,180	\$1,480

<b>Legend</b>					
0 = Gray = Zip Codes with no SAFMR available. 100% FMR					
1 = Red = FMR > 110% SAFMR. 95% FMR					
2 = Green = FMR < 90% SAFMR. 105% FMR					
3 = White = SAFMR between 90% and 110% FMR. 97% FMR					
4 = Blue = San Antonio, Fort Worth Dallas MSA. 100% SAFMR					
5 = Orange = Galveston County Zip Code 77539 108% FMR					
78623	\$910	\$1,070	\$1,280	\$1,660	\$2,020
78666	\$840	\$960	\$1,140	\$1,470	\$1,760
78676	\$1,110	\$1,270	\$1,500	\$1,930	\$2,310
<b>Comanche</b>					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	\$538	\$644	\$734	\$1,050	\$1,092
76432	\$538	\$644	\$734	\$1,050	\$1,092
76436	\$538	\$644	\$734	\$1,050	\$1,092
76442	\$538	\$644	\$734	\$1,050	\$1,092
76444	\$538	\$644	\$734	\$1,050	\$1,092
76445	\$538	\$644	\$734	\$1,050	\$1,092
76446	\$538	\$644	\$734	\$1,050	\$1,092
76452	\$538	\$644	\$734	\$1,050	\$1,092
76454	\$538	\$644	\$734	\$1,050	\$1,092
76455	\$538	\$644	\$734	\$1,050	\$1,092
76468	\$538	\$644	\$734	\$1,050	\$1,092
76471	\$538	\$644	\$734	\$1,050	\$1,092
76474	\$538	\$644	\$734	\$1,050	\$1,092
76857	\$538	\$644	\$734	\$1,050	\$1,092
76890	\$538	\$644	\$734	\$1,050	\$1,092
<b>Crockett</b>					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	\$538	\$582	\$734	\$969	\$1,085
76943	\$538	\$582	\$734	\$969	\$1,085
<b>Denton</b>					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom



<b>Legend</b>					
0 = Gray = Zip Codes with no SAFMR available. 100% FMR					
1 = Red = FMR > 110% SAFMR. 95% FMR					
2 = Green = FMR < 90% SAFMR. 105% FMR					
3 = White = SAFMR between 90% and 110% FMR. 97% FMR					
4 = Blue = San Antonio, Fort Worth Dallas MSA. 100% SAFMR					
5 = Orange = Galveston County Zip Code 77539 108% FMR					
HUD FMR	\$1,029	\$1,134	\$1,352	\$1,746	\$2,309
75007	\$1,110	\$1,220	\$1,460	\$1,890	\$2,490
75009	\$1,260	\$1,390	\$1,660	\$2,140	\$2,840
75010	\$1,230	\$1,350	\$1,610	\$2,080	\$2,750
75011	\$1,020	\$1,120	\$1,340	\$1,720	\$2,280
75019	\$1,260	\$1,390	\$1,660	\$2,140	\$2,840
75022	\$1,540	\$1,700	\$2,030	\$2,620	\$3,470
75024	\$1,550	\$1,700	\$2,030	\$2,620	\$3,470
75027	\$1,090	\$1,200	\$1,430	\$1,850	\$2,440
75028	\$1,550	\$1,700	\$2,030	\$2,620	\$3,470
75029	\$1,090	\$1,200	\$1,430	\$1,850	\$2,440
75033	\$1,120	\$1,230	\$1,470	\$1,890	\$2,500
75034	\$1,350	\$1,480	\$1,770	\$2,290	\$3,020
75035	\$1,550	\$1,700	\$2,030	\$2,620	\$3,470
75036	\$1,090	\$1,200	\$1,430	\$1,850	\$2,440
75056	\$1,290	\$1,420	\$1,690	\$2,180	\$2,890
75057	\$1,140	\$1,260	\$1,500	\$1,940	\$2,560
75065	\$1,130	\$1,250	\$1,490	\$1,920	\$2,550
75067	\$1,150	\$1,270	\$1,510	\$1,950	\$2,580
75068	\$1,530	\$1,690	\$2,010	\$2,600	\$3,430
75077	\$1,320	\$1,450	\$1,730	\$2,230	\$2,960
75078	\$1,320	\$1,460	\$1,740	\$2,250	\$2,970
75093	\$1,400	\$1,540	\$1,840	\$2,380	\$3,140
75287	\$1,160	\$1,280	\$1,530	\$1,980	\$2,610
76052	\$1,330	\$1,500	\$1,820	\$2,420	\$3,030
76078	\$1,110	\$1,140	\$1,310	\$1,680	\$1,840
76092	\$1,220	\$1,370	\$1,650	\$2,180	\$2,780
76177	\$1,190	\$1,340	\$1,630	\$2,170	\$2,730
76201	\$940	\$1,040	\$1,240	\$1,600	\$2,120
76202	\$1,090	\$1,200	\$1,430	\$1,850	\$2,440
76203	\$1,029	\$1,134	\$1,352	\$1,746	\$2,309
76204	\$1,090	\$1,200	\$1,430	\$1,850	\$2,440
76205	\$1,020	\$1,120	\$1,340	\$1,730	\$2,290
76206	\$1,090	\$1,200	\$1,430	\$1,850	\$2,440
76207	\$1,070	\$1,170	\$1,400	\$1,810	\$2,390
76208	\$1,100	\$1,220	\$1,450	\$1,870	\$2,480
76209	\$930	\$1,020	\$1,220	\$1,580	\$2,080

<b>Legend</b>					
0 = Gray = Zip Codes with no SAFMR available. 100% FMR					
1 = Red = FMR > 110% SAFMR. 95% FMR					
2 = Green = FMR < 90% SAFMR. 105% FMR					
3 = White = SAFMR between 90% and 110% FMR. 97% FMR					
4 = Blue = San Antonio, Fort Worth Dallas MSA. 100% SAFMR					
5 = Orange = Galveston County Zip Code 77539 108% FMR					
76210	\$1,260	\$1,390	\$1,660	\$2,140	\$2,840
76226	\$1,550	\$1,700	\$2,030	\$2,620	\$3,470
76227	\$1,550	\$1,700	\$2,030	\$2,620	\$3,470
76234	\$980	\$1,000	\$1,140	\$1,470	\$1,580
76247	\$1,230	\$1,360	\$1,620	\$2,090	\$2,770
76249	\$1,140	\$1,260	\$1,500	\$1,940	\$2,560
76258	\$1,000	\$1,110	\$1,320	\$1,700	\$2,250
76259	\$1,090	\$1,200	\$1,430	\$1,840	\$2,440
76262	\$1,120	\$1,240	\$1,490	\$1,950	\$2,530
76266	\$1,100	\$1,210	\$1,440	\$1,860	\$2,460
76272	\$1,090	\$1,200	\$1,430	\$1,850	\$2,440
<b>Ellis</b>					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	\$1,029	\$1,134	\$1,352	\$1,746	\$2,309
75101	\$860	\$950	\$1,130	\$1,460	\$1,930
75104	\$1,250	\$1,380	\$1,640	\$2,120	\$2,800
75119	\$860	\$950	\$1,130	\$1,460	\$1,930
75125	\$960	\$1,060	\$1,260	\$1,630	\$2,150
75146	\$970	\$1,070	\$1,270	\$1,640	\$2,170
75152	\$960	\$1,060	\$1,260	\$1,630	\$2,150
75154	\$1,070	\$1,180	\$1,410	\$1,820	\$2,410
75165	\$940	\$1,040	\$1,240	\$1,600	\$2,120
75167	\$1,350	\$1,490	\$1,780	\$2,300	\$3,040
75168	\$960	\$1,060	\$1,260	\$1,630	\$2,150
76041	\$930	\$1,030	\$1,220	\$1,580	\$2,090
76050	\$730	\$830	\$1,010	\$1,350	\$1,690
76055	\$960	\$1,060	\$1,260	\$1,630	\$2,150
76063	\$1,140	\$1,290	\$1,570	\$2,100	\$2,620
76064	\$840	\$920	\$1,100	\$1,420	\$1,880
76065	\$1,090	\$1,200	\$1,430	\$1,850	\$2,440
76084	\$840	\$950	\$1,150	\$1,540	\$1,930
76623	\$780	\$870	\$1,030	\$1,330	\$1,750
76626	\$960	\$1,060	\$1,260	\$1,630	\$2,150
76641	\$960	\$1,060	\$1,260	\$1,630	\$2,150

<b>Legend</b>					
0 = Gray = Zip Codes with no SAFMR available. 100% FMR					
1 = Red = FMR > 110% SAFMR. 95% FMR					
2 = Green = FMR < 90% SAFMR. 105% FMR					
3 = White = SAFMR between 90% and 110% FMR. 97% FMR					
4 = Blue = San Antonio, Fort Worth Dallas MSA. 100% SAFMR					
5 = Orange = Galveston County Zip Code 77539 108% FMR					
76651	\$720	\$800	\$950	\$1,230	\$1,620
76670	\$910	\$1,000	\$1,190	\$1,540	\$2,030
<b>Erath</b>					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	\$676	\$681	\$837	\$1,131	\$1,135
76401	\$676	\$681	\$837	\$1,131	\$1,135
76402	\$676	\$681	\$837	\$1,131	\$1,135
76433	\$656	\$716	\$879	\$1,188	\$1,192
76436	\$676	\$681	\$837	\$1,131	\$1,135
76444	\$676	\$681	\$837	\$1,131	\$1,135
76445	\$676	\$681	\$837	\$1,131	\$1,135
76446	\$676	\$681	\$837	\$1,131	\$1,135
76453	\$676	\$681	\$837	\$1,131	\$1,135
76457	\$676	\$681	\$837	\$1,131	\$1,135
76461	\$676	\$681	\$837	\$1,131	\$1,135
76462	\$710	\$716	\$879	\$1,188	\$1,192
76463	\$676	\$681	\$837	\$1,131	\$1,135
76465	\$676	\$681	\$837	\$1,131	\$1,135
76470	\$676	\$681	\$837	\$1,131	\$1,135
76649	\$676	\$681	\$837	\$1,131	\$1,135
76690	\$656	\$661	\$812	\$1,188	\$1,192
<b>Falls</b>					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	\$540	\$595	\$734	\$1,033	\$1,271
76519	\$524	\$578	\$712	\$1,003	\$1,233
76524	\$567	\$625	\$771	\$1,085	\$1,335
76570	\$567	\$625	\$771	\$1,085	\$1,335
76579	\$567	\$625	\$771	\$1,085	\$1,335
76629	\$567	\$625	\$771	\$1,085	\$1,335
76630	\$567	\$625	\$771	\$1,085	\$1,335
76632	\$567	\$625	\$771	\$1,085	\$1,335

<b>Legend</b>					
0 = Gray = Zip Codes with no SAFMR available. 100% FMR					
1 = Red = FMR > 110% SAFMR. 95% FMR					
2 = Green = FMR < 90% SAFMR. 105% FMR					
3 = White = SAFMR between 90% and 110% FMR. 97% FMR					
4 = Blue = San Antonio, Fort Worth Dallas MSA. 100% SAFMR					
5 = Orange = Galveston County Zip Code 77539 108% FMR					
76642	\$524	\$578	\$712	\$1,003	\$1,233
76653	\$567	\$625	\$771	\$1,085	\$1,335
76655	\$567	\$625	\$771	\$1,085	\$1,335
76656	\$524	\$578	\$712	\$1,003	\$1,233
76661	\$524	\$578	\$712	\$1,003	\$1,233
76664	\$567	\$625	\$771	\$1,085	\$1,233
76680	\$524	\$578	\$712	\$1,003	\$1,233
76682	\$567	\$625	\$771	\$1,085	\$1,335
76685	\$567	\$625	\$771	\$1,085	\$1,335
76706	\$567	\$625	\$771	\$1,085	\$1,233
<b>Fort Bend</b>					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	\$893	\$968	\$1,157	\$1,551	\$1,977
77031	\$849	\$920	\$1,100	\$1,474	\$1,879
77053	\$938	\$1,017	\$1,215	\$1,629	\$2,076
77082	\$938	\$1,017	\$1,215	\$1,629	\$2,076
77083	\$867	\$939	\$1,123	\$1,505	\$1,918
77085	\$867	\$939	\$1,123	\$1,505	\$1,918
77099	\$867	\$939	\$1,123	\$1,505	\$1,918
77406	\$938	\$1,017	\$1,215	\$1,629	\$2,076
77407	\$938	\$1,017	\$1,215	\$1,629	\$2,076
77417	\$867	\$939	\$1,123	\$1,505	\$1,918
77420	\$938	\$1,017	\$1,215	\$1,629	\$2,076
77423	\$849	\$920	\$1,100	\$1,474	\$1,879
77430	\$849	\$920	\$1,100	\$1,474	\$1,879
77435	\$867	\$939	\$1,123	\$1,505	\$1,918
77441	\$849	\$920	\$1,100	\$1,474	\$1,879
77444	\$849	\$920	\$1,100	\$1,474	\$1,879
77450	\$938	\$1,017	\$1,215	\$1,629	\$2,076
77451	\$867	\$939	\$1,123	\$1,505	\$1,918
77459	\$938	\$1,017	\$1,215	\$1,629	\$2,076
77461	\$849	\$920	\$1,100	\$1,474	\$1,879
77464	\$867	\$939	\$1,123	\$1,505	\$1,918
77469	\$867	\$939	\$1,123	\$1,505	\$1,918

<b>Legend</b>					
0 = Gray = Zip Codes with no SAFMR available. 100% FMR					
1 = Red = FMR > 110% SAFMR. 95% FMR					
2 = Green = FMR < 90% SAFMR. 105% FMR					
3 = White = SAFMR between 90% and 110% FMR. 97% FMR					
4 = Blue = San Antonio, Fort Worth Dallas MSA. 100% SAFMR					
5 = Orange = Galveston County Zip Code 77539 108% FMR					
77471	\$867	\$939	\$1,123	\$1,505	\$1,918
77476	\$867	\$939	\$1,123	\$1,505	\$1,918
77477	\$938	\$1,017	\$1,215	\$1,629	\$2,076
77478	\$938	\$1,017	\$1,215	\$1,629	\$2,076
77479	\$938	\$1,017	\$1,215	\$1,629	\$2,076
77481	\$867	\$939	\$1,123	\$1,505	\$1,918
77485	\$849	\$920	\$1,100	\$1,474	\$1,879
77487	\$938	\$1,017	\$1,215	\$1,629	\$2,076
77489	\$938	\$1,017	\$1,215	\$1,629	\$2,076
77493	\$938	\$1,017	\$1,215	\$1,629	\$2,076
77494	\$938	\$1,017	\$1,215	\$1,629	\$2,076
77496	\$938	\$1,017	\$1,215	\$1,629	\$2,076
77497	\$938	\$1,017	\$1,215	\$1,629	\$2,076
77498	\$938	\$1,017	\$1,215	\$1,629	\$2,076
77545	\$938	\$1,017	\$1,215	\$1,629	\$2,076
77583	\$849	\$920	\$1,100	\$1,474	\$1,879
77584	\$938	\$1,017	\$1,215	\$1,629	\$2,076
<b>Freestone</b>					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	\$538	\$557	\$734	\$1,050	\$1,271
75831	\$538	\$557	\$734	\$1,050	\$1,271
75838	\$538	\$557	\$734	\$1,050	\$1,271
75840	\$538	\$557	\$734	\$1,050	\$1,271
75848	\$538	\$557	\$734	\$1,050	\$1,271
75855	\$538	\$557	\$734	\$1,050	\$1,271
75859	\$538	\$557	\$734	\$1,050	\$1,271
75860	\$538	\$557	\$734	\$1,050	\$1,271
76667	\$538	\$557	\$734	\$1,050	\$1,271
76693	\$538	\$557	\$734	\$1,050	\$1,271
<b>Frio</b>					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	\$571	\$683	\$778	\$1,023	\$1,150

<b>Legend</b>					
0 = Gray = Zip Codes with no SAFMR available. 100% FMR					
1 = Red = FMR > 110% SAFMR. 95% FMR					
2 = Green = FMR < 90% SAFMR. 105% FMR					
3 = White = SAFMR between 90% and 110% FMR. 97% FMR					
4 = Blue = San Antonio, Fort Worth Dallas MSA. 100% SAFMR					
5 = Orange = Galveston County Zip Code 77539 108% FMR					
78005	\$554	\$663	\$755	\$993	\$1,116
78016	\$543	\$649	\$755	\$993	\$1,116
78017	\$571	\$683	\$778	\$1,023	\$1,150
78057	\$554	\$663	\$817	\$1,075	\$1,208
78061	\$571	\$683	\$778	\$1,023	\$1,150
<b>Galveston</b>					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	\$893	\$968	\$1,157	\$1,551	\$1,977
77510	\$867	\$939	\$1,123	\$1,505	\$1,918
77511	\$849	\$939	\$1,100	\$1,474	\$1,918
77517	\$867	\$939	\$1,123	\$1,505	\$1,918
77518	\$849	\$920	\$1,100	\$1,474	\$1,879
77539	\$956	\$1,036	\$1,238	\$1,660	\$2,116
77546	\$938	\$1,017	\$1,215	\$1,629	\$2,076
77549	\$867	\$939	\$1,123	\$1,505	\$1,918
77550	\$867	\$939	\$1,123	\$1,505	\$1,918
77551	\$867	\$939	\$1,123	\$1,505	\$1,918
77552	\$867	\$939	\$1,123	\$1,505	\$1,918
77553	\$867	\$939	\$1,123	\$1,505	\$1,918
77554	\$867	\$939	\$1,123	\$1,505	\$1,918
77555	\$893	\$968	\$1,157	\$1,551	\$1,977
77563	\$849	\$920	\$1,100	\$1,474	\$1,879
77565	\$938	\$1,017	\$1,215	\$1,629	\$2,076
77568	\$849	\$920	\$1,100	\$1,474	\$1,879
77573	\$938	\$1,017	\$1,215	\$1,629	\$2,076
77574	\$867	\$939	\$1,123	\$1,505	\$1,918
77581	\$867	\$1,017	\$1,123	\$1,505	\$1,918
77590	\$849	\$920	\$1,100	\$1,474	\$1,879
77591	\$867	\$939	\$1,123	\$1,505	\$1,918
77623	\$849	\$920	\$1,100	\$1,474	\$1,879
77650	\$867	\$939	\$1,123	\$1,505	\$1,918

<b>Legend</b>					
0 = Gray = Zip Codes with no SAFMR available. 100% FMR					
1 = Red = FMR > 110% SAFMR. 95% FMR					
2 = Green = FMR < 90% SAFMR. 105% FMR					
3 = White = SAFMR between 90% and 110% FMR. 97% FMR					
4 = Blue = San Antonio, Fort Worth Dallas MSA. 100% SAFMR					
5 = Orange = Galveston County Zip Code 77539 108% FMR					
<b>Gillespie</b>					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	\$709	\$734	\$967	\$1,384	\$1,494
76856	\$709	\$734	\$967	\$1,384	\$1,494
78028	\$709	\$734	\$967	\$1,384	\$1,494
78058	\$709	\$734	\$967	\$1,384	\$1,494
78618	\$709	\$734	\$967	\$1,384	\$1,494
78624	\$688	\$771	\$1,016	\$1,343	\$1,569
78631	\$709	\$734	\$967	\$1,384	\$1,494
78635	\$709	\$734	\$967	\$1,384	\$1,494
78671	\$709	\$734	\$967	\$1,384	\$1,494
78675	\$709	\$734	\$967	\$1,384	\$1,494
<b>Grimes</b>					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	\$545	\$564	\$743	\$958	\$1,008
77316	\$573	\$593	\$781	\$1,006	\$1,059
77356	\$573	\$593	\$781	\$1,006	\$1,059
77363	\$573	\$593	\$781	\$1,006	\$1,059
77484	\$573	\$593	\$781	\$1,006	\$1,059
77830	\$545	\$564	\$743	\$958	\$1,008
77831	\$545	\$564	\$743	\$958	\$1,008
77861	\$545	\$564	\$743	\$958	\$1,008
77868	\$573	\$593	\$781	\$1,006	\$1,059
77872	\$545	\$564	\$743	\$958	\$1,008
77873	\$573	\$593	\$781	\$1,006	\$1,059
77875	\$545	\$564	\$743	\$958	\$1,008
77876	\$545	\$564	\$743	\$958	\$1,008
<b>Guadalupe</b>					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	\$761	\$912	\$1,114	\$1,446	\$1,793
78108	\$1,140	\$1,370	\$1,670	\$2,170	\$2,690

<b>Legend</b>					
0 = Gray = Zip Codes with no SAFMR available. 100% FMR					
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2 = Green = FMR < 90% SAFMR. 105% FMR					
3 = White = SAFMR between 90% and 110% FMR. 97% FMR					
4 = Blue = San Antonio, Fort Worth Dallas MSA. 100% SAFMR					
5 = Orange = Galveston County Zip Code 77539 108% FMR					
78115	\$820	\$980	\$1,200	\$1,560	\$1,930
78121	\$830	\$990	\$1,210	\$1,570	\$1,950
78123	\$630	\$750	\$920	\$1,190	\$1,480
78124	\$700	\$840	\$1,030	\$1,340	\$1,660
78130	\$840	\$1,010	\$1,230	\$1,600	\$1,980
78132	\$850	\$1,020	\$1,240	\$1,610	\$2,000
78140	\$630	\$750	\$920	\$1,190	\$1,480
78150	\$740	\$890	\$1,090	\$1,420	\$1,750
78154	\$940	\$1,120	\$1,370	\$1,780	\$2,200
78155	\$680	\$810	\$990	\$1,290	\$1,590
78156	\$820	\$980	\$1,200	\$1,560	\$1,930
78638	\$710	\$830	\$990	\$1,290	\$1,560
78648	\$650	\$740	\$880	\$1,130	\$1,350
78655	\$740	\$860	\$1,030	\$1,330	\$1,610
78666	\$840	\$960	\$1,140	\$1,470	\$1,760
78670	\$660	\$790	\$970	\$1,260	\$1,560
<b>Johnson</b>					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	\$901	\$1,021	\$1,242	\$1,661	\$2,077
76009	\$850	\$960	\$1,170	\$1,570	\$1,960
76028	\$960	\$1,090	\$1,320	\$1,770	\$2,210
76031	\$760	\$860	\$1,050	\$1,400	\$1,760
76033	\$800	\$900	\$1,100	\$1,470	\$1,840
76035	\$1,100	\$1,210	\$1,460	\$1,920	\$2,390
76036	\$1,020	\$1,160	\$1,410	\$1,890	\$2,360
76044	\$900	\$1,020	\$1,240	\$1,660	\$2,070
76049	\$950	\$970	\$1,160	\$1,450	\$1,780
76050	\$730	\$830	\$1,010	\$1,350	\$1,690
76058	\$800	\$900	\$1,100	\$1,470	\$1,840
76059	\$790	\$900	\$1,090	\$1,460	\$1,820
76061	\$910	\$1,030	\$1,250	\$1,680	\$2,090
76063	\$1,140	\$1,290	\$1,570	\$2,100	\$2,620
76070	\$760	\$830	\$1,010	\$1,360	\$1,660
76084	\$840	\$950	\$1,150	\$1,540	\$1,930



<b>Legend</b>					
0 = Gray = Zip Codes with no SAFMR available. 100% FMR					
1 = Red = FMR > 110% SAFMR. 95% FMR					
2 = Green = FMR < 90% SAFMR. 105% FMR					
3 = White = SAFMR between 90% and 110% FMR. 97% FMR					
4 = Blue = San Antonio, Fort Worth Dallas MSA. 100% SAFMR					
5 = Orange = Galveston County Zip Code 77539 108% FMR					
76093	\$790	\$900	\$1,090	\$1,460	\$1,820
76097	\$860	\$980	\$1,190	\$1,590	\$1,990
<b>Karnes</b>					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	\$532	\$640	\$806	\$1,003	\$1,192
78062	\$532	\$640	\$806	\$1,003	\$1,192
78111	\$532	\$640	\$806	\$1,003	\$1,192
78113	\$559	\$672	\$847	\$1,054	\$1,252
78116	\$532	\$640	\$806	\$1,003	\$1,192
78117	\$532	\$640	\$806	\$1,003	\$1,192
78118	\$559	\$672	\$782	\$973	\$1,252
78119	\$559	\$672	\$847	\$1,054	\$1,157
78141	\$532	\$640	\$806	\$1,003	\$1,192
78144	\$532	\$640	\$806	\$1,003	\$1,192
78151	\$532	\$640	\$806	\$1,003	\$1,192
<b>Kendall</b>					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	\$884	\$1,061	\$1,293	\$1,608	\$2,063
78004	\$920	\$1,110	\$1,350	\$1,710	\$2,160
78006	\$880	\$1,060	\$1,290	\$1,610	\$2,060
78013	\$740	\$900	\$1,110	\$1,380	\$1,940
78015	\$1,160	\$1,390	\$1,700	\$2,170	\$2,720
78027	\$820	\$980	\$1,200	\$1,530	\$1,940
78070	\$1,010	\$1,210	\$1,480	\$1,920	\$2,380
78074	\$880	\$1,060	\$1,290	\$1,600	\$2,060
78606	\$630	\$760	\$920	\$1,180	\$1,480
78624	\$740	\$900	\$1,110	\$1,380	\$1,940
<b>Kerr</b>					

<b>Legend</b>					
0 = Gray = Zip Codes with no SAFMR available. 100% FMR					
1 = Red = FMR > 110% SAFMR. 95% FMR					
2 = Green = FMR < 90% SAFMR. 105% FMR					
3 = White = SAFMR between 90% and 110% FMR. 97% FMR					
4 = Blue = San Antonio, Fort Worth Dallas MSA. 100% SAFMR					
5 = Orange = Galveston County Zip Code 77539 108% FMR					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	\$718	\$735	\$838	\$1,199	\$1,233
76849	\$718	\$735	\$838	\$1,199	\$1,233
78003	\$697	\$772	\$880	\$1,259	\$1,295
78010	\$697	\$772	\$880	\$1,164	\$1,295
78013	\$697	\$772	\$880	\$1,259	\$1,295
78024	\$718	\$735	\$838	\$1,199	\$1,233
78025	\$718	\$735	\$838	\$1,199	\$1,233
78028	\$718	\$735	\$838	\$1,199	\$1,233
78029	\$718	\$735	\$838	\$1,199	\$1,233
78055	\$683	\$713	\$813	\$1,164	\$1,295
78058	\$718	\$735	\$838	\$1,199	\$1,233
78063	\$697	\$772	\$880	\$1,164	\$1,295
78624	\$697	\$772	\$880	\$1,259	\$1,295
78631	\$718	\$735	\$838	\$1,199	\$1,233
<b>Lee</b>					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	\$665	\$782	\$911	\$1,133	\$1,347
76567	\$646	\$759	\$884	\$1,100	\$1,307
76578	\$699	\$822	\$957	\$1,190	\$1,415
77853	\$665	\$782	\$911	\$1,133	\$1,347
78621	\$699	\$822	\$957	\$1,190	\$1,415
78650	\$699	\$822	\$957	\$1,190	\$1,415
78659	\$699	\$822	\$957	\$1,190	\$1,415
78942	\$699	\$822	\$957	\$1,190	\$1,415
78945	\$699	\$822	\$957	\$1,190	\$1,415
78946	\$665	\$782	\$911	\$1,133	\$1,347
78947	\$665	\$782	\$911	\$1,133	\$1,347
78948	\$665	\$782	\$911	\$1,133	\$1,347
<b>Llano</b>					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom

<b>Legend</b>					
0 = Gray = Zip Codes with no SAFMR available. 100% FMR					
1 = Red = FMR > 110% SAFMR. 95% FMR					
2 = Green = FMR < 90% SAFMR. 105% FMR					
3 = White = SAFMR between 90% and 110% FMR. 97% FMR					
4 = Blue = San Antonio, Fort Worth Dallas MSA. 100% SAFMR					
5 = Orange = Galveston County Zip Code 77539 108% FMR					
HUD FMR	\$645	\$667	\$879	\$1,093	\$1,375
76831	\$645	\$667	\$879	\$1,093	\$1,375
76869	\$645	\$667	\$879	\$1,093	\$1,375
76885	\$645	\$667	\$879	\$1,093	\$1,375
78607	\$645	\$667	\$879	\$1,093	\$1,375
78609	\$645	\$667	\$879	\$1,093	\$1,375
78611	\$645	\$667	\$879	\$1,093	\$1,375
78624	\$678	\$701	\$923	\$1,148	\$1,444
78639	\$645	\$667	\$879	\$1,093	\$1,375
78643	\$645	\$667	\$879	\$1,093	\$1,375
78657	\$645	\$667	\$879	\$1,093	\$1,375
78672	\$645	\$667	\$879	\$1,093	\$1,375
<b>McLennan</b>					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	\$686	\$721	\$934	\$1,252	\$1,398
76524	\$666	\$700	\$906	\$1,215	\$1,357
76557	\$666	\$685	\$888	\$1,215	\$1,357
76561	\$652	\$685	\$888	\$1,190	\$1,357
76621	\$666	\$700	\$906	\$1,215	\$1,357
76622	\$666	\$700	\$906	\$1,215	\$1,357
76624	\$666	\$700	\$906	\$1,215	\$1,357
76630	\$666	\$700	\$906	\$1,215	\$1,357
76633	\$721	\$758	\$981	\$1,315	\$1,468
76638	\$721	\$758	\$981	\$1,315	\$1,468
76640	\$666	\$700	\$906	\$1,215	\$1,357
76643	\$721	\$758	\$981	\$1,315	\$1,468
76654	\$666	\$700	\$906	\$1,215	\$1,357
76655	\$721	\$758	\$981	\$1,315	\$1,468
76657	\$666	\$700	\$906	\$1,215	\$1,357
76664	\$666	\$700	\$906	\$1,215	\$1,357
76673	\$652	\$685	\$888	\$1,190	\$1,329
76678	\$666	\$700	\$906	\$1,215	\$1,357
76682	\$666	\$700	\$906	\$1,215	\$1,357
76684	\$686	\$721	\$934	\$1,252	\$1,398

<b>Legend</b>					
0 = Gray = Zip Codes with no SAFMR available. 100% FMR					
1 = Red = FMR > 110% SAFMR. 95% FMR					
2 = Green = FMR < 90% SAFMR. 105% FMR					
3 = White = SAFMR between 90% and 110% FMR. 97% FMR					
4 = Blue = San Antonio, Fort Worth Dallas MSA. 100% SAFMR					
5 = Orange = Galveston County Zip Code 77539 108% FMR					
76689	\$666	\$700	\$906	\$1,215	\$1,357
76691	\$652	\$685	\$888	\$1,190	\$1,329
76701	\$721	\$758	\$981	\$1,315	\$1,468
76702	\$666	\$700	\$906	\$1,215	\$1,357
76703	\$666	\$700	\$906	\$1,215	\$1,357
76704	\$652	\$685	\$888	\$1,190	\$1,329
76705	\$652	\$685	\$888	\$1,190	\$1,329
76706	\$666	\$700	\$906	\$1,215	\$1,357
76707	\$666	\$700	\$906	\$1,215	\$1,357
76708	\$666	\$700	\$906	\$1,215	\$1,357
76710	\$666	\$700	\$906	\$1,215	\$1,357
76711	\$721	\$758	\$981	\$1,315	\$1,468
76712	\$666	\$700	\$981	\$1,215	\$1,468
76714	\$666	\$700	\$906	\$1,215	\$1,357
76716	\$666	\$700	\$906	\$1,215	\$1,357
76797	\$686	\$721	\$934	\$1,252	\$1,398
76798	\$666	\$700	\$906	\$1,215	\$1,357
76799	\$686	\$721	\$934	\$1,252	\$1,398
<b>McMullen</b>					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	\$580	\$628	\$791	\$1,044	\$1,170
78007	\$580	\$628	\$791	\$1,044	\$1,170
78026	\$609	\$660	\$831	\$1,097	\$1,229
78071	\$580	\$628	\$791	\$1,044	\$1,170
78072	\$580	\$628	\$791	\$1,044	\$1,170
<b>Medina</b>					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	\$592	\$657	\$866	\$1,133	\$1,329
78003	\$720	\$860	\$1,050	\$1,360	\$1,680
78009	\$660	\$740	\$970	\$1,270	\$1,490
78016	\$510	\$570	\$750	\$980	\$1,190

<b>Legend</b>					
0 = Gray = Zip Codes with no SAFMR available. 100% FMR					
1 = Red = FMR > 110% SAFMR. 95% FMR					
2 = Green = FMR < 90% SAFMR. 105% FMR					
3 = White = SAFMR between 90% and 110% FMR. 97% FMR					
4 = Blue = San Antonio, Fort Worth Dallas MSA. 100% SAFMR					
5 = Orange = Galveston County Zip Code 77539 108% FMR					
78023	\$1,110	\$1,330	\$1,620	\$2,110	\$2,610
78039	\$500	\$560	\$730	\$970	\$1,140
78052	\$510	\$640	\$750	\$950	\$1,200
78056	\$760	\$900	\$1,120	\$1,450	\$1,770
78057	\$600	\$660	\$870	\$1,140	\$1,330
78059	\$510	\$570	\$750	\$980	\$1,190
78063	\$680	\$820	\$1,000	\$1,300	\$1,610
78066	\$820	\$950	\$1,200	\$1,570	\$1,890
78253	\$1,080	\$1,290	\$1,590	\$2,060	\$2,550
78254	\$990	\$1,190	\$1,450	\$1,880	\$2,330
78850	\$600	\$660	\$870	\$1,140	\$1,330
78861	\$600	\$670	\$880	\$1,150	\$1,350
78884	\$500	\$600	\$730	\$960	\$1,190
78886	\$600	\$660	\$870	\$1,140	\$1,330
<b>Waller</b>					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	\$893	\$968	\$1,157	\$1,551	\$1,977
77355	\$867	\$939	\$1,123	\$1,505	\$1,918
77363	\$867	\$939	\$1,123	\$1,505	\$1,918
77423	\$849	\$920	\$1,100	\$1,474	\$1,879
77445	\$849	\$920	\$1,100	\$1,474	\$1,879
77446	\$867	\$939	\$1,123	\$1,505	\$1,918
77447	\$938	\$1,017	\$1,215	\$1,629	\$2,076
77466	\$867	\$939	\$1,123	\$1,505	\$1,918
77484	\$849	\$920	\$1,100	\$1,474	\$1,879
77493	\$938	\$1,017	\$1,215	\$1,629	\$2,076
77494	\$938	\$1,017	\$1,215	\$1,629	\$2,076
77868	\$849	\$920	\$1,100	\$1,474	\$1,879
<b>Wharton</b>					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	\$566	\$657	\$772	\$1,045	\$1,337

<b>Legend</b>					
0 = Gray = Zip Codes with no SAFMR available. 100% FMR					
1 = Red = FMR > 110% SAFMR. 95% FMR					
2 = Green = FMR < 90% SAFMR. 105% FMR					
3 = White = SAFMR between 90% and 110% FMR. 97% FMR					
4 = Blue = San Antonio, Fort Worth Dallas MSA. 100% SAFMR					
5 = Orange = Galveston County Zip Code 77539 108% FMR					
77420	\$595	\$690	\$811	\$1,098	\$1,404
77432	\$566	\$657	\$772	\$1,045	\$1,337
77434	\$566	\$657	\$772	\$1,045	\$1,337
77435	\$595	\$690	\$811	\$1,098	\$1,404
77436	\$566	\$657	\$772	\$1,045	\$1,337
77437	\$566	\$657	\$772	\$1,045	\$1,337
77443	\$566	\$657	\$772	\$1,045	\$1,337
77448	\$566	\$657	\$772	\$1,045	\$1,337
77453	\$566	\$657	\$772	\$1,045	\$1,337
77454	\$566	\$657	\$772	\$1,045	\$1,337
77455	\$566	\$657	\$772	\$1,045	\$1,337
77467	\$566	\$657	\$772	\$1,045	\$1,337
77485	\$595	\$690	\$811	\$1,098	\$1,404
77488	\$566	\$657	\$772	\$1,045	\$1,337
<b>Wilson</b>					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	\$761	\$912	\$1,114	\$1,446	\$1,793
78064	\$670	\$860	\$980	\$1,220	\$1,580
78101	\$750	\$890	\$1,090	\$1,420	\$1,760
78112	\$670	\$800	\$980	\$1,270	\$1,580
78113	\$750	\$910	\$1,090	\$1,410	\$1,760
78114	\$700	\$840	\$1,030	\$1,340	\$1,660
78121	\$830	\$990	\$1,210	\$1,570	\$1,950
78140	\$630	\$750	\$920	\$1,190	\$1,480
78143	\$710	\$850	\$1,030	\$1,340	\$1,660
78147	\$610	\$730	\$890	\$1,160	\$1,430
78152	\$720	\$860	\$1,050	\$1,360	\$1,690
78160	\$730	\$880	\$1,070	\$1,390	\$1,720
78161	\$780	\$940	\$1,150	\$1,490	\$1,850
78223	\$660	\$790	\$970	\$1,260	\$1,560
<b>Wise</b>					

<b>Legend</b>					
0 = Gray = Zip Codes with no SAFMR available. 100% FMR					
1 = Red = FMR > 110% SAFMR. 95% FMR					
2 = Green = FMR < 90% SAFMR. 105% FMR					
3 = White = SAFMR between 90% and 110% FMR. 97% FMR					
4 = Blue = San Antonio, Fort Worth Dallas MSA. 100% SAFMR					
5 = Orange = Galveston County Zip Code 77539 108% FMR					
	0 Bedroom	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
HUD FMR	\$932	\$954	\$1,087	\$1,401	\$1,496
76020	\$790	\$900	\$1,090	\$1,450	\$1,810
76023	\$980	\$1,000	\$1,140	\$1,470	\$1,580
76052	\$1,330	\$1,500	\$1,820	\$2,420	\$3,030
76071	\$920	\$950	\$1,090	\$1,410	\$1,530
76073	\$910	\$930	\$1,060	\$1,370	\$1,460
76078	\$1,110	\$1,140	\$1,310	\$1,680	\$1,840
76082	\$850	\$950	\$1,150	\$1,530	\$1,880
76225	\$820	\$840	\$960	\$1,240	\$1,340
76234	\$980	\$1,000	\$1,140	\$1,470	\$1,580
76246	\$930	\$960	\$1,090	\$1,400	\$1,500
76247	\$1,230	\$1,360	\$1,620	\$2,090	\$2,770
76249	\$1,140	\$1,260	\$1,500	\$1,940	\$2,560
76259	\$1,090	\$1,200	\$1,430	\$1,840	\$2,440
76267	\$930	\$960	\$1,090	\$1,400	\$1,500
76270	\$820	\$840	\$960	\$1,250	\$1,400
76426	\$870	\$890	\$1,010	\$1,300	\$1,390
76431	\$890	\$910	\$1,040	\$1,340	\$1,430
76458	\$930	\$960	\$1,090	\$1,400	\$1,500
76487	\$900	\$1,000	\$1,200	\$1,590	\$1,930

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### TDHCA Outreach Activities, October-November

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.

<b>Activity</b>	<b>Event</b>	<b>Date</b>	<b>Location</b>	<b>Division</b>
Virtual Homebuyer Fair	2020 Harris County Virtual Homebuyers Fair	Sept. 21	N/A	Texas Homebuyer Program
Virtual Meeting	Housing and Health Services Coordination Council (HHSCC) Policy and Planning Subcommittee Meeting	Sept. 30	N/A	Housing Resource Center (HRC)
Virtual Meeting	Disability Advisory Workgroup Meeting	Oct. 5	N/A	HRC
Virtual Conference	TAAHP Housing Conference Panel Discussion: A Look Inside Average Income Set Asides	Oct. 5	N/A	Executive
Virtual Training	Income Determination Training	Oct. 6	N/A	Compliance
Virtual Public Hearing	Public Hearing on CDBG-CV/ESG-CV Substantial Amendment to the 2019 One-Year Action Plan	Oct. 12	N/A	Homelessness Program, CDBG, HRC
Virtual Roundtable	Roundtable on Utility Allowances	Oct. 13	N/A	Compliance
Virtual Public Hearing	Telephonic Public Hearing on Legacy Riverside Senior Living Community	Oct. 14	N/A	Multifamily Finance Division
Virtual Meeting	HHSCC Quarterly Meeting	Oct. 14	N/A	HRC
Virtual Meeting	Texas Interagency Council for the Homeless (TICH) Quarterly Meeting	Oct. 20	N/A	HRC
Webinar	2020 ESG Implementation Webinar	Oct. 22	N/A	Homelessness Program

## **Internet Postings of Note**

*The list of new or noteworthy postings to the Department's website.*

### **Amy Young Barrier Removal**

- Added Phase II Balance of Funds for Service Regions Set Asides

### **Asset Management**

- Posted presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application (#02005, Brenham Oaks; #19344, Patriot Place)
- Posted Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement (#02070, Woodview Apartments; #02174, Gateway Village Seniors; #05236, Clifton Manor Apartments I and II; #05237, Bel Aire Manor Apartments; #05238, Hamilton Manor Apartments; #08195, St James Village Apartments; #11120, La Promesa Apartments)

### **Community Development Block Grant CARES**

- Posted information related to CDBG-CV funding, proposed use of funds and applicable documentation

### **Communications:**

- Added press release for Texas Eviction Diversion Program launch
- Posted Press article, "Celebrating National Energy Awareness Month"

### **Community Affairs**

- Posted revised Building Weatherization Report (as of October 2020)
- Posted updated WAP Best Practices for Evaporative Coolers (as of October 12)
- Posted updated US Citizenship/US National and SAVE Frequently Asked Questions (as of October 2020)
- Posted revised Blower Door and Duct Blaster Data Sheet
- Posted updated WAP Best Practices for Space Heaters (DOE; as of Sept. 28)
- Posted CARES Network Conference Call Q&A document

### **Compliance**

- Added recording of Multifamily Direct Loan Training and slides to YouTube channel

### **HOME and Homeless:**

- Posted updated Housing Contract System Access Request Form for Homeless Programs
- Posted COVID-19 Rental Coupon Contract Supplement for Rental Arrears form
- Posted updated Household Income Certification, TBRA TTP Worksheet, and SFD Loan Analysis
- Posted updated Administrative Draw Workbook
- Posted updated COVID-19 Rental Coupon Contract Supplement for Rental Arrears
- Added 2020 ESG Annual Implementation training webinar to video library page

### **Housing Resource Center**

- Posted updates to COVID-19 Resources webpage

### **Migrant Labor Housing**

- Posted updated New Application for a New License to Operate a Migrant Labor Housing Facility and updated Application to Renew or Change a License to Operate a Migrant Labor Housing Facility

### **Multifamily:**

- Posted update 2021 PAB Lottery Applications (as of October 8)
- Posted 2019 9% HTC relevant links and documentation to Multifamily Archive page

- Added 2020 9% HTC Carryover Allocation Information (2020 Carryover Allocation Manual, 2020 Carryover Allocation Submission Package)
- Posted 3<sup>rd</sup> Party Reports links under 2020 4% HTC Applications
- Posted updated HTC Property Inventory list (as of October 2020)
- Posted DRAFT Site Demographic Characteristics Report 2021 (as of October 2020)

#### **Program Services**

- Posted revised TDHCA Budget Worksheet
- Posted information related to Employment Opportunities for Low-Income People: HUD Section 3 Final Rule

#### **Public Comment**

- Public comment period open for CDBG-CV/ESG-CV Amendment to the 2019 State of Texas Consolidated Plan: One-Year Action Plan

#### **Section 811 PRA Program**

- Added 2019 Historical Income Limits chart to Forms and Materials webpage

#### **Texas Eviction Diversion Program**

- Added Pilot Counties Map
- Posted updated TEDP Frequently Asked Questions document
- Added TEDP Eligibility and supporting documents information
- Posted Tenant Application Form

#### **Texas Homebuyer Program**

- Launched new program website

#### **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
EHF	Ending Homelessness Fund	QCP	Quantifiable Community Participation
FAQ	Frequently Asked Questions	REA	Real Estate Analysis
HBA	Homebuyer Assistance Program	RFA	Request for Applications
HHSCC	Housing and Health Services Coordination Council	RFO	Request for Offer
HHSP	Homeless Housing and Services Program	RFP	Request for Proposals
HRA	Homeowner Rehabilitation Assistance Program	RFQ	Request for Qualifications
		ROFR	Right of First Refusal
		SLIHP	State of Texas Low Income Housing Plan
		TA	Technical Assistance
		TBRA	Tenant Based Rental Assistance Program
		TICH	Texas Interagency Council for the Homeless

HRC Housing Resource Center  
HTC Housing Tax Credit  
HTF Housing Trust Fund  
HUD U.S. Department of Housing and  
Urban Development  
IFB Invitation for Bid

TSHEP Texas Statewide Homebuyer  
Education Program  
TXMCC Texas Mortgage Credit Certificate  
VAWA Violence Against Women Act  
WAP Weatherization Assistance Program

2b



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Update on TDHCA Programs in Response to COVID-19 and CARES Act  
As of October 28, 2020

This report provides an update on the programs TDHCA has targeted to assist with Texas' response to COVID-19 through reprogramming of existing funds and through the administration of CARES Act funds.

Program	Timelines / Contract Periods	Planned Activities	Waivers and Initial Approvals Needed	Program Status	Staffing Admin Funds	Served to Date	Total Program Funding Obligated (%) Drawn (%)	Other Notes
HOME Program Tenant Based Rental Assistance (TBRA) for COVID-19 DR	NA: Reservation Agreements	3-6 months of rental assistance made available through existing or new HOME subrecipients.  Geography: Available where subrecipients apply. Income Eligibility: Households at or below 80% AMFI based on current circumstances.	All necessary waivers for this activity were authorized by the OOG and HUD via HUD's mega-waiver of April 10, 2020. The HUD waivers expire December 31, unless extended.	21 contracted administrators representing 117 counties. 1 administrator in the review and approval process. Recently notified by HUD that arrears is also allowable so administrators are being notified.	No added TDHCA staffing.  No added admin funds.	446* Includes active and closed activities	Up to \$11,290,076 \$2,999,420* 26.57% \$667,898 22.26%	1,099 (households) activities submitted. Includes total served.  * Amount Reserved
Reprogram 2019 and 2020 CSBG Discretionary and Admin. Funds	<ul style="list-style-type: none"> <li>Board approval March 2020.</li> <li>Recipients contracts effective: 3/26/20</li> <li>Expenditure Deadline: 8/31/20</li> </ul>	Uses the existing network of Community Action Agencies to provide direct client assistance to low income households economically impacted by COVID-19.  Geography: Available statewide (excluding CWCCP and CSI <sup>1</sup> ) Income Eligibility: 200% poverty (normally is 125%)	None	Program completed 8/31/20. Final close out reporting not yet available.	No added TDHCA staffing.  No added admin funds.	9,163 persons	\$1,477,993 1,477,993 100% \$1,431,133 98.8%	38 CAA subs

<sup>1</sup> CWCCP and CSI were omitted from this specific type of award because they have outstanding balances owed to the Department. The counties these two entities cover include: Anderson, Cameron, Collin, Denton, Ellis, Henderson, Hunt, Kaufman, Navarro, Rockwall, Van Zandt, and Willacy. It should be noted those counties will receive CSBG services under the CSBG CARES funds.

Program	Timelines / Contract Periods	Planned Activities	Waivers and Initial Approvals Needed	Program Status	Staffing Admin Funds	Served to Date	Total Program Funding Obligated (%) Expended (%)	Other Notes
Recaptured 2018/2019 HHSP	<ul style="list-style-type: none"> <li>Board approval March 2020.</li> <li>Spend by 8/31/20 for 2018 HHSP funds, and extensions on some 2019 HHSP funds through 12/31/20.</li> </ul>	<p>To allow subrecipients to perform HHSP eligible activities in addressing homelessness and those at risk of homelessness.</p> <p>Geography: Available 9 largest metro areas. Income Eligibility: Generally 30% AMFI if applicable</p>	Approval from Comptroller granted.	<p>9 of the 9 contracts have been executed by subs.</p> <p>100% of \$88,547 in 2018 funds expended, and 46% of 2019 HHSP funds expended.</p>	<p>No added TDHCA staffing.</p> <p>No added admin funds.</p>	456 persons	<p>\$239,884</p> <p>\$239,884 100%</p> <p>\$158,036 66%</p>	9 subs
CSBG CARES	<ul style="list-style-type: none"> <li>Board approved April 2020.</li> <li>On 9/3/20 Board programmed 7% in reserve for an eviction diversion pilot.</li> <li>Expend 90% by 8/31/22*</li> <li>45 day closeout</li> </ul>	<p>90% to CAAs using regular formula for households affected by COVID-19; 2% (\$949,120) to Texas Homeless Network<sup>2</sup>; 7% for an eviction diversion pilot program; and 1% for state admin.</p> <p>Geography: Available statewide Income Eligibility: 200% of poverty (normally is 125%)</p>	The <a href="#">flexibilities allowed by USHHS</a> have been accepted.	The CSBG CARES Plan was submitted on 9/18/20. 40 out of 40 contracts have been executed. THN and 8 Eviction Diversion contracts have been executed.	<p>1 Art. IX FTE for CSBG reporting (Offer Pending)</p> <p>1% admin (\$474,560)</p>	29,151 persons	<p>\$48,102,282</p> <p>\$43,292,056 90%</p> <p>\$12,254,985 28.3%</p>	<p>40 CAA subs</p> <p>* CSBG-CV Discretionary has various deadlines</p>
LIHEAP CARES	<ul style="list-style-type: none"> <li>Board approved April 2020</li> <li>By 11/30/20 need to decide on the 9% reserve</li> <li>Expend by 8/30/21</li> <li>45 day closeout</li> </ul>	<p>90% to CEAP subs using regular formula for households affected by COVID-19; 9% to be held in reserve for future emergency use or for subs; and 1% for state admin.</p> <p>Geography: Available statewide Income Eligibility: 150% of poverty</p>	The <a href="#">flexibilities allowed by USHHS</a> have been accepted. Told HHS no WAP w/ CARES. Sent waiver request 5/13/20 to HHS about performance measures for billing history. As of 10/29, no response. No 10% Carry Forward applies.	37 out of 37 contracts have been executed.	<p>1 Art. IX FTE for CEAP TA/capacity (Filled)</p> <p>1% admin (\$892,670)</p>	20,174 persons	<p>\$94,023,896</p> <p>\$84,621,506 90%</p> <p>\$9,412,721 11.1%</p>	37 subs. No subs declined funds.

<sup>2</sup> The award to THN is to: 1) address homelessness and at-risk of homelessness in the Balance of State Continuum of Care and to provide capacity building assistance to subrecipients of Emergency Solutions Grant CARES Act and 2020 and 2021 Emergency Solutions Grant funds as a result of COVID-19.

Program	Timelines / Contract Periods	Planned Activities	Waivers and Initial Approvals Needed	Program Status	Staffing Admin Funds	Served to Date	Total Program Funding Obligated (%) Expended (%)	Other Notes
CDBG CARES – Phases I, II and III	<p>Board approved general use of the funds for CDBG Phase I in April 2020 and Plan Amendment in October 2020.</p> <p>80% of funds must be expended within 3 years of the grant agreement date; remaining 20% by 6 years from the grant agreement date.</p> <p>90-day closeout</p>	<p>Recommended Usage in Plan Amendment: rental assistance including an eviction diversion program, FEMA match for food distribution activities; broadband planning, and assistance for providers of persons with disability.</p> <p>Geography: \$40,000,886 to be allocated to Units of General Local Government in non-entitlement areas. All remaining rental assistance funds to be regionally allocated to cover the state.</p> <p>Income Eligibility: For households at or below 80% of AMI for rental assistance.</p>	<p>Federal Register guidance was released by HUD on August 10, 2020. Action item for the Plan Amendment reflecting use of these funds was submitted to HUD on October 21, 2020. Awaiting HUD approval and issuance of grant agreements.</p>	<p>The Plan Amendment was posted for a 5 day public comment period then submitted to HUD for acceptance.</p>	<p>CDBG Director position filled. 3 other positions filled. 3 more posted.</p> <p>All FTES are Art. IX</p> <p>Up to 7% admin and TA budget (\$9,918,464)</p>	0	<p>First allocation: \$40,000,886</p> <p>Second Allocation: \$63,546,200</p> <p>Third Allocation: \$38,299,172</p> <p>Total: \$141,846,258</p> <p>\$0 0%</p> <p>\$0 0%</p>	<p>All CDBG CARES funds nationally have now been allocated. Office of the Governor designated TDHCA as the state agency recipient for all CDBG CARES on June 15, 2020.</p>
ESG CARES – Phase I	<ul style="list-style-type: none"> <li>Board approved programming plan on April 2020, and conditional awards on July 23, 2020.</li> <li>Expend by 9/30/22</li> <li>90 day closeout</li> </ul>	<p>Four streams:</p> <ul style="list-style-type: none"> <li>Existing subs were offered 100% to 200% of current contract amount (~\$12.5M)</li> <li>ESG Coordinators decided via local process for their CoC, and awards made in three areas without ESG Coordinators by offering funds to CoC awardees (~\$17.2M)</li> <li>Legal/HMIS (\$1.9M)</li> </ul> <p>Geography: Locations of all funded grantees</p> <p>Income Eligibility: 50% AMI for homeless prevention.</p>	<ul style="list-style-type: none"> <li>HUD mega-waivers accepted.</li> <li>ESG Guidance issued by HUD on 9/1/20. An updated waiver request to HUD was submitted on August 31, 2020. One-Year Plan/Con Plan amendment to HUD on May 8.</li> <li>Signed HUD grant agreement sent to HUD 5/15/20.</li> <li>Funds live in HUD system 5/22/20.</li> </ul>	<ul style="list-style-type: none"> <li>48 out of 49 contracts out for existing ESG subs</li> <li>32 out of 43 contracts generated for new ESG subs</li> <li>3 legal service providers awarded.</li> </ul>	<p>3 Art. IX FTE (for all phases of ESG as well)</p> <p>2 hired; 1 in process</p> <p>5% admin (\$1,662,734)</p>	946 persons	<p>\$33,254,679</p> <p>\$32,254,679 97%</p> <p>\$1,766,473 5%</p>	<p>This is the first \$1B of national ESG.</p> <p>HMIS/Coordination funds totaling \$365,826 will go to the 8 ESG Coordinators.</p>



Program	Timelines / Contract Periods	Planned Activities	Waivers and Initial Approvals Needed	Program Status	Staffing Admin Funds	Served to Date	Total Program Funding Obligated (%) Expended (%)	Other Notes
ESG CARES – Phase II	Federal award amounts announced 6/9/2020.	Two streams: <ul style="list-style-type: none"> <li>• \$61,031,041 for Homelessness Prevention and Rapid Rehousing.</li> <li>• \$280,000 for ESG CARES and HMIS Coordination through each Continuum of Care.</li> </ul>	ESG Guidance issued by HUD on 9/1/20.  Plan Amendment submitted to HUD 10/21/20.	In process of releasing application for ESG CARES Subrecipients.	FTEs noted under ESG CARES Phase I will be utilized for both phases.  5% admin (\$3,226,896)	0	\$64,537,937  \$0 0%  \$0 0%	This is the state's share of the second (final) allocation of \$2.96 billion.
Housing Choice Voucher Program Admin	HUD has clarified that expenditure must occur by 12/31/20. (PIH 2020-08)  1 <sup>st</sup> Award: \$117,268 2 <sup>nd</sup> Award: \$140,871 (8/10/2020)	<ul style="list-style-type: none"> <li>• Software upgrades with Housing Pro to allow more efficient remote interface.</li> <li>• Landlord incentive payments.</li> <li>• Possible damage assistance, PPE expenses, tablets</li> </ul>	Received HUD interpretation that using funds for software upgrades are acceptable.	Purchases of Housing Pro upgrades complete. Training underway. Materials for landlord incentives completed.	No added TDHCA staffing.	0	\$258,139  \$38,012* 32.4%  \$0 0%	\$380M nationally  *\$11,260 obligated for the system purchase. \$42,007 offered to 48 households for landlord incentives.
Housing Choice Voucher Program MVP	12 months of assistance, start date begins whenever we designate with HUD.  Orig. Alloc: \$105,034 Supp. Alloc.: \$5,268	15 additional MVP vouchers consistent with our award of MVP, which for us is for the Project Access List.  A quarterly supplemental allocation from HUD in the amount of \$5,268 was received on 8/10/2020 to support the 15 vouchers.	None needed.	Received award from HUD. Issued the 15 vouchers on 5/22/20.	No added TDHCA staffing.  No added admin funds.	3 families leased*	\$110,302  \$0 0%  \$0 0%	*\$1,275 obligated to Mainstream families. There are 12 households searching for units

Note that Section 811 was initially reflected on this report. However, the funds in CARES have been clarified by HUD to be for traditional 811 Project Rental Assistance Contracts, not 811 PRA programs.

2c

BOARD REPORT ITEM  
FINANCIAL ADMINISTRATION DIVISION  
NOVEMBER 5, 2020

Report on the Department's 4th Quarter Investment Report in accordance with the Public Funds Investment Act

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 \$1,481,786,730 of which \$1,443,014,078 is not subject to the PFIA. This report addresses the remaining \$38,772,652 (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 daily purchase of a security with an agreement to repurchase that security at a specific price and date, which in this case was September 1, 2020, with an effective interest rate of 0.04%. These investments safeguard principal while maintaining liquidity. The overnight repurchase agreements, subject to the PFIA, earned \$3,025 in interest during the quarter.

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 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, 85<sup>th</sup> Texas Legislature, Regular Session. These donations are collected and disbursed 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 4th Quarter, as it relates to the investments covered by the PFIA, the carrying value increased by \$3,085,126 (see page 1) for an ending balance of \$38,772,652. The change is described below by fund groups.

General Fund: The General Fund increased by \$1,592,150. This consists primarily of \$1,342,517 received in multifamily bond fees and \$244,425 in MCC Fees.

The State Housing Trust Fund: The Housing Trust Fund decreased by \$637,698. This consists primarily of \$1,468,371 received in loan repayments offset by disbursements including \$2,043,058 for loans, grants, and escrow payments.

Compliance: Compliance funds increased by \$1,050,979. This consists primarily of \$1,048,763 received in compliance fees.

Housing Initiative: Housing Initiative funds increased by \$1,054,685. This consists primarily of \$1,034,467 received in fees related to tax credit activities.

Ending Homelessness Fund: Ending Homelessness funds increased by \$25,010. This consists primarily of \$82,558 in donations and interest earnings on current investment balances, offset by disbursements of \$57,501 for grants.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
HOUSING FINANCE DIVISION

PUBLIC FUNDS INVESTMENT ACT  
INTERNAL MANAGEMENT REPORT (SEC. 2256.023)  
QUARTER ENDING August 31, 2020

Texas Department of Housing and Community Affairs  
Non-Indenture Related Investment Summary  
For Period Ending August 31, 2020

Investment		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
Type	Issue	Rate	Date	Date	05/31/20	05/31/20					08/31/20	08/31/20		
Repo Agmt	General Fund	0.04	08/31/20	09/01/20	766,972.17	766,972.17		(841.45)			766,130.72	766,130.72	-	0.00
Repo Agmt	General Fund	0.04	08/31/20	09/01/20	31,120.25	31,120.25		(28.50)			31,091.75	31,091.75	-	0.00
Repo Agmt	General Fund	0.04	08/31/20	09/01/20	397,251.39	397,251.39	242,118.91				639,370.30	639,370.30	-	0.00
Repo Agmt	General Fund	0.04	08/31/20	09/01/20	775,280.37	775,280.37	7.30				775,287.67	775,287.67	-	0.00
Repo Agmt	General Fund	0.04	08/31/20	09/01/20	109,113.40	109,113.40	1,363,142.52				1,472,255.92	1,472,255.92	-	0.00
Repo Agmt	General Fund	0.04	08/31/20	09/01/20	651,842.84	651,842.84	1,415.99				653,258.83	653,258.83	-	0.00
Repo Agmt	General Fund	0.04	08/31/20	09/01/20	253,492.90	253,492.90		(13,749.37)			239,743.53	239,743.53	-	0.00
Repo Agmt	General Fund	0.04	08/31/20	09/01/20	801,955.98	801,955.98	84.97				802,040.95	802,040.95	-	0.00
Repo Agmt	General Fund	0.04	08/31/20	09/01/20	0.02	0.02					0.02	0.02	-	0.00
General Fund Total					3,787,029.32	3,787,029.32	1,606,769.69	(14,619.32)	0.00	0.00	5,379,179.69	5,379,179.69	0.00	0.00
Repo Agmt	Housing Trust Fund	0.04	08/31/20	09/01/20	113,416.26	113,416.26	64,814.44				178,230.70	178,230.70	-	0.00
Repo Agmt	Housing Trust Fund	0.04	08/31/20	09/01/20	3,758.27	3,758.27	11.61				3,769.88	3,769.88	-	0.00
Repo Agmt	Housing Trust Fund	0.04	08/31/20	09/01/20	511,946.00	511,946.00	441,108.52				953,054.52	953,054.52	-	0.00
Repo Agmt	General Revenue Appn	0.04	08/31/20	09/01/20	54,380.69	54,380.69		(23.30)			54,357.39	54,357.39	-	0.00
Repo Agmt	General Revenue Appn	0.04	08/31/20	09/01/20	136,145.93	136,145.93	166,523.98				302,669.91	302,669.91	-	0.00
Repo Agmt	General Revenue Appn	0.04	08/31/20	09/01/20	650,232.43	650,232.43		(160,410.07)			489,822.36	489,822.36	-	0.00
Repo Agmt	General Revenue Appn	0.04	08/31/20	09/01/20	69,276.25	69,276.25		(27.81)			69,248.44	69,248.44	-	0.00
Repo Agmt	General Revenue Appn	0.04	08/31/20	09/01/20	228,497.90	228,497.90					228,497.90	228,497.90	-	0.00
Repo Agmt	Housing Trust Fund-GR				327,783.60	327,783.60		(327,783.60)					-	0.00
Repo Agmt	Housing Trust Fund-GR	0.04	08/31/20	09/01/20	571,032.40	571,032.40		(268,705.60)			302,326.80	302,326.80	-	0.00
Repo Agmt	Housing Trust Fund-GR	0.04	08/31/20	09/01/20	1,110,844.83	1,110,844.83		(402,242.69)			708,602.14	708,602.14	-	0.00
Repo Agmt	Housing Trust Fund-GR	0.04	08/31/20	09/01/20	1,560,419.29	1,560,419.29		(96,563.43)			1,463,855.86	1,463,855.86	-	0.00
Repo Agmt	Bootstrap -GR	0.04	08/31/20	09/01/20	905,431.42	905,431.42		(438,900.00)			466,531.42	466,531.42	-	0.00
Repo Agmt	Bootstrap -GR	0.04	08/31/20	09/01/20	2,858,698.87	2,858,698.87	384,500.00				3,243,198.87	3,243,198.87	-	0.00
Housing Trust Fund Total					9,101,864.14	9,101,864.14	1,056,958.55	(1,694,656.50)	0.00	0.00	8,464,166.19	8,464,166.19	0.00	0.00
Repo Agmt	Multi Family	0.04	08/31/20	09/01/20	760,186.55	760,186.55	221,390.25				981,576.80	981,576.80	-	0.00
Repo Agmt	Multi Family	0.04	08/31/20	09/01/20	887,408.72	887,408.72	150,673.18				1,038,081.90	1,038,081.90	-	0.00
Repo Agmt	Low Income Tax Credit Prog.	0.04	08/31/20	09/01/20	6,852,538.46	6,852,538.46	678,915.39				7,531,453.85	7,531,453.85	-	0.00
Compliance Total					8,500,133.73	8,500,133.73	1,050,978.82	0.00	0.00	0.00	9,551,112.55	9,551,112.55	0.00	0.00
Repo Agmt	Asset Management	0.04	08/31/20	09/01/20	1,425,574.98	1,425,574.98	144,565.68				1,570,140.66	1,570,140.66	-	0.00
Repo Agmt	Low Income Tax Credit Prog.	0.04	08/31/20	09/01/20	1,683,136.59	1,683,136.59	70,894.45				1,754,031.04	1,754,031.04	-	0.00
Repo Agmt	Low Income Tax Credit Prog.	0.04	08/31/20	09/01/20	10,424,475.26	10,424,475.26	839,232.21				11,263,707.47	11,263,707.47	-	0.00
Repo Agmt	Low Income Tax Credit Prog.	0.04	08/31/20	09/01/20	414,771.16	414,771.16		(6.92)			414,764.24	414,764.24	-	0.00
Housing Initiatives Total					13,947,957.99	13,947,957.99	1,054,692.34	(6.92)	0.00	0.00	15,002,643.41	15,002,643.41	0.00	0.00
Repo Agmt	Homelessness - HB4102	0.04	08/31/20	09/01/20	350,539.83	350,539.83	25,010.19				375,550.02	375,550.02	-	0.00
Homelessness - HB4102 Total					350,539.83	350,539.83	25,010.19	0.00	0.00	0.00	375,550.02	375,550.02	0.00	0.00
Total Non-Indenture Related Investment Summary					35,687,525.01	35,687,525.01	4,794,409.59	(1,709,282.74)	0.00	0.00	38,772,651.86	38,772,651.86	0.00	0.00

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
HOUSING FINANCE DIVISION  
PUBLIC FUNDS INVESTMENT ACT  
Internal Management Report (Sec. 2256.023)  
Quarter Ending August 31, 2020

	Investment Type	FAIR VALUE (MARKET) @ 05/31/20	CARRYING VALUE @ 05/31/20	ACCRETION / PURCHASES	AMORTIZATION/ SALES	MATURITIES	TRANSFERS	CARRYING VALUE @ 08/31/20	FAIR VALUE (MARKET) @ 08/31/20	CHANGE IN FAIR VALUE (MARKET)	ACCRUED INT REC'BL @ 08/31/20	RECOGNIZED GAIN
<b>NON-INDENTURE RELATED:</b>												
General Fund	Repurchase Agreements	3,787,029.32	3,787,029.32	1,606,769.69	(14,619.32)			5,379,179.69	5,379,179.69	-	5.98	-
Housing Trust Fund	Repurchase Agreements	9,101,864.14	9,101,864.14	1,056,958.55	(1,694,656.50)			8,464,166.19	8,464,166.19	-	9.67	-
Compliance	Repurchase Agreements	8,500,133.73	8,500,133.73	1,050,978.82				9,551,112.55	9,551,112.55	-	10.61	-
Housing Initiatives	Repurchase Agreements	13,947,957.99	13,947,957.99	1,054,692.34	(6.92)			15,002,643.41	15,002,643.41	-	16.87	-
Ending Homelessness Trust Fund	Repurchase Agreements	350,539.83	350,539.83	25,010.19				375,550.02	375,550.02	-	0.42	-
<b>NON-INDENTURE RELATED TOTAL</b>		<b>35,687,525.01</b>	<b>35,687,525.01</b>	<b>4,794,409.59</b>	<b>(1,709,282.74)</b>	<b>0.00</b>	<b>0.00</b>	<b>38,772,651.86</b>	<b>38,772,651.86</b>	<b>0.00</b>	<b>43.55</b>	<b>0.00</b>

(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 9, 2019  
Monica Galuski completed 5.0 hrs. of training on the Texas Public Funds Investment Act on February 8, 2019

	Date: 10/14/20
David Cervantes Director of Administration	
	Date: 10/20/20
Monica Galuski Director of Bond Finance/Chief Investment Officer	

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**BOARD REPORT ITEM**  
**BOND FINANCE DIVISION**  
**NOVEMBER 5, 2020**

Report on the Department's 4<sup>th</sup> 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 \$275.3 million (see page 3), resulting in an end of quarter balance of \$1,443,014,078.

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)	86%	73%
Guaranteed Investment Contracts/Investment Agreements	2%	2%
Repurchase Agreements	4%	16%
Treasury Backed Mutual Funds	5%	6%
Treasury Notes / Bonds	3%	3%

The decrease in percentage of MBS is due to the overall increase of investments due to one single family bond issuance and six multifamily bond/note issuances. The increase of Repurchase Agreements and Treasury Backed Mutual Funds is due to the investment of bond proceeds.

**Portfolio activity for the quarter:**

- The MBS purchases this quarter were approximately \$76.3 million, due to the issuance of single family bonds and the investment of proceeds in MBS.
- The maturities in MBS were approximately \$29.6 million, which represent loan repayments or payoffs.

The table below shows the trend in MBS activity.

	4th Qtr FY 19	1st Qtr FY 20	2nd Qtr FY 20	3rd Qtr FY 20	4th Qtr FY 20	Total
Purchases	\$ 109,650,734	\$ 99,520,103	\$ 75,233,628	\$ 746,799	\$ 76,319,543	\$ 361,470,807
Sales						\$ -
Maturities	\$ 16,187,797	\$ 16,188,430	\$ 14,887,354	\$ 16,039,041	\$ 29,627,468	\$ 92,930,090
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) increased \$1.2 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 August 31, 2020, was 2.91%, down from 3.15% at the end of May 2020. Various factors 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 103.41% to 115.79%, which would indicate the Department has sufficient assets to meet its obligations.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
 BOND FINANCE DIVISION  
 BOND TRUST INDENTURES  
 Supplemental Management Report  
 Quarter Ending August 31, 2020



	FAIR VALUE (MARKET) @ 05/31/20	CARRYING VALUE @ 05/31/20	ACCRETION / PURCHASES	AMORTIZATION/ SALES	MATURITIES	TRANSFERS	CARRYING VALUE @ 08/31/20	FAIR VALUE (MARKET) @ 08/31/20	CHANGE IN FAIR VALUE (MARKET)	ACCRUED INT RECVBL @ 08/31/20	RECOGNIZED GAIN
<b>INDENTURE RELATED:</b>											
Single Family	666,935,478	617,017,445	202,370,435	(3,187,120)	(20,800,416)		795,400,344	842,876,844	(2,441,532)	2,021,716	-
RMRB	289,517,302	265,489,848	2,387,110	(4,140,475)	(8,260,952)		255,475,531	277,792,893	(1,710,092)	896,792	-
Taxable Mortgage Program	3,669,910	3,669,910	26,903				3,696,813	3,696,813	-	841,475	-
Multi Family	311,390,991	281,508,991	137,467,272	(29,968,773)	(566,099)		388,441,391	423,721,078	5,397,686	696,777	-
	<u>1,271,513,681</u>	<u>1,167,686,194</u>	<u>342,251,720</u>	<u>(37,296,367)</u>	<u>(29,627,468)</u>		<u>1,443,014,078</u>	<u>1,548,087,627</u>	<u>1,246,062</u>	<u>4,456,759</u>	<u>-</u>

(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 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 9, 2019

Monica Galuski completed 5.0 hrs. of training on the Texas Public Funds Investment Act on February 8, 2019



	10/31/20
David Cervantes Director of Administration	
	10/21/2020
Monica Galuski Director of Bond Finance/Chief Investment Officer	

TEXAS DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS  
 BOND FINANCE DIVISION  
 BOND TRUST INDENTURES  
 Supplemental Management Report  
 Quarter Ending August 31, 2020

INVESTMENT TYPE	FAIR VALUE (MARKET) @ 05/31/20	CARRYING VALUE @ 05/31/20	ACCRETION / PURCHASES	AMORTIZATION/ SALES	MATURITIES	TRANSFERS	CARRYING VALUE @ 08/31/20	FAIR VALUE (MARKET) @ 08/31/20	CHANGE IN FAIR VALUE (MARKET)	RECOGNIZED GAIN
<b>INDENTURE RELATED:</b>										
Mortgage-Backed Securities	1,113,790,936	1,009,963,449	76,319,543	-	(29,627,468)	-	1,056,655,524	1,161,676,946	1,193,935	-
Guaranteed Inv Contracts	21,836,295	21,836,295	14,591,758	(1,858,214)	-	-	34,569,839	34,569,839	-	-
Investment Agreements	1,229,962	1,229,962	1,067,767	-	-	-	2,297,730	2,297,730	-	-
Treasury-Backed Mutual Funds	60,986,634	60,986,634	50,514,374	(17,708,873)	-	-	93,792,135	93,792,135	-	-
Repurchase Agreements	41,952,286	41,952,286	194,633,828	(5,913,656)	-	-	230,672,458	230,672,458	-	-
Treasury Notes / Bonds	31,717,567	31,717,567	5,124,449	(11,815,623)	-	-	25,026,393	25,078,520	52,127	-
	<b>1,271,513,681</b>	<b>1,167,686,194</b>	<b>342,251,720</b>	<b>(37,296,367)</b>	<b>(29,627,468)</b>	<b>-</b>	<b>1,443,014,078</b>	<b>1,548,087,627</b>	<b>1,246,062</b>	<b>-</b>

(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 9, 2019  
 Monica Galuski completed 5.0 hrs. of training on the Texas Public Funds Investment Act on February 8, 2019

 David Cervantes Director of Administration	10/21/20
 Monica Galuski Director of Bond Finance/Chief Investment Officer	10/21/2020

**Texas Department of Housing and Community Affairs**  
**Bond Finance Division**  
**Executive Summary**  
As of August 31, 2020

	Single Family Indenture Funds	Residential Mortgage Revenue Bond Indenture Funds	Multi-Family Indenture Funds	Combined Totals
<b>PARITY COMPARISON:</b>				
PARITY ASSETS				
Cash	\$ 384,468	\$ 9,013	\$ 38,236,543	\$ 38,630,024
Investments <sup>(1)</sup>	\$ 235,402,875	\$ 14,195,953	\$ 383,513,437	\$ 633,112,265
Mortgage Backed Securities <sup>(1)</sup>	\$ 559,235,761	\$ 241,279,577		\$ 800,515,338
Loans Receivable <sup>(2)</sup>	\$ 18,265	\$ -	\$ 787,406,926	\$ 787,425,191
Accrued Interest Receivable	\$ 2,021,716	\$ 896,792	\$ 3,793,459	\$ 6,711,967
<b>TOTAL PARITY ASSETS</b>	<b>\$ 797,063,085</b>	<b>\$ 256,381,335</b>	<b>\$ 1,212,950,365</b>	<b>\$ 2,266,394,785</b>
PARITY LIABILITIES				
Notes Payable	\$ 12,000,000	\$ 10,000,000	\$ 154,234,080	\$ 176,234,080
Bonds Payable <sup>(1)</sup>	\$ 726,432,032	\$ 236,075,000	\$ 889,452,296	\$ 1,851,959,328
Accrued Interest Payable	\$ 9,269,417	\$ 1,850,115	\$ 3,874,050	\$ 14,993,582
Other Non-Current Liabilities <sup>(3)</sup>				\$ -
<b>TOTAL PARITY LIABILITIES</b>	<b>\$ 747,701,449</b>	<b>\$ 247,925,115</b>	<b>\$ 1,047,560,426</b>	<b>\$ 2,043,186,990</b>
PARITY DIFFERENCE	\$ 49,361,636	\$ 8,456,220	\$ 165,389,939	\$ 223,207,795
<b>PARITY</b>	<b>106.60%</b>	<b>103.41%</b>	<b>115.79%</b>	<b>110.92%</b>

(1) Investments, Mortgage Backed Securities and Bonds Payable reported at par value not fair value. This adjustment is consistent with indenture cashflows prepared for r  
Also, the CHMRB Bonds were redeemed in full in January 2019.

(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.

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**BOARD ACTION REQUEST**

**COMPLIANCE DIVISION**

**NOVEMBER 5, 2020**

Presentation, discussion, and possible action on repeal of and proposed new 10 TAC Chapter 2 Enforcement, Subchapter A General, Subchapter C Administrative Penalties, and Subchapter D Debarment to be published in the *Texas Register* for public comment

**RECOMMENDED ACTION**

**WHEREAS**, Tex. Gov't Code §2306.0504 requires the Board to adopt a rule providing for the debarment of a person from participation in programs administered by the Department;

**WHEREAS**, Tex. Gov't Code §2306.041 provides that the Board may impose an administrative penalty on a person who violates Department rules;

**WHEREAS**, the Department adopted a comprehensive enforcement rule addressing debarment and administrative penalties on November 19, 2014, and Department staff has recognized the need for revisions; and

**WHEREAS**, such proposed rulemaking will be published in the *Texas Register* for public comment and subsequently returned to the Board for final adoption;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Executive Director and his designees be and each of them are hereby authorized, empowered and directed, for and on behalf of the Department, to publish for public comment in the *Texas Register* the repeal and proposed new 10 TAC Chapter 2 Enforcement, Subchapter A General, Subchapter C Administrative Penalties, and Subchapter D Debarment and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

**BACKGROUND**

In November 2014, the Department adopted Chapter 2 Enforcement to consolidate the Department's enforcement authority and procedures for assessing administrative penalties, and the handling of debarments and contract terminations for noncompliant subrecipients. Department staff has recognized the need to revise certain sections of this rule. Subchapter B, related to noncompliance with Chapters 6 and 7 Community Affairs and Homelessness Programs, is not recommended for amendments at this time. Therefore only subchapters A, C, and D are proposed as part of this action.

The rule is shown in black line so that changes are readily apparent; however, this rulemaking is proposing the full repeal and replacement with a new rule.

The Compliance and Legal Divisions held a virtual roundtable discussion on September 11, 2020, regarding the staff draft of the Enforcement rule. The roundtable discussion included detailed proposed changes to Subchapters A, C, and D. The recording of the virtual roundtable was posted to the Department's YouTube channel, and stakeholders were requested to provide feedback by September 21, 2020.

A summary of the more significant changes proposed is provided below. Other administrative, technical or immaterial changes are not listed below.

### **Summary of Significant Changes:**

#### Subchapter A General

- Removes superfluous language to add clarity.
- Adds the same definition of Actively Monitored Development that is in the Department's rule relating to Previous Participation in 10 TAC Chapter 1, Subchapter C.
- Adds definitions for various other terms.
- Clarifies membership of the Enforcement Committee ensuring that there are no conflicts.

#### Subchapter C Administrative Penalties

- Provides more transparency and details regarding the current administrative penalties process.
- Allows all TDHCA divisions to refer a responsible party for an administrative penalty, no longer requiring referrals to originate with the Compliance Division.
- Adds a requirement for all referred responsible parties to submit a list of actively monitored developments in their portfolio for debarment evaluation purposes.
- Provides changes to penalty tables to add findings for new Department programs (e.g., Section 811 PRA), and to clarify fair housing and accessibility violations.
- Provides changes to penalty tables to better align penalty amounts as incentives for resolution, and to subdivide certain penalty types for which appropriate penalty amounts may vary depending on the extent of the violation.
- Clarifies penalty table standards for increased penalty amounts for responsible parties that have previously paid a penalty for the same finding type.

#### Subchapter D Debarment From Participation in Programs Administered by the Department

- Proposed changes redefine material and repeated violations for multifamily developments. Under the proposed rule a Uniform Physical Condition Standards (UPCS) inspection that results in a score of 70 or below in sequential UPCS inspections after the effective date of this rule would be considered a material violation. In addition, persons who control five or more Actively Monitored Developments shall be considered for Debarment if an inspection or referral, after the effective date of this rule, indicates that 50% or more of the Actively Monitored Developments in their portfolio have been referred to the Enforcement Committee or 50% or more of the Actively Monitored Developments in their portfolio score a 70 or below during a UPCS inspection.
- Allows all TDHCA divisions to refer a responsible party for debarment, no longer requiring referrals to originate with the Compliance Division.
- Requires that a party undergoing debarment may not participate in new Department financing and assistance opportunities until such debarment is fully resolved.
- Reclassifies some events of noncompliance from "shall debar" to "may debar."



- Adds violations to the “may debar” section, effective as of the rule amendment date (e.g. violation of a Department order that is not resolved within six months of demand, refusing to comply with EARAC conditions of the Executive Award Review Advisory Committee, and controlling a property that has been foreclosed).

Staff recommends approval of the repeal and replacement of this rule for publication in the *Texas Register* to solicit public comment.

**Attachment 1: Preamble for proposed new 10 TAC Chapter 2 Enforcement, Subchapter A General, Subchapter C Administrative Penalties and Subchapter D Debarment**

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 2 Enforcement, Subchapter A General, Subchapter C Administrative Penalties and Subchapter D Debarment. The purpose of the proposed new sections is to provide compliance with Tex. Gov't Code §2306.041 and §2306.0504 and to update the rule to: include a definition of "Actively Monitored Development," clarify membership of the Enforcement Committee ensuring that there are no conflicts of interest, align the rule with the Department's current administrative penalties process, update the administrative penalty table to include new Department programs (e.g., Section 811 PRA), clarify standards for increased penalty amounts for responsible parties that have previously paid a penalty for the same finding type, propose changes redefining material and repeated violations for multifamily developments, require that a party undergoing debarment may not participate in new Department financing and assistance opportunities until such debarment is fully resolved, and reclassify some events of noncompliance from "shall debar" to "may debar."

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action. Several revisions do have potential financial costs to a party undergoing enforcement proceedings, however property owners and subrecipients remaining in good standing do not incur these costs and the rule is only selectively applicable to those performing poorly. Such changes include adding findings for new Department programs (e.g., Section 811 PRA), aligning penalty amounts as incentives for resolution, subdividing certain penalty types, and increasing penalty amounts for responsible parties that have previously paid a penalty for the same finding type. Because it is determined that compliance with the rule does not require additional costs and the adjustment of potential penalty amounts is expected to incentivize compliance rather than increase the amount of fines collected, no costs to the rule warrant being offset. The Department has analyzed this proposed 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. Wilkinson has determined that, for the first five years the proposed new rule would be in effect:

1. The proposed rule does not create or eliminate a government program. This rule updates definitions, Enforcement Committee membership, the Department's administrative penalties process, and the administrative penalty table. This rule also clarifies standards for increased penalty amounts, stipulates that debarment does not relieve existing Department obligations, and reclassifies some events of noncompliance from "shall debar" to "may debar."
2. The proposed 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 proposed 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 proposed rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The proposed rule will not expand, limit, or repeal an existing regulation.
7. The proposed rule will not increase or decrease the number of individuals subject to the rule's applicability; and
8. The proposed rule will not negatively or 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

proposed 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 §2306.041 and §2306.0504.

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 owners and managers of developments participating in Department programs. Other than in the case of a small or micro-business that participates in the Department's programs covered by this rule, no small or microbusinesses 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 doing so.

3. The Department has determined that because all potential penalties can be avoided by adhering to program rules, 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 proposed rule does not contemplate or 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 proposed rule has no economic effect on local employment. Therefore, no local employment impact statement is required to be prepared for this 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 proposed rule has not economic impact on local 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. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be an updated and more germane rule. There will not be any economic cost, other than that described above, to any individuals required to comply with the new section because the processes described by the rule have 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. Wilkinson 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 based on the Department's history and past experience with penalty collections.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 20, 2020, to December 21, 2020, to receive input on the new proposed sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Wendy Quackenbush, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by fax to (512) 475-3359, or email [wendy.quackenbush@tdhca.state.tx.us](mailto:wendy.quackenbush@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, December 21, 2020.

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.

**Subchapter A            General**

**§2.101            Policy and Purpose**

~~(a) In accordance with authority conferred on the Department by Texas Government Code, Chapters 2105 and 2306 and under applicable provisions of federal law the Department has a range of measures it is able to take to address identified instances of noncompliance. In some instances these measures may also require compliance with or adherence to additional federal or state requirements.~~

~~(b) It is the overarching intent and guiding principle of these rules that full compliance is required, and the enforcement mechanisms provided for herein are intended to be used in a manner which:~~

~~–(1) Promotes full compliance;~~

~~–(2) Uses compliance assistance methods and, where needed, enforcement mechanisms, to obtain compliance and to deter noncompliance;~~

~~–(3) Takes appropriate enforcement action against those who fail to take the necessary and appropriate measures to comply; and~~

~~–(4) Provides for the exclusion or removal from Department programs, of persons who have demonstrated that they are either unable or unwilling to comply.~~

~~(c) Any person or entity that enters into a commitment or contract with the Department directly or with a subrecipient of Department financial assistance, setting forth the terms and conditions under which housing tax credits, loans, grants, or any other source of funds or financial assistance from the Department will be made available (collectively the "Program Agreements") is required to comply with all provisions of their respective Program Agreements. Requirements in Program Agreements include requirements to comply with applicable federal or state laws. The failure to comply with any provision of a Program Agreement is, in addition to a breach of such Program Agreement, a violation of this rule.~~

~~(ad) This chapter sets forth the enforcement mechanisms that the Department may use to bring about compliant administration of Department funded programs, state or federal, and exclude or remove from Department programs, Persons to ensure that persons who have established, through certain noncompliant egregious and/or repetitive noncompliance behavior that they are either unwilling to act behave in a compliance-compliant manner, or are unable to do so. These enforcement mechanisms are in addition to any available contractual remedies under program agreements.~~

~~(e) Refer to Chapter 10, Subchapter F of this title (relating to Compliance Monitoring) and/or Chapter 5, Subchapter L of this title (relating to Compliance Monitoring) for detailed information about the monitoring process and remedies available to Persons who disagree with the Department's assessment of their compliance status.~~

**§2.102 Definitions**

The words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Capitalized words used herein have the meaning assigned in the specific ~~chapters~~ Chapters of this Title that govern the program associated with the request, in Chapter 1 of this Title, or assigned by federal or state law.

(1) **Actively Monitored Development**--A Development that within the last three years has been monitored by the Department, either through a Uniform Physical Condition Standards (UPCS) inspection, an onsite or desk file monitoring review, an Affirmative Marketing Plan review, or a Written Policies and Procedures Review. UPCS inspections include inspections completed by Department staff, Department contractors and inspectors from the Real Estate Assessment Center through federal alignment efforts.

~~(21)~~ Consultant—~~A Person One~~ who provides services or advice for a fee in a capacity other than and not as an employee and does not have Control.

~~(3)~~ Control (including the terms Controlled and Controlling)—“Control” is defined in 10 TAC Chapter §11.1 of this Title or as identified in the specific Program rule.

~~(4)~~ Debarment—A prohibition from future participation in some or all Programs administered by the Department. Except as otherwise stated in the Order, Debarment does not impact existing or ongoing participation in Department Programs, prior to the date of the Debarment, nor does it affect any continuing responsibilities or duties thereunder.

~~(52)~~ Enforcement Committee ("Committee")—A Committee committee of employees of the Department appointed by the Executive Director. The voting members of that Committee shall be no fewer than five ~~(5)~~ and no more than nine ~~(9)~~. Additionally, each voting member shall have an alternate member, also appointed by the Executive Director, in the event that the primary voting member is unavailable. The Committee may be composed of any member of any Department division, but members from the referring division may not be present during deliberations. Alternate members may serve on behalf of any voting member for purposes of assuring a quorum. The Executive Director may designate certain members as ex officio and non-voting. The Legal Division will designate person(s) to attend meetings and advise the Committee, ~~but not be members of the Committee. Staff from the Compliance Division will attend at the Committee's request but will not be members of the Committee or be present during any actual deliberations in which the affected person(s) are not also present.~~ A Legal Division designee will ~~also~~ serve as Secretary to the Committee. ~~The Executive Director may designate a substitute for voting committee members who shall be permitted to attend and vote in their absence.~~

~~(6)~~ Event of Noncompliance (including the alternate term “Finding of Noncompliance”)—Any event for which a Person may be found to be in noncompliance with Texas Government Code Chapters 2105 or 2306, any rule adopted thereunder, any Program Agreement requirement, or federal program requirements.

~~(73)~~ Legal Requirements—All requirements, as it relates to the particular Department Program, of state, federal, or local statutes, rules, regulations, ordinances, orders, court opinions, official interpretations, policy issuances, OMB Circulars, representations to secure awards, or any similar memorialization of requirement, including a contract requirements of a purely contractual nature, no matter how designated, applicable to a matter.

~~(8)~~ Monitoring Event—An onsite or desk monitoring review, a Uniform Physical Condition Standards inspection, the submission of the Annual Owner's Compliance Report, Final Construction Inspection, a Written Policies and Procedures Review, or any other instance when the Department's Compliance Division or other reviewing area provides written notice to an Owner or Contact Person requesting a response by a certain date. This would include, but not be limited to, responding to a tenant complaint.

~~(9)~~ Person—A legal entity including, without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability corporation, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality or other organization or entity of any nature whatsoever, and shall include any group of Persons acting in concert toward a common goal, including individual members of the group.

~~(10)~~ Program—Includes any activity performed by a Subrecipient, Administrator, Contractor, Development Owner, or other Person under a Program Agreement or activities performed by a third party under a Program Agreement, including but not limited to a Subgrantee or Subcontractor.

~~(114)~~ Program Agreements include:

(A) agreements between the Department and a Person ~~person~~ setting forth Legal Requirements; and

(B) agreements between a ~~Person~~ person subject to a Program Agreement and a third party to carry out one or more ~~of these~~ Legal Requirements, ~~as the agent, consultant, partner, contractor, subcontractor, or otherwise for a person described in paragraph (1) of this section.~~

(125) Responsible Party--Any Person subject to a Program Agreement.

(136) Vendor--A person who is procured by a subrecipient to provide goods or services in any way relating to a Department program or activity.

## §2.103 General

(a) A Responsible Party must comply with all applicable Legal Requirements.

(b) A failure by the Department to identify, address, or take action with respect to any one or more Events of Noncompliance ~~instances of noncompliance~~ does not constitute a waiver, ratification, or approval of, consent to, or agreement with such noncompliance. It is the responsibility of a Responsible Party to be familiar with the applicable Legal Requirements~~requirements~~.

(c) Record-keeping. Each referring division ~~The Compliance Division~~ will keep records in accordance with the Department's record retention schedule and any other state or Federal requirements of all Events of Noncompliance. ~~instances of identified noncompliance, whether the noncompliance was correctable or not, and, if correctable, whether the noncompliance was corrected within the time afforded for corrective action.~~

(d) As provided for in Texas Government Code, §2306.6719, parties subject to certain compliance requirements must be afforded written notice and a reasonable period to correct identified Events of Noncompliance ~~instances of noncompliance~~ that are susceptible to being corrected. It is the responsibility of each division to provide any required cure, C~~o~~corrective A~~a~~ction, or notice period(s) prior to referral of any matter to the Committee under this chapter. Matters should not be referred to the Committee until such cure, C~~o~~corrective A~~a~~ction, or notice periods have been completed or expired.

(e) For each Event of Noncompliance, the Department will evaluate which Person or Persons who Controlled had Control of the Development, Program, or activity at the time the Event of Noncompliance occurred. A Person will not be referred for Debarment or assessed a Administrative Penalty because they have newly acquired a Development that has existing Events of Noncompliance, provided that the findings are resolved by transferee within a reasonable timeframe after purchase, in accordance with a plan that is approved by the Department in an ownership transfer request under §10.406 of this title (relating to Ownership transfers).

## §2.104 Enforcement Mechanisms

(a) The enforcement mechanisms referenced in this chapter are not the exclusive mechanisms whereby compliance may be obtained in any particular circumstance. ~~In addition to Department action, enforcement~~ Enforcement mechanisms related to Department programs may include, where applicable, those required or employed by other entities or agencies. With regard to the low-income housing tax credit program, if an identified Event of Noncompliance ~~instance of noncompliance~~ is required to be reported to ~~by~~ the Internal Revenue Service, ("IRS") ~~to be reported to the IRS~~, it will be reported by the Compliance Division on form 8823. For federally funded Programs or activities the Department may recommend that a federal funding agency initiate a debarment proceeding under 2 CFR Part 180 or 2 CFR 2424, as applicable. -Program Agreements may also include additional enforcement mechanisms, federal reporting, or penalties.

(b) Enforcement mechanisms available to the Department include but are not limited to:

(1) Enforcement of contractual provisions, in the Program Agreements including, but not, limited to, options to place a Development into receivership, and rights of suspension or termination, and placement on a cost reimbursement status as described in Subchapter B of this chapter (relating to

Enforcement for Noncompliance with Program Requirements of Chapters 6 and 7 Regarding Community Affairs Contract Subrecipients);

(2) Consideration of a reasonable plan for correction, warning letter, informal conference, and assessment of administrative penalties~~Assessment of Administrative Penalties~~, as further described in Subchapter C of this chapter (related to Administrative Penalties); or

(3) Debarment, as described in Subchapter D of this chapter (relating to Debarment).

## **Subchapter C Administrative Penalties**

### **Rule §2.301 General**

~~The Compliance Division~~ Department divisions will recommend to the Committee the initiation of proceedings to assess administrative penalties where the Responsible Party or Parties have violated Chapters 2105 or 2306 of the Texas Government Code or a rule or order adopted under Chapters 2105 or 2306 of the Texas Government Code and failed, despite written notice, to take appropriate and timely corrective action or seek and obtain for good cause an extension of the time to take corrective action. In addition, staff from the Compliance or Fair Housing Divisions may recommend to the Committee the initiation of proceedings to assess administrative penalties where the Responsible Party or Parties has an established pattern of repeated substantive and material violations, even if corrected within the applicable corrective action periods.

### §2.302 Administrative Penalty Process

(a) The Executive Director will appoint an Enforcement Committee, as defined in §2.102 of this chapter (relating to Definitions).

(b) ~~The Compliance Division~~ This referring division will recommend the initiation of administrative penalty proceedings to the Committee by referral ~~of a compliance monitoring matter~~ to the secretary of the Committee ("Secretary"). At the time of referral for a multifamily rental Development, the referral letter from the referring Division will require the Responsible Party who Controls the Development to provide a listing of the Actively Monitored Developments in their portfolio. The Secretary will use this information to help determine whether mandatory Debarment should be simultaneously considered by the Enforcement Committee in accordance with §2.401(e)(2) of this section, related to repeated violations.

(c) The ~~secretary~~ Secretary of the Committee shall promptly contact the Responsible Party ~~describing the violations involved~~. If fully acceptable corrective action documentation is submitted to the referring division before the ("Secretary") sends an informal conference notice, the referral shall be closed with no further action provided that the Responsible Party is not subject to consideration for Debarment. If the secretary is able to facilitate closure of the matter without further action by the Committee, the secretary will report back to the Compliance Division. If the Secretary is not able to facilitate resolution, but receives a reasonable plan for correction, such plan shall be reported to the Committee to determine whether to schedule an informal conference, modify the plan, or accept the plan. If accepted, plan progress shall be regularly reported to the Committee, but an informal conference will not be held unless the approved plan is substantively violated, or an informal conference is later requested by ~~with~~ the Committee or the Responsible Party. Plan examples include but are not limited to: a rehabilitation plan with a scope of work or contracts already in place, plans approved by EARAC as part of an ownership transfer or funding application, plans approved by the Executive Director, plans

approved by the Asset Management Division, and/or plans relating to newly transferred Developments with unresolved Events of Noncompliance originating under prior ownership. Should the Secretary and Responsible Party fail to come to closure, an agreement or closer of the referral, or if the Responsible Party or ownership group's prior history of administrative penalty referrals does not support closure, or if consideration of Debarment is appropriate, the matter will be presented to the Committee for possible action. the Secretary will schedule an informal conference with the Responsible Party to attempt to reach an agreed resolution.

~~(d) The Committee will first offer to hold an informal meeting with the Responsible Party to attempt to reach an agreed resolution.~~

(d) When an informal conference is scheduled, a deadline for submitting Corrective Action documentation will be included, providing a final opportunity for resolution. If compliance is achieved at this stage, the referral will be closed with a warning letter provided that factors, as discussed below, do not preclude such closure. Closure with a warning letter shall be reported to the Committee. Factors that will determine whether it is appropriate to close with a warning letter include, but are not limited to:

(1) Prior Enforcement Committee history relating to the Development or other properties in the ownership group;

(2) Prior Enforcement Committee history regarding similar federal or state Programs;

(3) Whether the deadline set by the Secretary in the informal conference notice has been met;

(4) Whether the Committee has set any exceptions for certain finding types; and

(5) Any other factor that may be relevant to the situation.

(e) If any such meeting informal conference is held:

~~-(1) Notwithstanding the Responsible Party's attendance or presence of an authorized representative, the Enforcement Committee may proceed with the informal conference; Statements made in the meeting shall not be used as evidence in any proceedings if agreed resolution is not reached. This does not preclude establishing such matters through the introduction of proper evidence;~~

~~(2) The Responsible Party may, but is not required to be, represented by legal counsel of their choosing at their own cost and expense;~~

~~(3) The Responsible Party may bring to the meeting third parties, employees, and agents with knowledge of the issues;~~

~~(4) Assessment of an administrative penalty and Debarment may be considered at the same informal conference; and~~

~~(5) In order to facilitate candid dialogue, informal meetings-conference will not be open to the public; however, the Committee may include such other persons or witnesses as the Committee deems necessary for a complete and full development of relevant information and evidence.~~

(ef) An informal meeting-conference may result in the following, which shall be reported to the Executive Director:

~~(1) An agreement to dismiss the matter with no further action, which will then be reported to the Executive Director;~~

~~(2) A Compliance-compliance Assistance-assistance Notice-notice issued by the Committee, available for Responsible Parties appearing for the first time before the Committee for matters which the Committee determines do not necessitate the assessment of an administrative penalty, but for which~~



the Committee wishes to place the Responsible Party on ~~specific~~ notice with regard to possible future ~~violations penalty assessment~~;

(3) An agreement to resolve the matter through corrective action without penalty. ~~In this circumstance, the agreement shall be reported to the Executive Director. If the agreement is to be included in an order, a proposed agreed order will be prepared and presented to the Board for approval;~~

(4) An agreement to resolve the matter through corrective action with the assessment of an administrative penalty which may be probated in whole or in part, and may, where appropriate, include additional action to promote compliance such as ~~agreements- requirements~~ to obtain training. In this circumstance, a proposed agreed order ~~and draft report~~ will be prepared and presented to ~~Department's Governing~~ Board for approval;

(5) A recommendation by the Committee to the Executive Director ~~to determine that a violation occurred, and to regarding the issuance issue~~ of a report to the Board and ~~issuance of~~ a Notice of Violation to the Responsible Party, seeking the assessment of administrative penalties ~~through a contested case hearing with the State Office of Administrative Hearings ("SOAH"); or~~ ~~(6) A determination that the Responsible Party should be referred for debarment, in which case the Responsible Party will be offered another opportunity to appear before the Committee, shall be reported to the Executive Director; or~~

~~(67) Other action as the Committee deems appropriate shall be reported to the Executive Director.~~

~~(fg)~~ Upon receipt of a recommendation from the Committee regarding the issuance of a report and assessment of an administrative penalty ~~under subsection (f)(5)~~, the Executive Director shall determine whether a violation has occurred. If needed, the Executive Director may request additional information and/or return the recommendation to the Committee for further development. If the Executive Director determines that a violation has occurred, the Executive Director will issue a report to the Board in accordance with §2306.043 of the Texas Government Code.

~~(gh)~~ Not later than fourteen (14) days after issuance of the report to the Board, the Executive Director will issue a Notice of Violation to the Responsible Party. The Notice of Violation issued by the Executive Director will include:

(1) ~~a~~ ~~A~~ summary of the alleged violation(s) together with reference to the particular sections of the statutes and rules alleged to have been violated;

(2) ~~a~~ ~~A~~ statement informing the Responsible Party of the right to a hearing before the ~~State Office of Administrative Hearings ("SOAH")~~, if applicable, on the occurrence of the violation(s), the amount of penalty, or both;

(3) ~~any~~ ~~Any~~ other matters deemed relevant; and

(4) ~~the~~ ~~The~~ amount of the recommended penalty. In determining the amount of a recommended administrative penalty, the Executive Director shall take into consideration ~~the statutory factors at Tex. Gov't Code §2306.042 the penalty schedule shown in the tables in subsection (l) of this section whether the Responsible Party has timely taken appropriate actions within their control, the amount of penalty necessary to deter future violations,~~ and, in the instance of a proceeding to assess administrative penalties against a Responsible Party administering ~~CDBG, CSBG, or CEAPLIHEAP, ESG or HHSP~~, whether the assessment of such penalty will interfere with the uninterrupted delivery of services under such program(s). ~~He or she~~ ~~The Executive Director~~ shall further take into account whether the Department's purposes may be achieved or enhanced by the use of full or partial probation of penalties subject to adherence to specific requirements and whether the violation(s) in question involve disallowed costs ~~or other matters giving rise to financial exposure to the Department.~~

~~(h) The amount of recommended penalty will be determined with reference to a penalty schedule shown in the tables in subsection (j) of this section.~~

(ij) Not later than ~~twenty (20)~~ days after the Responsible Party receives the Notice of Violation, the Responsible Party may accept the determination requirements of the Notice of Violation ~~and recommended penalty~~ or request a SOAH hearing.

(jk) If the Responsible Party requests a hearing or does not respond to the Notice of Violation, the Executive Director, with the approval of the Board, shall cause the hearing to be docketed before a SOAH administrative law judge in accordance with Chapter 1, §1.13 of this title (relating to Contested Case Adjudicative Hearing Procedures), which outlines the remainder of the process.

(l) Penalty schedules

[Attached Graphic](#)

[Attached Graphic](#)

[Attached Graphic](#)

Figure 1: 10 TAC §2.302(lj)

<b>Penalty table for <u>Community Affairs Program</u> <u>Chapters 6 and 7 Findings of Noncompliance Violations</u></b> <u>These are the maximum potential administrative penalty amounts possible for each finding of noncompliance. When an administrative penalty is to be considered, the matrix below must be considered in conjunction with the statutory factors at Tex. Gov't Code §2306.042.</u>		
<u>Finding of Noncompliance Event</u>	<u>Maximum first time administrative penalty assessment First Time Violation Administrative Penalty</u>	<u>Repeat Violation Maximum Administrative penalty assessment for a Responsible Party that has previously paid a penalty for the same finding type</u>
Lack of financial duties or material inventory segregation of duties	Up to \$500	Up to \$1,000
No Cost Allocation/Not <del>Cost</del> <u>allocating costs properly</u> <u>Allocating properly</u>	Up to \$500 for each instance	Up to \$1,000 for each instance
<u>Violation of Texas Public Information Act</u>	<u>Up to \$1,000 for each instance + up to \$100 for each day the entity failed to comply</u>	<u>Up to \$1,000 for each instance + up to \$200 for each day the entity failed to comply</u>
<u>Violation of Conflict of Interest policies</u>	<u>Up to \$500</u>	<u>Up to \$1,000</u>

Lack of Insurance or Fidelity Bond coverage	Up to \$1,000 + up to \$100 a day for each day not in compliance	Up to \$1,000 + up to \$200 a day for each day not in compliance
Failure to submit Inventory Report within 45 days (end <del>Contract period</del> Term)	Up to \$500	Up to \$1,000
Unallowable/Unreasonable expenditure	Up to \$1,000 for each instance	Up to \$1,000 for each instance
Violation of Procurement Requirements	Up to \$1,000 for each service or product not <u>properly</u> procured	Up to \$1,000 for each service or product not <u>properly</u> procured
Lack of Subcontractor contract	Up to \$250 for each instance	Up to \$500 for each instance
Lack of prior approval for purchase(s)	Up to \$500 for each instance	Up to \$1,000 for each instance
Instance of Fraud, Waste and/or Abuse	Up to \$1,000	Up to \$1,000
Commingling of funds, Misapplication of funds	Up to \$1,000	Up to \$1,000
Failure to timely submit Audit Certification Form	Up to \$250	Up to \$1,000 per violation
Failure to timely submit Single Audit	Up to \$1,000	Up to \$1,000 + up to \$100 for each day not in compliance
Lack of providing requested documentation/item(s) for monitoring	Up to \$500 per day for each item or documentation not provided	Up to \$150 per day for each item or documentation not provided
Failure to timely respond to Report/provide required correspondence	Up to \$100 for first violation	Up to \$1,000 per day per violation

Failure to report/record program income	Up to \$500 for each instance	Up to \$1,000 for each instance
Noncompliance with record retention requirements	Up to \$100 for each instance	Up to \$1,000 for each instance
Providing assistance to income or SAVE ineligible applicants	Up to \$500 for each instance	Up to \$1,000 for each instance
Service provided to clients not according to poverty population makeup	Up to \$500	Up to \$1,000
Failure to meet <del>Board of Director</del> <u>Tri-Partite Board</u> Requirements	Up to \$1,000 + up to \$100 for each the entity failed to comply	Up to \$1,000 + up to \$250 for each day the entity failed to comply
Failure to comply with Department minimum applicant/client denials and appeals	Up to \$250 for each instance	Up to \$500 for each instance
Failure to Prioritize applicants	Up to \$250 for each instance	Up to \$500 for each instance
<del>Lack of providing Assurance to activities</del>	<del>Up to \$250 for each instance</del>	<del>Up to \$500 for each instance</del>
Failure to complete or to properly complete required program documents	Up to \$250 for each instance	Up to \$750 for each instance
<del>Failure to complete or properly complete a process required by Chapter 5 of this title.</del>	<del>Up to \$250 for each instance</del>	<del>Up to \$750 for each instance</del>
Payment to Vendor without a Vendor Agreement	Up to \$500 for each instance	Up to \$1,000 for each instance
Failure to perform Outreach activities	Up to \$500	Up to \$1,000
Weatherized unit expenditure over	Up to \$500 for each instance	Up to \$1,000 for each instance

maximum cost per unit w/o prior approval		
Failure to input <a href="#">Ending Homelessness, HHSP, or ESG</a> client data into the Homeless Management Information System	Up to \$500 for each instance	Up to \$1,000 for each instance
Other noncompliance with a contract requirement	Up to \$1,000	Up to \$1,000
Failure to comply with case management requirements	Up to \$500	Up to \$750
<del>Noncompliance with Material Installation Standards Manual</del>	<del>Up to \$500</del>	<del>Up to \$750</del>
Noncompliance with applicable OMB or state financial management requirements	Up to \$500	Up to \$1,000
Noncompliance with Texas Prompt Payment Act	Up to \$500	Up to \$750
Noncompliance with Historical Commission requirements	Up to \$500	Up to \$750
<del>Fair Housing Violations</del>	<del>Up to \$100 per violation</del>	<del>Up to \$200 per violation</del>
Failure to comply with Limited English Proficiency (“LEP”) policies in accordance with program rule, policy or agreement	Up to \$500	Up to \$1000
Failure to meet accessibility requirements	Up to \$1,000 per violation	Up to \$1,000 per violation
<a href="#">Failure to submit Inventory Report within 45 days (end of contract period term)</a>	<a href="#">Up to \$500</a>	<a href="#">Up to \$1,000</a>
<a href="#">Failure to timely enter into an ISPA (Information Privacy and Security Agreement)</a>	<a href="#">Up to \$1,000 per violation</a>	<a href="#">Up to \$1,000 per violation</a>

<u>Failure to attend required training as required by program rule, policy or agreement</u>	<u>Up to \$100 per violation</u>	<u>Up to \$200 per violation</u>
<u>Failure to comply with Section 3 requirements in accordance with program rule, policy, or agreement (ESG only)</u>	<u>Up to \$500</u>	<u>Up to \$1,000</u>

Figure 2: 10 TAC §2.302(lj)

Penalty table for Multifamily Rental ~~Violations~~Findings of Noncompliance. These are the maximum potential administrative penalty amounts possible for each finding of noncompliance. When an administrative penalty is to be considered, the matrix below must be considered in conjunction with the statutory factors at Tex. Gov't Code §2306.042:

<b>Finding of Noncompliance Event</b>	<b>Maximum First Time Violation Administrative Penalty assessment</b>	<b>Repeat Violation Maximum Administrative Penalty Assessment for a Responsible Party that has previously paid a penalty for the same finding type</b>
Violations of the Uniform Physical Condition Standards	Up to \$500 for level 3 deficiencies, up to \$250 for level 2 deficiencies, up to \$125 for level 1 deficiencies, <u>plus an optional \$100 per day if level 2 or level 3 deficiencies remain uncorrected 6 months from the corrective action deadline</u>	Up to \$1,000 for level 3 deficiencies, up to \$500 for level 2 deficiencies, up to \$250 for level 1 deficiencies, <u>plus an optional \$200 per day if level 2 or level 3 deficiencies remain uncorrected 6 months from the corrective action deadline</u>
Noncompliance related to Affirmative Marketing requirements described in §10. <del>617-801</del> of this title	Up to \$ <del>500</del> <u>250</u>	Up to \$ <del>500</del> <u>1,000</u>
<u>TDHCA has received notice from HUD, the DOJ, or the TWC of a judgement from a court of competent jurisdiction regarding a Fair Housing Act Violation</u>	<u>Up to \$1,000</u>	<u>Up to \$1,000</u>

<u>and/or reported general public use violation</u>		
<u>TDHCA has referred unresolved Fair Housing design and construction issues to the Texas workforce Commission Civil Rights division</u>	<u>Up to \$1,000</u>	<u>Up to \$1,000</u>
Development is not available to the general public because of leasing issues	Up to <del>\$750</del> <u>1,000</u> per day per violation	Up to \$1,000 per day per violation
<u>Development is never expected to comply due to failure to report or allow monitoring</u>	<u>Up to \$1,000 per day</u>	<u>Up to \$1,000 per day</u>
Owner did not allow on-site monitoring or failed to notify residents resulting in inspection cancellation <u>(including failure to appear for review)</u>	Up to \$1,000 per day	Up to \$1,000 per day
<del>LURA not in effect Failure to timely enter into Land Use Restriction Agreement (LURA)</del>	Up to \$1,000 per day	Up to \$1,000 per day
Project failed to meet minimum set aside	Up to \$1,000 per day	Up to \$1,000 per day
No evidence of, or failure to certify to material participation <u>and/or ownership by of a</u> non-profit or HUB, if required by LURA	Up to <del>\$750</del> <u>10</u> per day per violation	Up to <del>\$1,000</del> <u>20</u> per day per violation
Development failed to meet additional state required rent and	Up to \$250 per day per violation	Up to \$500 per day per violation

occupancy restrictions		
Noncompliance with social service requirements ( <u>provision of services</u> )	Up to <del>\$500</del> <u>\$250</u> per violation, <u>with each required service considered a separate violation</u>	Up to <del>\$750</del> <u>\$500</u> per violation, <u>with each required service considered a separate violation</u>
<u>Noncompliance with social service requirements (expenditure amounts)</u>	<u>Double the monthly expenditure deficiency, up to a maximum of \$1,000 per day</u>	<u>Triple the monthly expenditure deficiency, up to a maximum of \$1,000 per day.</u>
Development failed to provide housing to the elderly as promised at application	Up to \$5 per day per violation	Up to \$10 per day per violation
Failure to provide special needs housing as required by LURA	Up to \$1,000	Up to \$1,000
Changes in Eligible Basis or Applicable percentage in violation of the IRS 8823 Audit Guide or other IRS guidance	Up to \$1,000 per day per violation	Up to \$1,000 per day per violation
Failure to submit all or parts of the Annual Owner's Compliance Report	Up to <del>\$500</del> <u>\$1,000</u>	Up to \$1,000
<u>Failure to respond to Compliance Division requests for clarification regarding answers on the Annual Owner's Compliance Report</u>	<u>Up to \$250</u>	<u>Up to \$750</u>
Failure to <del>timely</del> submit quarterly reports as required by §10.607 of this title	Up to \$100, <u>then and additional \$250 for each subsequent quarter that the report is not received for first violation</u>	Up to <u>\$250, then</u> an additional \$500 for each subsequent quarter <u>that</u> -the report is not submitted



Noncompliance with utility allowance requirements described in §10.614 of this title and/or Treasury Regulation §1.42-10	Up to \$50 per unit <del>per</del> <del>day</del>	Up to \$100 per unit <del>per day</del>
Noncompliance with lease requirements described in §10.613 of this title ( <u>failure to execute required lease provisions</u> )	Up to \$500	Up to \$1,000
<u>Noncompliance with lease requirements described in §10.613 of this title (failure to provide lease brochures, guides or notices described in §10.613 currently including but not limited to the Tenant Rights and Resources Guide)</u>	<u>Up to \$250</u>	<u>Up to \$500</u>
<u>Asset Management has reported that</u> Development has failed to establish and maintain a reserve account in accordance with §10.404 of this title	Up to \$1,000	Up to \$1,000
Failure to provide a notary public as promised at application	Up to \$500	Up to \$750
Violation of the Unit Vacancy Rule	Up to \$250 per violation	Up to \$500 per violation
Failure to provide pre-on-site documentation	Up to \$250 <u>per pre-on-site documentation item</u>	Up to \$500 <u>per pre-on-site documentation item</u>
Failure to provide amenity as required by LURA	Up to <del>\$750</del> <u>\$1,000</u> per violation	Up to \$1,000 per violation, <u>plus \$100 for each subsequent day the violation continues</u>
Failure to pay asset management, compliance monitoring or	Up to \$250 for the first day plus \$10 per day for each subsequent day	Up to \$500 for the first day plus \$50 per day for each subsequent day the violation continues

other required fee	the violation continues	
Change in ownership without department approval (other than removal of a general partner in accordance with §10.406 of this title)	Up to \$1,000 for the first day plus \$100 per day for each subsequent day the violation continues	Up to \$1,000 for the first day plus \$200 per day for each subsequent day the violation continues
<del>Failure to timely provide fair housing disclosure notice</del>	<del>Up to \$100 per violation</del>	<del>Up to \$200 per violation</del>
Noncompliance with <u>written policy and procedure tenant selection</u> requirements described in §10.610-802 of this title ( <u>written policy violations</u> )	Up to \$500 per violation	Up to \$1,000 per violation
<del>Noncompliance with written policy and procedure requirements described in §10.802 of this title (notice of termination language requirements)</del>	<del>Up to \$250 per violation</del>	<del>Up to \$500 per violation</del>
<del>Noncompliance with Reasonable Accommodation Policy requirements as described in §10.802 of this title</del>	<del>Up to \$500 per violation</del>	<del>Up to \$1,000 per violation</del>
Program Unit not leased to Low-Income household ( <u>either because the household's income exceeds the allowable limit or because the owner did not gather adequate documentation to establish household eligibility</u> )	Up to \$1,000 per violation	Up to \$1,000 per violation

Program unit occupied by nonqualified full-time students	Up to \$1,000 per violation	Up to \$1,000 per violation
Low-Income units used on a transient basis	Up to \$500 per violation	Up to \$1,000 per violation
Violation of the Available Unit Rule	Up to \$500 per violation	Up to \$1,000 per violation
Gross rent exceeds the highest rent allowed under the LURA or other deed restriction	Up to \$50 per unit per day	Up to \$150 per unit per day
Failure to provide Tenant Income Certification and documentation	Up to <del>\$250</del> <u>\$100</u> per violation	Up to \$250 <u>per</u> violation
Unit not available for rent	Up to <del>\$1,000</del> <u>\$50</u> per unit per <u>day violation</u>	Up to <del>\$100,000</del> per unit per <u>day violation</u>
Failure to collect data required by §10.608(b)(1) and/or (2) of this title ( <u>Annual Eligibility Certifications</u> )	Up to \$50 per violation	Up to \$100 per violation
Development evicted or terminated the tenancy of a low-income tenant for other than good cause	Up to \$1,000 per violation	Up to \$1,000 per violation
Household income increased above 80 percent at recertification and Owner failed to properly determine rent	Up to \$500 per violation	Up to \$1,000 per violation
<del>Any other violation of Texas Government Code Chapter 2306 or rule or order adopted under Texas</del>	<del>Up to \$1,000 per violation per day</del>	<del>Up to \$1,000 per violation per day</del>

<u>Government Code Chapter 2306</u>		
<u>Violation of the Integrated Housing Rule</u>	<u>Up to \$500</u>	<u>Up to \$500</u>
<u>Failure to resolve final construction deficiencies within corrective action period</u>	<u>Up to \$1,000 per violation</u>	<u>Up to \$1,000 per violation</u>
<u>Failure to meet accessibility requirements</u> <u>Noncompliance with the required accessibility requirements such as §504 of the Rehabilitation Act of 1973, the 2010 ADA standards or other accessibility related requirements of a Department Rule, including but not limited to those described in Chapter 1, Subchapter B (except those only under the Fair Housing Act for which there is a separate category)</u>	Up to \$1,000 per violation	Up to \$1,000 per violation
<u>Noncompliance with the notice to the Department requirements described in §10.609 of this title</u>	<u>Up to \$500</u>	<u>Up to \$500</u>
<u>Failure to provide a reasonable accommodation under 10 TAC, Chapter 1, Subchapter B</u>	<u>Up to \$1,000 per violation</u>	<u>Up to \$1,000 per violation</u>
<u>Violation of the Fair Housing Act and §1.205 of this Title</u>	<u>Up to \$1,000</u>	<u>Up to \$1,000</u>
<u>Failure to reserve units for Section 811 participants (Section 811 PRA only)</u>	<u>Up to \$750</u>	<u>Up to \$1,000</u>
<u>Failure to notify the Department of the</u>	<u>Up to \$750</u>	<u>Up to \$1,000</u>

<u>availability of Section 811 units (Section 811 PRA only)</u>		
<u>Owner failed to check criminal history and drug use of household (as required by Department Rule)</u>	<u>Up to \$250</u>	<u>Up to \$500</u>
<u>Failure to use Enterprise Income Verification System (section 811 PRA only)</u>	<u>Up to \$250</u>	<u>Up to \$500</u>
<u>Failure to properly document and calculate adjusted income (section 811 PRA only)</u>	<u>Up to \$500 per violation</u>	<u>Up to \$1,000 per violation</u>
<u>Failure to use required HUD forms (Section 811 PRA only)</u>	<u>Up to \$250</u>	<u>Up to \$500</u>
<u>Accepted funding that limits 811 PRA participation</u>	<u>Up to \$1,000</u>	<u>Up to \$1,000</u>
<u>Failure to properly calculate resident portion of rent (Section 811 PRA only)</u>	<u>Up to \$50 per unit per day</u>	<u>Up to \$150 per unit per day</u>
<u>Failure to use HUD model Lease (Section 811 PRA only)</u>	<u>Up to \$500</u>	<u>Up to \$1,000</u>
<u>Failure to disperse 811 PRA Units according to program requirements (relates to disbursement throughout the Development. Section 811 PRA only)</u>	<u>Up to \$500</u>	<u>Up to \$1,000</u>
<u>Failure to conduct interim certifications (Section 811 PRA only)</u>	<u>Up to \$100 per violation</u>	<u>Up to \$250 per violation</u>
<u>Failure to conduct annual income recertification (Section 811 PRA only)</u>	<u>Up to \$100 per violation</u>	<u>Up to \$250 per violation</u>

<u>Asset Management Division has reported that Development has failed to submit rents for review on an annual basis in accordance with §10.403 of this Title</u>	<u>Up to \$750</u>	<u>Up to \$1,000</u>
<u>Failure to maintain status as a qualified Community Housing Development Organization (CHDO)</u>	<u>Up to \$1,000 + up to \$100 for each day the entity failed to comply</u>	<u>Up to \$1,000 + up to \$250 for each day the entity failed to comply</u>
<u>Failure to submit Audit Certification Form, a Single Audit, or other programmatic audit</u>	<u>Up to \$1,000</u>	<u>Up to \$1,000 plus up to \$100 for each day not in compliance</u>
<u>Failure to timely enter into an Information Privacy and Security Agreement</u>	<u>Up to \$1,000 per violation</u>	<u>Up to \$1,000 per violation</u>
<u>Failure to comply with Labor Standards requirements in accordance with program rule, policy or agreement</u>	<u>Up to \$500</u>	<u>Up to \$1,000</u>
<u>Failure to comply with displacement policies as required by program rule, policy or agreement</u>	<u>Up to \$500</u>	<u>Up to \$1,000</u>
<u>Casualty loss not corrected during restoration period</u>	<u>Up to \$100 per unit per day</u>	<u>Up to \$500 per unit per day</u>
<u>Unit leased to Household that is not qualified for the Section 811 PRA program</u>	<u>Up to \$500</u>	<u>Up to \$1,000</u>
<u>Failure to submit documentation for mail in review</u>	<u>Up to \$1,000 per day</u>	<u>Up to \$1,000 per day</u>
<u>Noncompliance with CHDO requirements</u>	<u>Up to \$500</u>	<u>Up to \$1,000</u>
<u>Failure to properly calculate security deposit (Section 811 PRA only)</u>	<u>Up to \$250</u>	<u>Up to \$500</u>
<u>Failure to prominently display required Fair</u>	<u>Up to \$250</u>	<u>Up to \$500</u>

<u>Housing Posters (Section 811 PRA only)</u>		
<u>Failure to comply with Section 3 requirements in accordance with program rule, policy, or agreement</u>	<u>Up to \$500</u>	<u>Up to \$1,000</u>

Figure 3: 10 TAC §2.302(lj)

**Penalty table for Single Family Program ~~Violations~~ Findings of Noncompliance.** These are the maximum potential administrative penalty amounts possible for each finding of noncompliance. When an administrative penalty is to be considered, the matrix below must be considered in conjunction with the statutory factors at Tex. Gov't Code §2306.042.

<u>Finding of Noncompliance Event</u>	<u>Maximum first time administrative penalty assessment</u> <del>First Time Violation Administrative Penalty</del>	<u>Maximum administrative penalty assessment for a Responsible Party that has previously paid a penalty for the same finding type</u> <del>Repeat Violation</del>
Noncompliance related to Affirmative Marketing requirements	Up to \$500	Up to \$1,000
<del>Fair housing</del> <u>Program Accessibility</u> violations	Up to \$100 per violation	Up to \$200 per violation
<u>Failure to meet CHDO Board requirements</u>	<u>Up to \$1,000 + up to \$100 for each day the entity failed to comply</u>	<u>Up to \$1,000 + up to \$250 for each day the entity failed to comply</u>
Repeated violations of interim loan terms or timeline	Up to \$500	Up to \$1,000
Records retention violations	Up to \$100 per violation	Up to \$200 per violation
Failure to attend required training as required by program rule, policy or agreement	Up to \$100 per violation	Up to \$200 per violation

Providing assistance to households that are not income eligible	Up to \$500	Up to \$1,000
Violations of construction standards	Up to \$500	Up to \$1,000
Violations of property condition standards	Up to \$500	Up to \$1,000
Violation of Conflict of Interest Policies	Up to \$500	Up to \$1,000
Violation of program policies regarding use of funds for sectarian or religious activity	Up to \$500	Up to \$1,000
Failure to comply with Limited English Proficiency ("LEP") policies in accordance with program rule, policy or agreement	Up to \$500	Up to \$1,000
Failure to comply with labor standards requirements in accordance with program rule, policy or agreement	Up to \$500	Up to \$1,000
<del>Violation of Procurement Requirements Failure to comply with procurement policies as required by program rule, policy or agreement</del>	<del>Up to \$500</del> <u>Up to \$1,000 for each service or product not properly procured</u> <u>Up to \$500</u>	<del>Up to \$1,000</del> <u>Up to \$1,000 for each service or product not properly procured</u> <u>Up to \$1,000</u>
Failure to comply with Section 3 requirements in accordance with program rule, policy, or agreement	Up to \$500	Up to \$1,000
Failure to comply with displacement policies as required by program rule, policy, or agreement	Up to \$500	Up to \$1,000



Failure to provide Tenant Income Certification and documentation	Up to \$250 per violation	Up to \$250 violation
Failure to collect data required by program rules, policies or agreements	Up to \$50 per violation	Up to \$100 per violation
<del>Failure to provide reports required by program rules, policies or agreements, such as single audit certifications</del>	<del>Up to \$250 per violation</del>	<del>Up to \$1,000 per violation</del>
Failure to provide required documentation or corrections to documentation	Up to \$50 per day	Up to \$150 per day
<del>Failure to comply with defective mortgage loan policies per program rules, policies or agreements</del>	<del>Up to \$50 per violation</del>	<del>Up to \$100 per violation</del>
Development evicted or terminated the tenancy of a low-income tenant for other than good cause	Up to \$500 per violation	Up to \$1,000 per violation
For tenant-based rental programs, Household income increased above 80 percent at recertification and Owner failed to properly determine rent	Up to \$500 per violation	Up to \$1,000 per violation
For tenant-based rental programs, gross rent exceeds the highest rent by program rule, policy or agreement	Up to \$50 per unit per day	Up to \$150 per unit per day
Failure to return or repay funds to the Department as required by rule, policy or agreements (such as contract termination, assessed penalties,	Up to \$50 per day	Up to \$150 per day

disallowed costs, overpayment, Deobligation, or recapture)		
<del>Any other violation of Texas Government Code Chapter 2306 or rule or order adopted under Texas Government Code Chapter 2306</del>	<del>Up to \$1,000 per violation per day</del>	<del>Up to \$1,000 per violation per day</del>
Failure to meet accessibility requirements	Up to \$1,000 per violation	Up to \$1,000 per violation
Noncompliance with applicable OMB or state financial management requirements	Up to \$500	Up to \$1,000
<u>Failure to timely submit Audit Certification Form</u>	<u>Up to \$250</u>	<u>Up to \$1,000 per violation</u>
<u>Failure to timely submit Single Audit</u>	<u>Up to \$1,000</u>	<u>Up to \$1,000 + up to \$100 for each day not in compliance</u>
<u>Failure to timely enter into an ISPA (Information Privacy and Security Agreement)</u>	<u>Up to \$1,000 per violation</u>	<u>Up to \$1,000 per Violation</u>
<u>Lack of insurance of fidelity bond coverage</u>	<u>Up to \$1,000 + up to \$100 a day for each day not in compliance</u>	<u>Up to \$1,000 + up to \$200 a day for each day not in compliance</u>

SUBCHAPTER D DEBARMENT FROM PARTICIPATION IN PROGRAMS ADMINISTERED BY THE DEPARTMENT

RULE §2.401 General

(a) The Committee-Department may debar a Responsible Party, a Consultant and/or a Vendor who has exhibited past failure to comply with any condition imposed by the Department in the administration of its programs. A Responsible Party, Consultant or Vendor ~~is subject to debarment for, but not limited to~~ may be referred to the Committee for Debarment for any of the following:

- ~~–(1) Refusing to provide an acceptable plan to implement and adhere to procedures to ensure compliant operation of the program after being placed on Modified Cost Reimbursement;The Responsible Party has been placed on Modified Cost Reimbursement and failed to provide the Compliance Division with~~

~~an acceptable plan to implement and adhere to procedures to ensure compliant operation of the program; or~~

~~—(2) Refusing to repay disallowed costs;~~

~~(3) Refusing to enter into a plan to repay disallowed costs or egregious violations of an agreed repayment plan;~~

~~—(42) The Responsible Party, Consultant or Vendor Meetings any of the ineligibility criteria referenced in §110.202 of this title (relating to Ineligible Applicants) or other ineligibility criteria outlined in a Program Rule, with the exception of: ineligibility related to conflicts of interest disclosed to the Department for review, and ineligibility identified in a previous participation review (unless otherwise eligible for Debarment under this Subchapter D) in conjunction with an application for funds or resources (unless otherwise eligible for Debarment under this Subchapter D) .:-~~

~~—(53) Providing fraudulent information, knowingly falsified documentation, or other intentional or negligent material misrepresentation or omission with regard to any documentation, certification or other representation made to the Department;~~

~~(6) Failing to correct Events of Noncompliance as required by an order that became effective after the effective date of this rule, and/or failing to pay an administrative penalty as required by such order, within six months of a demand being issued by the Department. In this circumstance, if the Debarment process is initiated but the Responsible Party fully corrects the findings of noncompliance to the satisfaction of the referring division and pays the administrative penalty as required by the order before the Debarment is finalized by the Board, the Debarment recommendation may be cancelled or withdrawn by Committee recommendation and Executive Director concurrence. This type of referral would be initiated by the Secretary;~~

~~(7) Controlling a multifamily Development that was foreclosed after the effective date of this rule, where the foreclosure or deed in lieu of foreclosure terminates a subordinate TDHCA LURA;~~

~~(8) Controlling a multifamily Development and allowing a change in ownership after the effective date of this rule, without Department approval;~~

~~(9) Transferring a Development, after the effective date of this rule, without regard for a Right of First Refusal requirement;~~

~~(10) Being involuntary removed, or replaced due to a default by the General Partner under the Limited Partnership Agreement, after the effective date of this rule;~~

~~(11) Refusing to comply with conditions approved by the Board that were recommended by the Executive Award Review Advisory Committee after the effective date of this rule;~~

~~(12) Having any Event of Noncompliance that occur after the effective date of this rule that causes the Department to be required to repay federal funds to any federal agency including, but not limited to the U.S. Department of Housing and Urban Development; and/or~~

~~(13) Submitting a written certification that non-compliance has been corrected when it is determined that the Event of Non-compliance was not corrected. For certain Events of Noncompliance, in lieu of documentation, the Compliance Division accepts a written certification that noncompliance has been corrected. If it is determined that the Event of Noncompliance was not corrected, the Person who signed the certification may be recommended for debarment;~~

~~(14) Refusing to provide an amenity required by the LURA after the effective date of this rule;~~

~~(15) Failing to reserve units for Section 811 PRA participants after the effective date of this rule; and/or~~

~~(16) Failing to notify the Department of the availability of 811 PRA units after the effective date of this rule;~~

~~(17) Taking "choice limiting" actions prior to receiving HUD environmental clearance (24 CFR §58.22);~~

~~(18) Substandard construction, as defined by the Program, and repeated failure to conduct required inspections;~~

- (19) Repeated failure to provide eligible match. 24 CFR §92.220, 24 CFR §576.201, and as required by NOFA;
- (20) Repeated failure to report program income. 24 CFR §570.500, 24 CFR §576.407(c), 2 CFR Part 215 (if applicable), and 10 TAC §20.9, or as defined by Program Rule;
- (21) Participating in activities leading to or giving the appearance of "Conflict of Interest". 2 CFR Part 215 (if applicable), 24 CFRs §84.42, §92.356 (if applicable), §570.489, §576.404, 10 TAC §20.9, or as defined by Program Rule;
- (22) Repeated material financial system deficiencies. 24 CFR §§84.21, 84.43, 85.20, 85.22, 85.36, 92.205, 92.206, 92.350, 92.505, and 92.508 (if applicable), –OMB A-110 Relocated to 2 CFR Part 215 (if applicable), OMB A-87 Relocated to 2 CFR Part 225 (if applicable), OMB A-122 Relocated to 2 CFR Part 230 (if applicable), 10 TAC §20.9 and Uniform Grant Management Standards (if applicable) and as defined by Program Rule.
- (23) Repeated violations of Ssingle Aaudit or other programmatic audit requirements;
- (24) Failure to remain a CHDO for Developmentpartment committed HOME funds;
- (25) Commingling of funds, Misapplication of funds;
- (26) Refusing to submit a required Audit Certification Form, Single Audit, or other programmatic audit;
- (27) Refusing to timely respond to reports/provide required correspondence;
- (28) Failure to timely expend funds; and
- (29) A Monitoring Event determines that 50% or more of the client or household files reviewed do not contain required documentation to support income eligibility or indicate that the client or household is not income eligible.

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~~(b) The Department shall debar any Responsible Party, Consultant, or Vendor who is debarred from participation in any program administered by the United States Government. Debarment of an Eligible Entity under the CSBG Act, for CSBG funds, shall not take effect until and unless proceedings to terminate Eligible Entity status have concluded and no right of appeal or review remains.~~

~~(c) Debarment for violations of the Department’s Multifamily Programs. The Department shall debar any Responsible Party who has materially or repeatedly violated any condition imposed by the Department in connection with the administration of a Department program, including but not limited to a material or repeated violation of a land use restriction agreement (LURA). Subsection (d) of this section provides the criteria the Department will use to determine if there has been a material violation of a LURA. Subsections (e)(1) and (e)(2) of this section provide the criteria the Department shall use to determine if there have been repeated violations of a LURA. The Department may debar any Responsible Party who has:~~

~~–(1) Materially or repeatedly violated any condition imposed by the Department in connection with the administration of a Department program, including a material or repeated violation of a land use restriction agreement (LURA) regarding a development supported with a housing tax credit allocation;~~

~~or~~  
~~–(2) Is debarred from participation in any program administered by the United States Government.~~

~~(d) Material violations of a LURA. In general LURAs entered into between Responsible parties and the Department require owners to maintain property in a manner that is suitable for occupancy and in accordance with State and Federal regulations. To determine compliance with this requirement, in accordance with Treasury Regulations, the Department uses the Uniform Physical Condition Standards protocol. A Responsible Party person will be considered to have materially violated a LURA, Program Agreement, or condition imposed by the Department and shall be referred to the committee for mandatory Debarment Land Use Restriction Agreement if they;~~

~~(1) Control a Development that has, on more than one occasion scored 50 or less on a UPCS inspection;~~

~~(2) Refuse to transfers a Development without regard for a Right of First Refusal requirement, refused to allow a monitoring visit when proper notice was provided or failed to notify residents resulting in inspection cancellation, or otherwise fails to make units and records available;~~

~~(3) Refuses to reduce rents to less than the highest allowed under the LURA;~~

~~(4) Fail to meet minimum set aside by the end of the first year of the credit period (HTC Developments only) after the effective date of this rule; or~~

~~(5) Refuse to lease to—Excluding an individual or family from admission to the Development solely because the household participates in the HOME Tenant Based Rental Assistance Program, the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1-437), or other federal, state, or local government rental assistance program after the effective date of this rule.~~

~~-(e) Repeated Violations of a LURA that shall be considered grounds for Debarment.~~

~~(1) A Responsible Party person shall be referred to the Committee recommended for mandatory debarment if they control a Development that during two sequential consecutive monitoring visits/events are/is found to be out of compliance with the following events of noncompliance:~~

~~-(A) No evidence of, or failure to certify to, material participation of a non-profit or HUB, if required by the Land Use Restriction Agreement;~~

~~(B) Uniform Physical Condition Standards Violations that result in a score of 70 or below in sequential UPCS inspections after the effective date of this rule;~~

~~(C) Refuse to submit all or parts of the Annual Owner's Compliance Report for two consecutive years after the effective date of this rule, ; or~~

~~(D) Gross rents exceed the highest rent allowed under the LURA or other deed restriction.~~

~~(2) Repeated violations in a portfolio. Persons who control five or more Actively Monitored Developments will be considered for Debarment based on repeated violations in a portfolio. A Person shall be referred to be committee for mandatory will be referred for Debarment if an inspection or referral, after the effective date of this rule, indicates the following:~~

~~(A) 50% or more of the Actively Monitored Developments in the portfolio have been referred to the Enforcement Committee; or,~~

~~(B) 50% or more of the Actively Monitored Developments in the portfolio score a 70 or less during a Uniform Physical Conditions Standards inspection.~~

~~-(2) Development failed to meet additional state required rent and occupancy restrictions;~~

~~-(3) Development failed to provide supportive services required by LURA;~~

~~-(4) Development failed to provide housing to the elderly as promised at application;~~

~~-(5) Utility allowance not properly calculated cited for failure to update or failure to request permission to switch methodologies or miscalculation causes overcharge of rents; or~~

~~-(6) Owner failed to execute required lease provisions, including language required by §10.613 of this title (relating to Lease Requirements) or exclude prohibited language.~~

~~-(f) Debarment for violations of all other Department Programs, with the exception of the Non-Discretionary funds in the Community Services Block Grant program. Material or repeated violations of conditions imposed in connection with the administration of Programs administered by the Department.~~

~~Single-Family subrecipients Administrators, Subrecipients, Responsible Parties, cContractors, multifamily owners/applicants, and related parties shall be referred to the Committee for consideration for sanctions or Debarment for material or repeated-violations including but not limited to:~~

~~-(1) Excessive-50% or more loan defaults in the first 12 months of the loan agreement after the effective date of this rule;~~

~~-(2) Taking "choice limiting" actions prior to receiving HUD environmental clearance (24 CFR §58.22);~~

~~-(3) Disallowed costs that are not repaid;~~

~~-(4) Substandard construction and repeated failure to conduct required inspections;~~

- ~~—(5) Repeatedly participating in procurement violations;~~
- ~~—(46) The following Davis Bacon Act Violations including but not limited to:~~
  - ~~—(A) Failure/Refusing to pay restitution (underpayment of wages). 29 CFR §5.31.~~
  - ~~—(B) Refusing/Failure to pay liquidated damages (overtime violations). 29 CFR §5.8.~~
  - ~~—(C) Repeated failure to pay full prevailing wage, including fringe benefits, for all hours worked. 29 CFR §5.31.~~
- ~~—(527) The following violations of the Uniform Relocation Act and requirements of §104(d) Violations including but not limited to:~~
  - ~~—(A) Repeated failure to provide the General Information Notice to tenants prior to application. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §93.352 and HUD Handbook 1378.~~
  - ~~—(B) Repeated failure to provide all required information in the General Information Notice. 49 CFR §24.203, 24 CFR §92.353, 24 CFR §93.352 and HUD Handbook 1378.~~
  - ~~—(C) Repeated failure to provide the Notice of Eligibility and/or Notice of Non-displacement on or before the Initiation of Negotiations date. 49 CFR §24.203, and 24 CFR §92.353, and 24 CFR §93.352, and 24 CFR §570.606 Displacement.~~
  - ~~—(D) Repeated failure to provide all required information in the Notice of Eligibility and/or Notice of Non-displacement. 49 CFR §24.203, and 24 CFR §92.353, and 24 CFR §93.352, and 24 CFR §570.606.~~
  - ~~—(E) Repeated failure to provide 90 Day Notices to all "displaced" tenants and/or repeated failure to provide 30 Day Notices to all "non-displaced" tenants. 49 CFR §24.203, and 24 CFR §92.353, 24 CFR §93.352, and 24 CFR §570.606.~~
  - ~~—(F) Repeated failure to perform and document "decent, safe and sanitary" inspections of replacement housing. 49 CFR §24.203, and 24 CFR §92.353, 24 CFR §93.352, and 24 CFR §570.606.~~
  - ~~—(G) Refusing to/Failure to properly provide Uniform Relocation Act or §104(d) assistance. 49 CFR §24.203, 24 CFR §92.353, 24 §570.606 and §104(d) of the Housing & Community Development Act of 1974 - 24 CFR Part 42.~~
- ~~—(8) Repeated failure to serve income eligible households;~~
- ~~—(9) Repeated failure to provide eligible match. 24 CFR §92.220 and 24 CFR §576.201;~~
- ~~—(10) Repeated failure to report program income. 24 CFR §570.500, 24 CFR §576.407(c) and OMB A-110 Relocated to 2 CFR Part 215 (if applicable), 10 TAC §20.9;~~
- ~~—(11) Participating in activities leading to or giving the appearance of "Conflict of Interest". OMB A-110 Relocated to 2 CFR Part 215 (if applicable), 24 CFRs §84.42, §92.356 (if applicable) 10 TAC §20.9;~~
- ~~—(12) Repeated material financial system deficiencies. 24 CFR §§84.21, 84.43, 85.20, 85.22, 85.36, 92.205, 92.206, 92.350, 92.505, and 92.508 (if applicable), OMB A-110 Relocated to 2 CFR Part 215 (if applicable), OMB A-87 Relocated to 2 CFR Part 225 (if applicable), OMB A-122 Relocated to 2 CFR Part 230 (if applicable), 10 TAC §20.9 and Uniform Grant Management Standards (if applicable).~~
- ~~—(g) Material or repeated violations of conditions imposed in connection with the administration of Community Affairs Programs administered by the Department. Community Affairs subrecipients, Contractors and related parties shall be referred to the Committee for consideration for debarment for material or repeated violations including but not limited to:~~
  - ~~—(1) Instance of Fraud, Waste and/or Abuse;~~
  - ~~—(2) Commingling of funds, Misapplication of funds;~~
  - ~~—(3) Failure to timely submit a required Single Audit or other programmatic audit;~~
  - ~~—(4) Failure to provide requested documentation/item(s) for monitoring;~~
  - ~~—(5) Failure to timely respond to Report/provide required correspondence;~~
  - ~~—(6) Refusing/Failure to reimburse excess cash on hand;~~
  - ~~—(7) Using Department funds to demolish a homeowner's dwelling and then refusing to rebuild;~~

(8) Drawing down Department funds for an eligible use and then refusing to pay a properly submitted request for payment to a subgrantee or vendors with the drawn down funds.

~~—(7) Failure to reimburse disallowed expenditures; and/or~~

~~—(8) Failure to meet Board of Director Requirements.~~

(g) The referring division shall provide the Responsible Party with written notice of the referral to the Committee, setting forth the facts and circumstances that justify the referral for Debarment consideration.

~~-(h) Before any Party is recommended for debarment that Party shall be given written notice of the matter, setting forth the facts and circumstances justifying debarment. That The Secretary shall then offer the Responsible Party shall then be offered the opportunity to attend an Informal Conference with the Committee to discuss resolution of the matter and if they have not already been provided a ninety day corrective action period. In the event that the Debarment referral was the result of a violated agreed order or a determination that 50% or more of the Actively Monitored Developments in their portfolio have been referred to the Enforcement Committee, the above written notice of the referral to the Committee and the informal conference notice shall be combined into a single notice issued by the Secretary~~

~~-(i) A Debarment Informal Conference may result in the following, which shall be reported to the Executive Director:~~

~~—(1) A determination that the Department did not have sufficient information and/or that the Responsible Party does not meet any of the criteria for Debarment; An agreement to dismiss the matter with no further action, which will then be reported to the Executive Director;~~

~~—(2) An agreement to resolve the matter through corrective action without debarment which will then be reported to the Executive Director;~~

~~—(23) An Agreed Debarment, which will then be reported to the Executive Director with a proposed agreed order to be prepared and presented to the Board for approval. A CSBG eligible entity that enters into an Agreed debarment must also voluntarily relinquish their eligible entity status;~~

~~—(34) A recommendation by the Committee to the Executive Director for debarment; or~~

~~—(45) A request for further information, to be considered during a future meeting; or, Other action as the Committee deems appropriate~~

(5) If Debarment is not mandatory, an agreement to dismiss the matter with no further action, an agreement to dismiss the matter with corrective action being taken, or any other action as the Committee deems appropriate, which will then be reported to the Executive Director.

~~-(j) The Committee's recommendation to the Executive Director regarding Debarment shall include a recommended period of Debarment. Recommended periods of Debarment will be based on material factors such as repeated occurrences, seriousness of underlying issues, and presence or absence of corrective action taken or planned, including corrective action to install new responsible persons and ensure they are qualified and properly trained. Recommended periods of Debarment if based upon HUD Debarment, shall be for the period of the remaining HUD Debarment; or, if based upon criminal conviction, shall be up to ten (10) years or until fulfillment of all conditions of incarceration and/or probation, whichever is greater.~~

~~-(k) The Executive Director shall accept, reject, or modify the Debarment recommendation by the Committee and shall provide written notice to the Responsible Party of the his determination, and an explanation of the his determination if different than the Committee's recommendation, including the period of Debarment, if any. Not later than the twentieth (20th) day after the date the Responsible Party receives the notice, the Responsible Party may appeal the Debarment determination in writing to the Board as described in §1.7 of this Title.~~

(l) The Debarment recommendation will be brought to the next Board meeting for which the matter can be properly posted. The Board reserves discretion to impose longer or shorter Debarment periods than those recommended by staff based on its finding that such longer or shorter periods are appropriate when considering all factors and/or for the purposes of equity or other good cause. An action on a proposed Debarment of an Eligible Entity under the CSBG Act will not become final until and unless proceedings to terminate Eligible Entity status have occurred, resulting in such termination and all rights of appeal or review have run or Eligible entity status has been voluntarily relinquished.

(m)-Until the Responsible Party's Debarment referral is fully resolved, the Responsible Party may not participate in new Department financing and assistance opportunities.

(n) Any person who has been debarred is prohibited from participation as set forth in the final order of Debarment~~in programs administered by the Department~~ for the term of their Debarment~~unless by its terms the order of debarment permits continuing activity in one or more specified programs. Unless specifically stated in the order of Debarment, Debarment does not relieve a Responsible Party from its current obligations, or prohibit it from continuing its participation in any existing engagements funded through the Department, nor limit its responsibilities and duties thereunder.~~ The Board will not consider modifying the terms of the Debarment after the issuance of a final order of Debarment.

(o) If an Eligible Entity under the CSBG Act meets any of the criteria for Debarment in this rule, the Department may recommend the Eligible Entity for Debarment. However, that referral or recommendation shall not proceed until the termination of the Eligible Entity's status under the CSBG Act has concluded, and no right of appeal or review remains.



**Attachment 2: Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 2 Enforcement, Subchapter A General, Subchapter C Administrative Penalties and Subchapter D Debarment**

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 2 Enforcement, Subchapter A General, Subchapter C Administrative Penalties and Subchapter D Debarment. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this proposed 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. Bobby Wilkinson has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption, making changes to the Department's Enforcement activities.
2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to 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, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the Department's Enforcement activities.
7. The proposed repeal will not increase or decrease the number of individuals subject to the rule's applicability.
8. The proposed repeal will not negatively or 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 proposed 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 or 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 proposed 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. Bobby Wilkinson, Executive Director, 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 an updated and more germane 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. Wilkinson, 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.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held November 20, 2020, to December 21, 2020, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Wendy Quackenbush, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email [wendy.quackenbush@tdhca.state.tx.us](mailto:wendy.quackenbush@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, DECEMBER 21, 2020.

STATUTORY AUTHORITY. The proposed repeal is made 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 Ch 2 Enforcement, Subchapter A, General**

**10 TAC Ch 2 Enforcement, Subchapter C, Administrative Penalties**

**10 TAC Ch 2 Enforcement, Subchapter D, Debarment**

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**TO BE POSTED  
NOT LATER THAN  
THE THIRD DAY  
BEFORE THE  
DATE OF THE  
MEETING**