

# **BOARD MEETING OF NOVEMBER 13, 2014**

**J. Paul Ozer, Chair**

**Juan Muñoz, Vice-Chair**



**TEXAS DEPARTMENT OF  
HOUSING & COMMUNITY AFFAIRS**

*Building Homes. Strengthening Communities.*

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
BOARD MEETING**

**A G E N D A  
9:30 AM**

**November 13, 2014**

**John H. Reagan Building  
Room JHR 140, 105 W 15<sup>th</sup> Street  
Austin, Texas**

**CALL TO ORDER, ROLL CALL  
CERTIFICATION OF QUORUM**

**J. Paul Ozer, Chairman**

*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.*

*Announcements and Introductions - Gov. Rick Perry has appointed T. Tolbert Chisum of Beaumont and J.B. Goodwin of Austin to the Governing Board of the Texas Department of Housing and Community Affairs.*

**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 Texas Government Code, Texas Open Meetings Act.

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

**EXECUTIVE**

- a) Presentation, Discussion, and Possible Action on Board Meeting Minutes Summary for September 4, 2014
- b) Presentation, Discussion, and Possible Action regarding Resolution No.15-004 Designating Signature Authority and superseding Resolution No. 14-037

**Barbara Deane**  
Board Secretary

**David Cervantes**  
Chief Financial Officer

**LEGAL**

- c) Presentation, Discussion, and Possible Action on the adoption of an Agreed Final Order concerning Holland House Apartments (HTC Exchange 15090009994 / HOME 1001139 / CMTS 4471)

**Jeff Pender**  
Deputy General Counsel

**RULES**

- d) Presentation, Discussion, and Possible Action on an order adopting the repeal of 10 TAC Chapter 10, Subchapter E, concerning Post Award and Asset Management Requirements, and an order adopting the new 10 TAC Chapter 10, Subchapter E, and directing its publication in the *Texas Register*
- e) Presentation, Discussion, and Possible Action on an order adopting the repeal of 10 TAC Chapter 10, Subchapter D, concerning Underwriting and Loan Policy, and an order adopting the new 10 TAC Chapter 10, Subchapter D, and directing its publication in the *Texas Register*

**Cari Garcia**  
Dir. Asset Management

**Brent Stewart**  
Director of RE Analysis

**Michael DeYoung**  
Dir., Community Affairs

- f) Presentation, Discussion, and Possible Action on an order adopting amendments to 10 TAC Chapter 5, Subchapter A, §5.2 concerning Definitions; and §5.19 concerning Client Income Guidelines, and directing their publication in the *Texas Register*
- g) Presentation, Discussion, and Possible Action on an order adopting the repeal of 10 TAC Chapter 5, Subchapter A, §5.16 concerning Monitoring and Single Audit Requirement; and §5.20 concerning Determining Income Eligibility, and directing their publication in the *Texas Register*
- h) Presentation, Discussion, and Possible Action on an order adopting amendments to 10 TAC Chapter 5, Subchapter B, §5.204 concerning Use of Funds; §5.207 concerning Subrecipient Performance; §5.210 concerning CSBG Needs Assessment and Community Action Plan; and §5.213 concerning Board Structure, and directing their publication in the *Texas Register*
- i) Presentation, Discussion, and Possible Action on an order adopting amendments to 10 TAC Chapter 5, Subchapter D, §5.423 concerning the Household Crisis Component, and directing its publication in the *Texas Register*
- j) Presentation, Discussion, and Possible Action on an order adopting amendments to 10 TAC Chapter 5, Subchapter E, §5.502 concerning Purpose and Goals; and §5.528 concerning Health and Safety, and directing their publication in the *Texas Register*
- k) Presentation, Discussion, and Possible Action on proposed amendments to 10 TAC Chapter 5, Subchapter H, Housing Choice Voucher Program §5.801 concerning Project Access Initiative and directing their publication for public comment in the *Texas Register*
- l) Presentation, Discussion, and Possible Action on an order adopting new 10 TAC Chapter 5, Subchapter K, §5.2013 concerning Environmental Clearance, and directing its publication in the *Texas Register*
- m) Presentation, Discussion, and Possible Action on proposed amendments to 10 TAC Chapter 20, Single Family Umbrella Rule, §20.4 and §20.15, and directing their publication for public comment in the *Texas Register*

**Marni Holloway**  
Director NSP

#### **HOUSING RESOURCE CENTER**

- n) Presentation, Discussion, and Possible Action on the 2015 Regional Allocation Formula Methodology

**Elizabeth Yevich**  
Dir, Housing Resource Ctr.

#### **MULTIFAMILY FINANCE**

- o) Presentation, Discussion, and Possible Action on Inducement Resolution No. 15-005 for Multifamily Housing Revenue Bonds and an Authorization for Filing Applications for 2014 Private Activity Bond Authority for Artist Lofts at Fort Worth Town Square
- p) Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with another Issuer

**Jean Latsha**  
Director, Multifamily

14412 Parmer Place Austin

#### **ASSET MANAGEMENT**

- q) Presentation, Discussion, and Possible Action on Housing Tax Credit Application Amendments

**Cari Garcia**  
Dir. Asset Management

13144 Mariposa at Pecan Park La Porte  
14017 Catalon Houston

## NEIGHBORHOOD STABILIZATION

- r) Presentation, Discussion, and Possible Action to authorize the programming of NSP1 Program Income

**Marni Holloway**  
Director NSP

## REPORT ITEMS

The Board accepts the following reports:

1. TDHCA Outreach Activities, September-October 2014
2. Report on the Department's 4<sup>th</sup> Quarter Investment Report in accordance with the Public Funds Investment Act ("PFIA")
3. Report on the Department's 4<sup>th</sup> Quarter Investment Report relating to funds held under Bond Trust Indentures
4. Report on the Status of the 2014 Competitive 9% Housing Tax Credit Application Cycle

**Michael Lyttle**  
Chief of External Affairs

**David Cervantes**  
Chief Financial Officer

## ACTION ITEMS

### ITEM 2: EXECUTIVE

Presentation, Discussion, and Possible Action on the Executive Director's Appointment of the Director of Internal Audit

**Timothy K. Irvine**  
Executive Director

### ITEM 3: SECTION 811 PRA PROGRAM

Presentation, Discussion, and Possible Action approving the Program Selection Guidelines for 2015 9% Housing Tax Credit Applicants placing Section 811 Units in Existing Properties and regarding contractual issues with HUD

**Brooke Boston**  
Deputy Executive Director

### ITEM 4: RULES

- a) Presentation, Discussion, and Possible Action on an order adopting the amendments to 10 TAC Chapter 11 §11.1(e), concerning Census Data; §11.2, concerning Program Calendar for Competitive Housing Tax Credits; §11.3(e), concerning Developments in Certain Sub-Regions and Counties; §11.3(f), concerning Additional Phase; §11.5, concerning Competitive HTC Set-Asides; §11.6, concerning Competitive HTC Allocation Process; §11.7, concerning Tie Breaker Factors; §11.8(b), concerning Pre-Application Threshold Criteria; §11.9(c)(4), concerning Opportunity Index; §11.9(c)(5), concerning Educational Excellence; §11.9(c)(7), concerning Tenant Populations with Special Housing Needs; §11.9(d)(1), concerning Local Government Support; §11.9(d)(4), concerning Quantifiable community Participation; §11.9(e)(3), concerning Pre-application Participation; §11.9(e)(7), concerning Funding Request Amount; and §11.10, concerning Challenges of Competitive HTC Applications; concerning the Housing Tax Credit Program Qualified Allocation Plan and directing its publication in the *Texas Register*
- b) Presentation, Discussion, and Possible Action on orders adopting the repeals of 10 TAC Chapter 10 Subchapter A, concerning General Information and Definitions; Subchapter B, concerning Site and Development Requirements and Restrictions; Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules; and Subchapter G, concerning Fee Schedule, Appeals, and Other Provisions; and orders adopting the new Subchapter A, concerning General Information and Definitions; Subchapter B, concerning Site and Development Requirements and Restrictions; Subchapter

**Jean Latsha**  
Director, Multifamily



C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules for Applications; and Subchapter G, concerning Fee Schedule, Appeals, and Other Provisions; and directing their publication in the *Texas Register*

**ITEM 5: MULTIFAMILY FINANCE**

**Jean Latsha**  
Director, Multifamily

- a) Presentation, Discussion, and Possible Action on a Request for a Waiver of §11.3(e) of the 2014 Qualified Allocation Plan Relating to Developments in Certain Sub-regions and Counties for Villas at Plano Gateway
- b) Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with another Issuer  
14414 Villas at Plano Gateway Senior Living Plano
- c) Presentation, Discussion, and Possible Action to adopt the 2015 Multifamily Programs Procedures Manual
- d) Presentation, Discussion, and Possible Action regarding Awards of HOME funds from the 2014-1 HOME Multifamily Development Program Notice of Funding Availability
- e) Presentation, Discussion, and Possible Action to Approve the Programming of Funds from the Tax Credit Assistance Program and issuance of a NOFA
- f) Presentation, Discussion, and Possible Action on a request for an Extension of a deadline to submit documentation as a condition of a Housing Tax Credit Award for Application #14130, Tays, El Paso

**ITEM 6: APPEALS**

Appeal of a denial recommendation for a HOME reservation participation agreement for Starr County

**Tom Gouris**  
Chair, EARAC

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

**EXECUTIVE SESSION**

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

**J. Paul Oxer**  
Chairman

- 1. The Board may go into Executive Session Pursuant to Texas Government 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, including the appointment of the Director of Internal Audit
- 2. 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, including:
  - a) *The Inclusive Communities Project, Inc. v. Texas Department of Housing and Community Affairs, et al., filed in federal district court, Northern District of Texas.*
  - b) *Relman, Dane & Colfax PLLC letters to HUD concerning the State's Phase 2 Analysis of Impediments*
  - c) *Litigation hold relating to Shaw v. ACS*
- 3. 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:
  - a) Any posted agenda item
- 4. 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-

5. 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 Lytle, 512-475-4542, TDHCA, 221 East 11<sup>th</sup> Street, Austin, Texas 78701, and request the information.

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Gina Esteves, ADA Responsible Employee, at 512-475-3943 or Relay Texas at 1-800-735-2989, at least three (3) days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Jorge Reyes, 512-475-4577 at least three (3) days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

# CONSENT AGENDA

1a

**BOARD ACTION REQUEST**

**BOARD SECRETARY**

**NOVEMBER 13, 2014**

Presentation, Discussion, and Possible Action on Board Meeting Minutes Summary for September 4, 2014.

**RECOMMENDED ACTION**

Approve Board Meeting Minutes Summary for September 4, 2014

**RESOLVED**, that the Board Meeting Minutes Summary for September 4, 2014, is hereby approved as presented.

**Texas Department of Housing and Community Affairs Governing Board**  
**Board Meeting Minutes Summary**  
**September 4, 2014**

On Thursday, the fourth day of September, 2014, at 10:00 a.m., the regular monthly meeting of the Governing Board (“Board”) of the Texas Department of Housing and Community Affairs (“TDHCA”) was held in Room JHR 120 of the John H. Reagan Building, Austin, Texas.

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

- J. Paul Oxer
- Leslie Bingham Escareño
- Tom Gann
- Dr. Juan Muñoz
- Robert Thomas

J. Paul Oxer served as Chair, and Barbara Deane served as secretary.

1) As a general comment, Tim Irvine, Executive Director, provided the Board with clarification as it regarded preambles in rules which the Board would be considering in the agenda. Mr. Irvine clarified that staff would be using the authority provided in the Board’s resolutions on the rules to make additional comments and clarifications in the preambles regarding any analysis of increased costs.

2) Cari Garcia, Director of Asset Management, provided information and clarification on Consent Agenda Item 1e – Presentation, Discussion, and Possible Action on the proposed repeal of 10 TAC Chapter 10 Uniform Multifamily Rules, Subchapter E concerning Post Award and Asset Management Requirements, and proposed new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter E concerning Post Award and Asset Management Requirements, and directing their publication for public comment in the *Texas Register*. Following public comment on Item 1e (listed below), the Board unanimously approved the Consent Agenda as modified.

- Frank Ainsa, attorney for Investment Builders, testified in opposition to staff recommendation
- Ike Monty, Investment Builders, testified in opposition to staff recommendation
- Gerry Cichon, Housing Authority of the City of El Paso, testified in opposition to staff recommendation

3) Action Item 2a – Presentation, Discussion, and Possible Action on proposed amendments to 10 TAC Chapter 11 §§11.1(e), 11.2, 11.3(e), 11.3(f), 11.5, 11.6(5), 11.7, 11.8, 11.9(c)(4), 11.9(c)(5), 11.9(c)(7), 11.9(d)(1), 11.9(d)(4), 11.9(e)(3), 11.9(e)(7) and 11.10 concerning the Housing Tax Credit Program Qualified Allocation Plan and directing their publication for public comment in the *Texas Register* – was presented by Jean Latsha, Director of Multifamily Finance. Following public comment (listed below), the Board unanimously approved staff recommendation for publication of the proposed amendments in the *Texas Register*.

- Carol Naughton, Purpose Built Communities, testified and provided additional ideas she would like staff to consider including in the proposed amendments

- Walter Moreau, Foundation Communities, testified and expressed concern over some language in the proposed amendments
- Joy Horak-Brown, New Hope Housing, testified and expressed concern over some language in the proposed amendments
- Claire Palmer, law offices of Claire Palmer, testified and expressed concern over some language in the proposed amendments
- Jonathan Tomko, City of Austin Neighborhood Housing and Community Development Department, read a resolution from the Austin City Council encouraging changed language in some of the proposed amendments
- Bridgette Wallace, citizen from McKinney, testified and expressed concern over some language in the proposed amendments
- Darrell Jack, Apartment Market Data, testified and expressed concern over some language in the proposed amendments
- Ginger McGuire, Rural Rental Housing Association, testified and expressed concern over some language in the proposed amendments
- Cynthia Garcia, City of Fort Worth Housing and Economic Development, testified and expressed concern over some language in the proposed amendments
- Donna Chatham, Association of Rural Communities in Texas, testified and expressed concern over some language in the proposed amendments
- Kathy Tyler testified and expressed concern over some language in the proposed amendments
- Deb Guerrero, Texas Affiliation of Affordable Housing Providers, testified and told the Board that her organization was current reviewing the proposed amendments and would be offering comment at a later date

4) Ms. Latsha presented Action Item 2b – Presentation, Discussion, and Possible Action on proposed repeals of 10 TAC Chapter 10 Subchapter A concerning General Information and Definitions; Subchapter B concerning Site and Development Requirements and Restrictions; Subchapter C concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules; and Subchapter G concerning Fee Schedule, Appeals and Other Provisions, and a proposed new 10 TAC Chapter 10 Subchapter A concerning General Information and Definitions; Subchapter B concerning Site and Development Requirements and Restrictions; Subchapter C concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules; and Subchapter G concerning Fee Schedule, Appeals and Other Provisions, and directing their publication for public comment in the *Texas Register*. Following public comment (listed below), the Board unanimously approved staff recommendation for publication of the proposed repeals and proposed new rules in the *Texas Register*.

- Claire Palmer, Law Offices of Claire Palmer, testified and expressed concern over some language in the proposed rules
- John Henneberger, Texas Low Income Housing Information Service, testified in support of staff recommendation

5) Action Item 2c – Presentation, Discussion, and Possible Action regarding on the proposed repeal of 10 TAC Chapter 12, Multifamily Housing Revenue Bond Rules, and a proposed new 10 TAC Chapter 12 concerning the Multifamily Housing Revenue Bond Rules and directing their publication for public

comment in the *Texas Register*— was presented by Ms. Latsha. The Board unanimously approved staff recommendation for publication of the proposed repeal and proposed new rule in the *Texas Register*.

6) Action Item 3a – Presentation, Discussion and Possible Action on the 2014 HOME Multifamily Rental Development Notice of Funding Availability (“NOFA”) –was presented by Ms. Latsha with the Board unanimously approving staff recommendation to publish the NOFA in the *Texas Register*.

7) Action Item 3b – Presentation, Discussion, and Possible Action Regarding Reinstatement of a Determination Notice for Housing Tax Credits with another Issuer for #13249 William Cannon Apartments in Austin – was presented by Ms. Latsha with the Board unanimously approving staff recommendation to reinstate the notice subject to underwriting and other conditions.

8) Action Item 3c – Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with another Issuer for #14409 Lakes of El Dorado in McKinney, #14410 Fountains of Rosemeade in Dallas, and #14411 Ash Lane Apartments in Euless – was presented by Ms. Latsha with the Board unanimously approving staff recommendation to issue the notices subject to underwriting conditions.

9) Action Item 3d – Presentation, Discussion, and Possible Action on Inducement Resolution No. 15-001 for Multifamily Housing Revenue Bonds and an Authorization for Filing Applications for Private Activity Bond Authority - 2014 Waiting List for Good Samaritan Towers – was presented by Ms. Latsha with the Board unanimously approving staff recommendation to proceed with application submission to the Bond Review Board.

10) No action was taken on Action Item 3e – Presentation, Discussion, and Possible Action on Awards of Competitive 9% Low Income Housing Tax Credits from the Waiting List for the 2014 Housing Tax Credit Application Round approved July 31, 2014 – as the item was pulled from the agenda.

11) The Board heard public comment on a non-agenda item from Ms. Horak-Brown who shared photos and information regarding affordable housing developed by her organization and funded, in part, by the Department.

12) At 12:07 p.m. the Board went into Executive Session and reconvened in open session at 1:02 p.m. No action was taken in or as a result of Executive Session.

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

There being no further business to come before the Board, the meeting adjourned at 1:40 p.m. The next meeting is set for Thursday, October 9, 2014.



---

Secretary

Approved:

---

Chair

1b

**BOARD ACTION REQUEST**

**FINANCIAL ADMINISTRATION DIVISION**

**NOVEMBER 13, 2014**

Presentation, Discussion, and Possible Action regarding Resolution No. 15-004, Designating Signature Authority and superseding Resolution No. 14-037

**RECOMMENDED ACTION**

See attached resolution.

**BACKGROUND**

The Texas Department of Housing and Community Affairs (the “Department”), a public and official governmental agency of the State of Texas (the “State”) was created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended. The Code authorizes the Department: (a) to make and acquire and finance, and to enter into advance commitments to make and acquire and finance, mortgage loans and finance, participating interests therein, secured by mortgages on residential housing in the State; (b) to issue its bonds, for the purpose of, among other things, obtaining funds to acquire or finance such mortgage loans, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues receipts or resources of the Department, including the revenues and receipts to be received by the Department from such single family mortgage loans of participating interests, and to mortgage, pledge or grant security interests in such mortgages of participating interests, mortgage loans or other property of the Department, to secure the payment of the principal or redemption price of and interest on such bonds.

This Resolution updates and designates signature authority to reflect the current structure of the Department.

**Texas Department of Housing and Community Affairs  
RESOLUTION OF THE GOVERNING BOARD**

**SUPERSEDING RESOLUTION NO. 14-037  
AND ADOPTING NEW RESOLUTION NO. 15-004**

**DESIGNATING SIGNATURE AUTHORITY**

**WHEREAS**, the Texas Department of Housing and Community Affairs (the “Department”), a public and official governmental agency of the State of Texas, was created and organized pursuant to and in accordance with the provisions of Texas Government Code, Chapter 2306, as amended; and

**WHEREAS**, Chapter 2306 of the Code authorizes the Department:

(a) to make and acquire and finance, and to enter into advance commitments to make and acquire and finance, mortgage loans and finance, participating interests therein, secured by mortgages on residential housing in the State of Texas (the “State”); and

(b) to issue its bonds, for the purpose of, among other things, obtaining funds to acquire or finance such mortgage loans, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds; and

(c) to pledge all or any part of the revenues receipts or resources of the Department, including the revenues and receipts to be received by the Department from such single family mortgage loans of participating interests, and to mortgage, pledge or grant security interests in such mortgages of participating interests, mortgage loans or other property of the Department, to secure the payment of the principal or redemption price of and interest on such bonds; and

**WHEREAS**, on April 10, 2014, the Governing Board adopted Resolution No. 14-037, designating signature authority to reflect the structure of the Department; and

**WHEREAS**, the Governing Board has now determined that Resolution No. 14-037, designating signature authority, should be superseded by a new Resolution No. 15-004 designating signature authority in order to conform to the Department’s current organizational structure and operations;

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

**SECTION 1 – Supersession of Prior Signature Authority.** The Governing Board hereby supersedes Resolution No. 14-037 by enacting this new Resolution No.15-004.

**SECTION 2 – Designation of Signature Authority for Bond Transactions.** The Governing Board hereby authorizes and designates the Board Secretary, the Assistant Board Secretary, the Executive Director, Chief of Staff, the Deputy Executive Director for Single Family, Community Affairs & Metrics, the Deputy Executive Director of Asset Analysis and Management, the Chief Financial Officer, the Director of Financial Administration, the Director of Bond Finance, the Director of Texas Homeownership and the Director of Multifamily Finance and each of them as signatories for single family and multifamily bond transactions including, but not limited to letters of instruction, officer's certificates, bond transactional documents and all other documents and certificates executed in connection with such bond transactions.

**SECTION 3 – Designation of Signatory Authority for Real Estate Transactions.** The Governing Board hereby authorizes and designates the following persons to execute and deliver, as specified earnest money contracts, deeds or conveyances of title, leases of real property, settlement statements on purchase or sale of real property, deposits and disbursements on agency bank accounts, real estate transactional documents and all other documents executed in connection with real estate or real estate-related transactions:

- (a) Executive Director, Chief of Staff, Chief Financial Officer, Board Secretary, and Assistant Board Secretary: All real estate or real estate related transactions;
- (b) Executive Director, Chief of Staff or Deputy Executive Director for Single Family, Community Affairs & Metrics: All real estate or real estate-related transactions administered under any of the Single Family Programs and Community Affairs areas;
- (c) Executive Director, Chief of Staff or Deputy Executive Director of Asset Analysis and Management: All real estate or real estate-related transactions administered under any of the Real Estate Analysis, Asset Management, or Program Services sections;
- (d) Executive Director, Chief of Staff or Deputy Executive Director of Asset Analysis and Management and the Director of Asset Management: All real estate or real estate-related transactions administered by the Asset Management program;
- (e) Executive Director, Chief of Staff or Director of Financial Administration: All real estate or real estate-related transactions administered by the Financial Administration Division;
- (f) Executive Director, Chief of Staff or Director of Multifamily Finance Division: All real estate or real estate-related transactions administered by the Multifamily Finance Division;
- (g) Executive Director, Chief of Staff or Deputy Executive Director of Asset Analysis and Management and the Director of Bond Finance: All real estate or real estate-related transactions administered by the Bond Finance Division;

- (h) Executive Director, Chief of Staff or Deputy Executive Director for Single Family, Community Affairs & Metrics and the Director of Texas Homeownership: All real estate or real estate-related transactions administered by the Texas Home Ownership Division;
- (i) Executive Director, Chief of Staff or Deputy Executive Director for Single Family, Community Affairs & Metrics and the Director of the HOME Program: All real estate or real estate-related transactions administered under the HOME Single Family Division;
- (j) Executive Director, Chief of Staff or Deputy Executive Director of Asset Analysis and Management and the Director of Program Services: All real estate or real estate-related transactions administered by the Program Services;
- (k) Executive Director, Chief of Staff or Deputy Executive Director for Single Family, Community Affairs & Metrics and the Director of the Housing Trust Fund and the Office of Colonia Initiatives: All real estate or real-estate related transactions administered under the Housing Trust Fund and Office of Colonia Initiatives Division;
- (l) Executive Director, Chief of Staff or Deputy Executive Director for Single Family, Community Affairs & Metrics and the Director of the Neighborhood Stabilization Program: All real estate or real-estate related transactions administered by the Neighborhood Stabilization Program Division; and
- (m) Signatory authority on deposits and disbursements on agency bank accounts is limited to those persons designated on the applicable signature cards, as specified by the Executive Director; provided however, that no person may be so designated other than the Executive Director, Chief of Staff, Chief Financial Officer, a Deputy Executive Director, or a Director.
- (n) Every reference to a signatory office or title herein includes any person serving in acting or interim capacity.

**SECTION 4 –Designation of Signatory Authority for Fund Transfers.** The Governing Board hereby authorizes and designates the following persons to execute and deliver any necessary fund transfer documents, including letters of instruction, in the manner prescribed below.

Fund transfers require dual signatures, consisting of one signatory from each of the following two groups:

- (a) Chief Financial Officer or Director of Financial Administration and
- (b) Executive Director, Chief of Staff or any Deputy Executive Director whose duties do not include management or oversight of the funds that are subject of the transfer.

**SECTION 5 – Execution of Documents.** The Governing Board hereby authorizes the Executive Director, Chief of Staff or in their absence the Chief Financial Officer or a Deputy Executive Director, to execute, on behalf of the Department, any and all documents, instruments reasonably deemed necessary to effectuate this Resolution.

**SECTION 6 – Effective Date.** This Resolution shall be in full force and effect from and upon its adoption.

1c



**BOARD ACTION REQUEST**

**LEGAL DIVISION**

**NOVEMBER 13, 2014**

Presentation, Discussion, and Possible Action on the adoption of an Agreed Final Order concerning Holland House Apartments (HTC Exchange 15090009994 / HOME 1001139 / CMTS 4471)

**RECOMMENDED ACTION**

**WHEREAS**, Holland House Apartments (“Property”), owned by Holland Apartments, Ltd (“Owner”), has a history of uncorrected compliance findings relating to the applicable land use restriction agreements and the associated statutory and rule requirements;

**WHEREAS**, on September 23, 2014, owner’s representative met with the Administrative Penalty Committee and agreed, subject to Board approval, to enter into an Agreed Final Order assessing an administrative penalty of \$1,500.00, to be fully forgiven if all violations are resolved on or before December 1, 2014;

**WHEREAS**, on October 28, 2014, the Committee voted to extend the deadline to January 1, 2015;

**WHEREAS**, remaining compliance violations include failure to prepare acceptable written tenant selection criteria, failure to ensure that the household in unit 112 income qualifies, failure to provide the Amenities and Services notice to unit 325, failure to provide the Fair Housing Disclosure Notice to units 323, 324, 401, and 416, and failure to screen for student status for unit 401;

**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 the Agreed Final Order assessing an administrative penalty of \$1,500.00, subject to forgiveness as outlined above for noncompliance at Holland House Apartments (HTC Exchange 15090009994 / HOME 1001139 / CMTS 4471), 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**

Holland Apartments, Ltd. is the owner of Holland House Apartments (the "Property"), a low income apartment complex comprised of 68 units, located in Holland, Bell County, Texas. The Property is subject to two Land Use Restriction Agreements:

1. The HOME Land Use Restriction Agreement ("HOME LURA") signed in 2010 in consideration for an allocation of HOME funds in the amount of \$550,000.00.
2. The HTC Exchange Land Use Restriction Agreement ("HTC Exchange LURA") signed in 2010, then amended in 2011 and 2012, in consideration for HTC exchange funds in the amount of \$3,622,969.00.

The HOME loan is in good standing, and no payments are required for the HTC Exchange funds unless a recapture event occurs. Holland Apartments Ltd. has been submitting late and insufficient corrective documentation to the Department, and the following compliance violations were referred for an administrative penalty:

1. 2014 Uniform Physical Condition Standards ("UPCS") violations;
2. Failure to maintain Affirmative Marketing Plan;
3. Failure to maintain tenant income certification for unit 112;
4. Failure to prepare acceptable written tenant selection criteria;
5. Failure to ensure that the households in units 112 and 221 income qualified at initial occupancy;
6. Failure to provide the Amenities and Services notice to unit 325;
7. Failure to provide the Fair Housing Disclosure Notice to units 221, 323, 324, 401, and 416; and
8. Failure to screen for student status for units 401 and 502.

Partial corrective documentation was received on September 18, 2014, after an informal conference notice was issued, and the following compliance violations remain unresolved:

1. Failure to prepare acceptable written tenant selection criteria;
2. Failure to ensure that the households in unit 112 income qualified at initial occupancy;
3. Failure to provide the Amenities and Services notice to unit 325;
4. Failure to provide the Fair Housing Disclosure Notice to units 323, 324, 401, and 416; and
5. Failure to screen for student status for unit 401.

Representatives of the owner met with the Administrative Penalty Committee on September 23, 2014, and agreed to the following terms, as amended on October 28, 2014:

1. A \$1,500.00 administrative penalty, to be fully forgiven if all compliance violations listed above are resolved on or before January 1, 2015;
2. Property management staff to attend HTC Compliance Training on or before January 1, 2015; and
3. All violations listed above to be resolved as indicated in the Agreed Final Order on or before January 1, 2015.

Consistent with direction from the Department's Administrative Penalty Committee, a fully forgivable penalty in the amount of \$1,500.00 is recommended.

ENFORCEMENT ACTION AGAINST  
HOLLAND APARTMENTS, LTD  
WITH RESPECT TO HOLLAND  
HOUSE APARTMENTS  
(HTC EXCHANGE 15090009994 /  
HOME 1001139)

§  
§  
§  
§  
§  
§  
§  
§

BEFORE THE  
TEXAS DEPARTMENT OF  
HOUSING AND  
COMMUNITY AFFAIRS

### **AGREED FINAL ORDER**

#### **General Remarks and official action taken:**

On this 13<sup>th</sup> day of November, 2014, the Governing Board ("Board") of the Texas Department of Housing and Community Affairs ("TDHCA") considered the matter of whether enforcement action should be taken against **HOLLAND APARTMENTS, LTD**, a Texas limited partnership ("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 Administrative Penalties 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**

##### **Jurisdiction:**

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, and 10 TEX. ADMIN. CODE §1.14 and 10 TEX. ADMIN. CODE Chapter 60.

2. Respondent was awarded an allocation of HOME funds by the Board during 2010, in the total amount of \$550,000.00 to acquire, rehabilitate, and operate Holland House Apartments ("Property") (HTC Exchange No. 15090009994 / HOME No. 1001139 / CMTS No. 4471 / LDLD No. 463).
3. In addition to the HOME funds described above, Respondent was also awarded an allocation of Low Income Housing Tax Credits by the Board during 2010, which were returned in exchange for a cash grant under the Texas Tax Credit Exchange Program, awarding Exchange funds in the aggregate amount of \$3,622,969.00 to acquire, rehabilitate, and operate the Property.
4. Respondent signed two land use restriction agreements (collectively the "LURAs") regarding the Property:
  - a. The HOME LURA was effective June 21, 2010, and filed of record at Document Number 2010-22123 of the Official Public Records of Real Property of Bell County, Texas ("Records").
  - b. The HTC Exchange LURA was effective June 21, 2010, and filed of record at Document Number 2010-00022253 of the Official Public Records of Real Property of Bell County, Texas ("Records"), as amended by a First Amendment executed on November 28, 2011, and filed in the Records at Document Number 2011-00040897, as further amended by a Second Amendment executed on August 29, 2012, and filed in the Records at Document Number 2012-00035874.
5. Respondent is a Texas limited partnership that is approved by TDHCA as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development that is subject to the regulatory authority of TDHCA.

Compliance Violations<sup>1</sup>:

1. A Uniform Physical Condition Standards ("UPCS") inspection was conducted on February 18, 2014. Inspection reports showed numerous serious property condition violations, a violation of 10 TEX. ADMIN. CODE § 10.621 (Property Condition Standards). Notifications of noncompliance were sent and a May 25, 2014, corrective action deadline was set.

Corrective documentation was not received until September 18, 2014, 116 days past the deadline, after intervention by the Administrative Penalty Committee.

---

<sup>1</sup> Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TEX. ADMIN. CODE, CHAPTERS 10 AND 60 refer to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

2. An on-site monitoring review was conducted on January 29, 2014, 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 July 7, 2014, corrective action deadline was set, however, the following violations were not timely resolved:
- a. Respondent failed to provide an affirmative marketing plan, a violation of 10 TEX. ADMIN. CODE §10.617 (Affirmative Marketing Requirements), which requires all Developments with five or more total units to develop an Affirmative Fair Housing Marketing Plan.  
The affirmative marketing finding was corrected on September 18, 2014, 73 days past the deadline.
  - b. Respondent failed to maintain written tenant selection criteria, a violation of 10 TEX. ADMIN. CODE §10.610 (Tenant Selection Criteria), which requires owners to develop written tenant selection criteria that meet minimum standards outlined in the rule.  
Written tenant selection criteria was submitted August 18, 2014, 42 days past the deadline, but it was insufficient to resolve the finding because it did not include required language.
  - c. Respondent failed to provide documentation that household incomes were within prescribed limits upon initial occupancy for units 112 and 221, a violation of 10 TEX. ADMIN. CODE §10.612 (Tenant File Requirements) and the LURA, which require Respondent to maintain minimum file standards to verify eligibility for the program.  
Corrective documentation was submitted on September 18, 2014, 73 days past the deadline. The file for unit 221 was acceptable to resolve the associated finding, but the file for unit 112 was insufficient and unacceptable.
  - d. Respondent failed to collect a tenant income certification for unit 112, a violation of 10 TEX. ADMIN. CODE §10.612 (Tenant File Requirements) and the LURA.  
Respondent submitted a tenant income certification on August 18, 2014, 42 days after the deadline, resolving the finding.
  - e. Respondent failed to provide the Amenities and Services Notice for unit 325, a violation of 10 TEX. ADMIN. CODE § 10.613 (Lease Requirements), which requires all developments to provide prospective households with a notice regarding amenities and services at the time of execution of the initial lease and whenever there is a subsequent change.  
Respondent submitted a form notice of Amenities and Services on August 18, 2014, 42 days after the deadline, but the notice was unacceptable because it was unsigned and did not include language required by the rule.

- f. Respondent failed to provide the Fair Housing Disclosure Notice for units 221, 323, 324, 401, and 416, a violation of 10 TEX. ADMIN. CODE §10.612 (Tenant File Requirements), which requires all developments to provide prospective households with a fair housing disclosure notice within a certain time period.

Respondent submitted multiple signed notices on August 18, 2014, 42 days past the deadline. The form submitted for unit 221 was acceptable, but the rest of the submitted forms were not signed during the appropriate period, leaving the finding unresolved for units 323, 324, 401, and 416.

- g. Respondent failed to ensure that the households in units 401 and 502 qualified for occupancy, by allowing the units to be occupied by non-qualified full time students and/or not maintaining evidence of an exception, a violation of 10 TEX. ADMIN. CODE §10.612 (Tenant File Requirements), which requires developments to screen for student status.

Respondent submitted corrective documentation on September 18, 2014, 73 days past the deadline. The finding was dropped for unit 502 and is considered resolved, but the documentation submitted for unit 401 was incomplete.

3. The following violations remain outstanding at the time of this order:
- a. Written tenant selection criteria violation described in FOF #2b;
  - b. Housing income above limit upon initial occupancy violations for unit 112 described in FOF #2c;
  - c. Amenities and Services Notice violation for unit 325, described in FOF #2e;
  - d. Fair Housing Disclosure Notice violation for units 323, 324, 401, and 416, described in FOF #2f;
  - e. Failure to screen for student status for unit 401, described in FOF #2g.

### CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503, 10 TAC §1.14 and 10 TAC, Chapter 60.
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 TEX. ADMIN. CODE § 10.621 in 2014 and I.R.C. §42, as amended, by failing to comply with HUD's Uniform Physical Condition Standards when major violations were discovered and not timely corrected.
5. Respondent violated 10 TEX. ADMIN. CODE § 10.617 in 2014 by failing to provide an affirmative marketing plan.

6. Respondent violated 10 TEX. ADMIN. CODE §10.610 in 2014 by failing to maintain written tenant selection criteria.
7. Respondent violated Article II of the HOME LURA, representations at page 1 of the HTC Exchange LURA, Section 4 of the HTC Exchange LURA, and 10 TEX. ADMIN. CODE §10.612 in 2014, by failing to provide documentation that household incomes are within prescribed limits upon initial occupancy for units 112 and 221.
8. Respondent violated 10 TEX. ADMIN. CODE §10.612 in 2014 by failing to collect a tenant income certification for unit 112.
9. Respondent violated 10 TEX. ADMIN. CODE § 10.613 in 2014 by failing to provide the Amenities and Services Notice for unit 325.
10. Respondent violated 10 TEX. ADMIN. CODE §10.612 in 2014, by failing to execute the Fair Housing Disclosure Notice during the appropriate time frame for units 221, 323, 324, 401, and 416.
11. Respondent violated 10 TEX. ADMIN. CODE §10.612 in 2014, by failing to screen for student status for units 401 and 502
12. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules and agreements, the Board has personal and subject matter jurisdiction over Respondent pursuant to TEX. GOV'T CODE §2306.041 and §2306.267.
13. 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.
14. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code Chapter 2306 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.
15. An administrative penalty of \$1,500.00 is an appropriate penalty in accordance with 10 TAC §§60.307 and 60.308.

[Remainder of page intentionally blank]



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 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 \$1,500.00, subject to deferral as further ordered below.

**IT IS FURTHER ORDERED** that property manager and her supervisor shall attend Housing Tax Credit Compliance Training on or before January 1, 2015.

**IT IS FURTHER ORDERED** that Respondent shall fully correct the file monitoring violations as indicated in the attachments and submit full documentation of the corrections to TDHCA on or before January 1, 2015.

**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 assessed administrative penalty and the full amount 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, then the full administrative penalty in the amount of \$1,500.00 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" within thirty days of the date the Department sends written notice to Respondent that it has violated a provision of this order.

**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>. Once uploaded, Respondent must email Ysella Kaseman at [ysella.kaseman@tdhca.state.tx.us](mailto:ysella.kaseman@tdhca.state.tx.us) to inform her that the uploads are complete. If it comes due and payable, the penalty payment must be submitted to the following address:

If via overnight mail (FedEx, UPS):	If via USPS:
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

*[Remainder of page intentionally blank]*





**Attachment 1**

**Tenant File Instructions**

(See attached)



## TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

[www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

Rick Perry  
GOVERNOR

**BOARD MEMBERS**  
J. Paul Oxer, *Chair*  
Juan S. Muñoz, PhD, *Vice Chair*  
Tom H. Gann  
Leslie Bingham-Escareño  
Robert D. Thomas  
J. Mark McWatters

October 31, 2014

*Writer's direct phone # (512) 305-8860*  
*Email: [wendy.quackenbush@tdhca.state.tx.us](mailto:wendy.quackenbush@tdhca.state.tx.us)*

Warren Maupin  
Holland Apartments, Ltd  
Temple, Texas  
[wmaupin@att.net](mailto:wmaupin@att.net)

RE: Holland House Apartments

CMTS ID: 4471

Dear Mr. Maupin:

The Texas Department of Housing and Community Affairs (Department) has received documentation addressing the noncompliance identified during the monitoring review conducted at Holland House Apartments on January 29, 2014. The corrective action deadline ended July 7, 2014. Please note, noncompliance that is corrected but that was not corrected during the applicable corrective period will be considered for a three (3) year period in future funding decisions. Please see 10TAC§1.5 for details. The Department's Administrative Penalties Committee will be updated with the status of this corrective action review. Below is a summary of the status of each finding of noncompliance identified during the last two monitoring reviews.

**The following findings have been corrected:**

- Noncompliance related to Affirmative Marketing requirements described in §10.617 – the owner submitted documentation to evidence the development is affirmatively marketing to groups least likely to apply and persons with disabilities. In addition, an updated affirmative marketing plan was submitted. **The finding is corrected.**
- Failure to provide Tenant Income Certification and documentation unit 112 – the household signed a USDA Income Certification form on January 27, 2014. **The finding is corrected.**
- Failure to provide Fair Housing Disclosure unit 221 – the household signed the Notice within the required time frame, prior to the date the household is legally obligated to provide written notice of their intention to terminate or renew their current lease. **The finding is corrected for this unit only.**
- Noncompliance with tenant selection requirements described in §10.610 of this subchapter – management submitted a statement acknowledging that rejected applicants will be provided a 30 day written notice for the grounds of rejection. **This finding is corrected.**



- Household income above income limit upon initial occupancy/Program unit not leased to low-income household unit 221 – documentation to evidence the household's income was initial eligible was submitted. **This finding is corrected.**

**The following finding was dropped:**

- Low-income unit occupied by nonqualified full-time students/Program unit occupied by nonqualified full-time students unit 502 – documentation to evidence the unit has not been occupied by all full-time students was submitted. **The finding is dropped.**

**The following findings remain uncorrected:**

- Household income above income limit upon initial occupancy/Program unit not leased to low-income household unit 112 – all of the request documentation was not submitted. The Department could not determine eligibility because the household transferred from one project to another project in 2012 and was not properly certified. As corrective action, a USDA certification signed by the household on January 27, 2014, a 2013 Social Security and Veterans Pension award letters and an application that appears to be from 2006 was submitted. The household does not appear to have completed an application with the 2014 certification which would disclose current income, assets and applicable student status. In addition, verification of assets was not submitted as requested in Findings and Corrective Action report provided. If screening documents were completed and assets verified, submit the documents to the Department for review. In accordance with the Guide for Completing Form 8823, page 4-35 the noncompliance can be corrected in either of two ways: 1) A new certification can be performed using current income and asset sources and current income limits or 2) A retroactive certification can be performed which completely and clearly documents the sources of income and assets that were in place at the time the initial certification should have been effective, and applies income limits that were in effect on that date. Submit all the requested documents to the Department for review. **The finding is uncorrected.**
- Noncompliance with lease requirements described in §10.613 of this subchapter unit 325 – according to the documentation submitted, the household has vacated the unit before receiving the required Amenities and Supportive Service form. There is no corrective action available for this unit. In addition, the property was to submit copies of the signed Amenities and Supportive Service forms for all affected households that moved in after January 1, 2014 to the Department for review. The property only submitted a blank version of the Amenities and Services form which is insufficient to correct noncompliance. Submit all the requested documents detailed in the Findings and Corrective Action report to the Department for review. **The finding is uncorrected.**
- Low-income unit occupied by nonqualified full-time students/Program unit occupied by nonqualified full-time students unit 401 – the requested corrective action documentation was not submitted that required the property to "verify the head of household's student status for calendar years 2013 and 2014 and if necessary, document the household's meets one of the student exceptions." As corrective action, the property submitted an incomplete 2014 Annual Eligibility Certification (AEC) form. indicating the head of household is now a part-time student and the minors were not listed on this form. Submit the requested documentation detailed in the Findings and Corrective Action report and submit to the Department for review. **The finding is uncorrected.**

- Noncompliance with tenant selection requirements described in §10.610 of this subchapter – a tenant selection criteria was submitted; however, it does not obtain the required information. The written criteria must “state that the development will comply with state and federal fair housing and antidiscrimination laws.” Update the criteria with the required language and submit to the Department for review. **The finding is uncorrected.**
- Failure to provide Fair Housing Disclosure – 323, 324, 401 and 416, see below for further explanation:
  - Unit 323: an executed Notice dated June 30, 2014 was submitted along with a letter acknowledging that the form was not signed during the appropriate time frame. **The finding is uncorrected.**
  - Unit 324: an executed Notice dated June 29, 2014 was submitted along with a letter acknowledging that the form was not signed during the appropriate time frame. **The finding is uncorrected.**
  - Unit 401: Copies of the household’s current lease along with a copy of the corrective action calculator print out was submitted. Please note, the lease expiration date was entered incorrectly into the calculator and the inappropriate date range for correction was submitted. The household lease expires January 31, 2015 and the Notice must be signed between September 3, 2014 (120 days) to December 2, 2014 (30 days). Have the household execute the Notice within this time frame and submit a copy of the Notice to the Department for review. **The finding is uncorrected.**
  - Unit 416: the Department was provided notice that the household in unit 416 has vacated. Since the household did not sign the notice within 120 to 30 days prior to the date that they were legally obligated to provide written notice of their intention to terminate or renew their lease, there is no corrective action available. **The finding is uncorrected.**

Please remember, to correct the finding for the Fair Housing Disclosure issue please have the household execute the form no more than one hundred twenty (120) days and no less than thirty (30) days prior to the date the household is legally obligated to provide written notice of their intention to terminate or renew their current lease.

Please note, findings that are not corrected during the corrective action period will be considered in future funding decisions. Please see 10TAC§1.5 for additional details.

Please supply all requested documentation to the Electronic Document Attachment system through the development’s Compliance Monitoring and Tracking System (CMTS) account as soon as possible. Partial corrections are unacceptable and the owner is responsible for ensuring that submissions are complete and satisfactorily address all findings. The Department will then determine whether or not the submitted materials sufficiently correct the noncompliance. If there are questions, the Department urges you to contact Ysella Kaseman or Wendy Quackenbush directly. Please upload your corrective action to the Electronic Document Attachment system using the development’s Compliance Monitoring Tracking System (CMTS) account. For instructions on how to use the attachment system, please see Attaching Documents to CMTS found on the Department’s website. To access, on the home page, select “Support and Services” tab; then select “Compliance.” From the submenu, select “Online Reporting.”

Enclosed are copies of the development’s current Finding’s and Corrective Action reports, which have been updated to reflect the current status of corrected and uncorrected noncompliance issues.

Holland House Apartments  
October 31, 2014  
Page 4

If you have any questions, please contact Wendy Quackenbush toll free in Texas at (800) 643-8204, directly at (512) 305-8860 or email: [wendy.quackenbush@tdhca.state.tx.us](mailto:wendy.quackenbush@tdhca.state.tx.us).

Sincerely,

*Wendy Quackenbush*

Wendy  
Quackenbush  
2014.10.31  
09:48:26 -05'00'

Wendy Quackenbush  
Manager, Compliance Monitoring

wmq  
cc: Ysella Kaseman





**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**  
**COMPLIANCE REVIEW**  
**DETAIL FINDINGS AND CORRECTIVE ACTION**  
*By program*

PROGRAM: ALL FILE#

Continued

**UNIT FINDINGS**

<b>Unit # 112</b>	<b>Bldg. # 1</b>	<b>BIN # TX0912601</b>	
<b>Finding</b>	Household income above income limit upon initial occupancy / Program Unit not leased to Low-Income household		
<b>Noncompliance Date</b>	10/01/2012	<b>Current Status</b> Uncorrected	<b>Correction Date</b>
<b>Reason</b>	According to the documentation maintained in the file, it appears the household transferred from unit 416 on October 1, 2012. Because the household moved from one project to another and IRS Forms 8609 have not been issued, the Department monitors each building as its own project. When a household moves from one project to another, they must be certified and have a current annual income less than the income limit established by the minimum set aside the owner selected.		
<b>Corrective Action</b>	Certify the household using current income and asset sources with the current income limits. Submit copies of the application, necessary income and asset verifications, student status verification and executed Income Certification form.		
<b>Potential Administrative Penalty</b>	\$1000 per violation		
<b>Unit # 112</b>	<b>Bldg. # 1</b>	<b>BIN # TX0912601</b>	
<b>Finding</b>	Failure to provide Tenant Income Certification and documentation		
<b>Noncompliance Date</b>	10/01/2013	<b>Current Status</b> Corrected	<b>Correction Date</b> 01/27/2014
<b>Reason</b>	The unit is layered with HTC Exchange and HOME funds. HTC Exchange developments must collect and maintain annually current data on each household that includes the number of household members, age, ethnicity, race, disability status, rental amounts and rental assistance (if any). This information can be collected on the Department's Annual Eligibility Certification, Income Certification form or the USDA Income Certification form. Student status must also be screened annually. For the HOME program, annual recertification with source documentation must be completed every 6th year of the Affordability Period as determined by the effective date of the development's LURA. In the intervening years, the development must collect a self certification from by the effective date of the original Income Certification from each household. Since the development participates in a Rural Development, the USDA Income Certification can be used. This was due by October 1, 2013.		
<b>Corrective Action</b>	Have the household execute the Department's Income Certification, Annual Eligibility Certification or the USDA Income Certification with the required information and submit a copy to the Department for review.		
<b>Potential Administrative Penalty</b>	\$250 per violation		
<b>Unit # 325</b>	<b>Bldg. # 3</b>	<b>BIN # TX0912603</b>	
<b>Finding</b>	Noncompliance with lease requirements described in 10.613 of this subchapter		
<b>Noncompliance Date</b>	01/01/2014	<b>Current Status</b> Uncorrected	<b>Correction Date</b>
<b>Reason</b>	10TAC §10.613(k) states "A Development Owner shall provide each household, at the time of execution of an initial leases and whenever there is a subsequent change in common amenities, unit amenities, or required services, a notice describing those amenities and services." Any new move in after January 1, 2014 must have this notice included in the tenant file. The tenant file for Unit 325 was reviewed and the notice was not present in the file.		
<b>Corrective Action</b>	Implement the Amenities and Supportive Services Notice and have households that moved in after January 1, 2014		

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
 COMPLIANCE REVIEW  
 DETAIL FINDINGS AND CORRECTIVE ACTION  
 By program

PROGRAM: ALL FILE#

Continued

**UNIT FINDINGS**

acknowledge that they have received the notice. Submit copies of the notices for all affected households to the Department for review.

**Potential Administrative Penalty**

<b>Unit # 401</b>	<b>Bldg. # 4</b>	<b>BIN # TX0912604</b>
<b>Finding</b>	Failure to provide Fair Housing Disclosure	
<b>Noncompliance Date</b>	01/01/2013	<b>Current Status</b> Uncorrected
<b>Reason</b>	The Fair Housing Disclosure Notice form must be presented to the household at the time of application for occupancy and must be executed no more than 120 days prior to the effective date of the lease. On the day of the review, the form was not found in the file. The household moved in on January 1, 2013 and the lease ended on December 31, 2013. The household is obligated to give a 30 day notice to terminate or renew their lease. If they have already renewed their current lease the noncompliance cannot be corrected because the timeframe to correct the noncompliance has passed.	
<b>Corrective Action</b>	If the current household is not provided this notice prior to move-in or transfer, the Department may consider the event corrected if the Fair Housing Disclosure Notice is provided to the household no more than 120 days and no less than 30 days prior to the date that the household is legally obligated to provide written notice of their intention to terminate or renew their current lease. Submit a copy of the executed Fair Housing Disclosure Notice and first page of the lease.	
<b>Potential Administrative Penalty</b>	\$50 per violation	

<b>Unit # 416</b>	<b>Bldg. # 4</b>	<b>BIN # TX0912604</b>
<b>Finding</b>	Failure to provide Fair Housing Disclosure	
<b>Noncompliance Date</b>	02/11/2013	<b>Current Status</b> Uncorrected
<b>Reason</b>	The Fair Housing Disclosure Notice form must be presented to the household at the time of application for occupancy and must be executed no more than 120 days prior to the effective date of the lease. On the day of the review, the form was not found in the file. The household moved in on February 11, 2013 and the lease ended on February 28, 2014. The household is obligated to give a 30 day notice to terminate or renew their lease. If they have already renewed their current lease the noncompliance cannot be corrected because the timeframe to correct the noncompliance has passed.	
<b>Corrective Action</b>	If the current household is not provided this notice prior to move-in or transfer, the Department may consider the event corrected if the Fair Housing Disclosure Notice is provided to the household no more than 120 days and no less than 30 days prior to the date that the household is legally obligated to provide written notice of their intention to terminate or renew their current lease. Submit a copy of the executed Fair Housing Disclosure Notice and first page of the lease.	
<b>Potential Administrative Penalty</b>	\$50 per violation	

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
 COMPLIANCE REVIEW  
 DETAIL FINDINGS AND CORRECTIVE ACTION  
 By program

PROGRAM: HOME FILE# 1001139

**PROPERTY FINDINGS**

<b>Finding</b>	Noncompliance with tenant selection requirements described in 10.610 of this subchapter		
<b>Noncompliance Date</b>	12/07/2013	<b>Current Status</b> Corrected	<b>Correction Date</b> 09/18/2014
<b>Reason</b>	Owners of HOME developments must provide any rejected applicant written notification of the grounds for rejection within 30 days. An applicant, Kathleen Patnio, completed an application on November 7, 2013 and was denied due to owing another apartment complex. By December 7, 2013, the applicant should have been given written notification of the grounds for rejection. On the day of the review, the Department could not determine that the applicant was notified within 30 days.		
<b>Corrective Action</b>	The owner must submit a written response acknowledging this requirement and committing to compliance in the future.		
<b>Potential Administrative Penalty</b>			

PROGRAM: HTC Exchange FILE# 15090009994

**UNIT FINDINGS**

<b>Unit # 401</b>	<b>Bldg. # 4</b>	<b>BIN # TX0912604</b>
<b>Finding</b>	Low-income unit occupied by nonqualified full-time student(s) / Program unit occupied by nonqualified full-time students	
<b>Noncompliance Date</b>	01/01/2013	<b>Current Status</b> Uncorrected
<b>Reason</b>	The application indicates that the household is comprised entirely of full time students. The Annual Eligibility Certification (AEC) completed at move-in also indicates that the household is comprised entirely of full time students and that the household is a qualified full-time student household based on the single parent/dependent child exception; however, no documentation was in the file to support the exception.	
<b>Corrective Action</b>	Verify the head of household's student status for calendar years 2013 and 2014 and if necessary, document the exception to the student status rules and submit copies of the verification and supporting documentation to the Department. If the household is not eligible, when the unit becomes available, reoccupy with an eligible household and submit copies of the application, necessary income, asset and student status verifications, executed Income Certification, first and signatory pages of the lease contract, applicable addendums and the Fair Housing Disclosure Notice to the Department.	
<b>Potential Administrative Penalty</b>	\$1000 per violation	

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**  
**COMPLIANCE REVIEW**  
**DETAIL FINDINGS AND CORRECTIVE ACTION**  
*By program*

Property ID # 4471  
Property Holland House Apartments  
Address 616 Josephine St., Holland, TX-76534

**Last Desk Review Date:**  
**Last Onsite Review Date:** 01/29/14  
**Program(s):** HOME    **File #** 1001139  
                  HTC        **File #** 15090009994  
                  Exchan  
                  ge  
**Occupancy as of** 02/02/13

PROGRAM: ALL    FILE#

**PROPERTY FINDINGS**

<b>Finding</b>	Failure to provide Fair Housing Disclosure		
<b>Noncompliance Date</b>	01/01/2013	<b>Current Status</b> Uncorrected - Not Reportable to IRS	<b>Correction Date</b>
<b>Reason</b>	10TAC 10.608(f) states "All owners must provide prospective households with a Department approved fair housing disclosure notice. This notice must be executed by the household no more than thirty days and no less than three days prior to the effective date of the lease. This requirement pertains to all households taking initial occupancy of a unit on a Development administered by the Department, including households transferring units within the same Development." The Department started monitoring for this provision as of December 27, 2012. All tenant files with move-in dates after December 27, 2012 must include this Notice. The tenant in units 221, 323 and 324 moved into the development on January 1, 2013, but did not have an executed Notice in the file.		
<b>Corrective Action</b>	Please see separate correspondence dated 11/15/13 for corrective action required.		
<b>Potential Administrative Penalty</b>	\$50 per violation		
<b>Finding</b>	Noncompliance related to Affirmative Marketing requirements described in 10.617		
<b>Noncompliance Date</b>	02/21/2013	<b>Current Status</b> Corrected - Not Reportable to IRS	<b>Correction Date</b> 11/13/2013
<b>Reason</b>	10TAC §10.612 requires the owner to approve and distribute an Affirmative Marketing Plan that identifies groups least likely to apply and persons with disabilities. The plan did not identify persons with disabilities as a group being marketed to and no evidence of marketing efforts to this group was provided.		
<b>Corrective Action</b>	Update the plan and complete marketing efforts to a community contact that specifically reaches persons with disabilities. Submit a copy of the updated plan and completed marketing efforts.		
<b>Potential Administrative Penalty</b>	\$5 per day per violation		

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**  
**COMPLIANCE REVIEW**  
**DETAIL FINDINGS AND CORRECTIVE ACTION**  
*By program*

PROGRAM: ALL FILE#

Continued

**UNIT FINDINGS**

<b>Unit # 121</b>	<b>Bldg. # 1</b>	<b>BIN # TX0912601</b>
<b>Finding</b>	Household income above income limit upon initial occupancy / Program Unit not leased to Low-Income household	
<b>Noncompliance Date</b>	07/01/2012	<b>Current Status</b> Corrected - Not Reportable to IRS <b>Correction Date</b> 03/01/2013
<b>Reason</b>	The Department is unable to determine total annual income. On the application, the resident indicated employment at Educare in Temple, Texas. The employment verification form in the file lacks employer identifying information and does not appear to be from Educare in Temple.	
<b>Corrective Action</b>	Obtain paystubs or a payroll print-out for the income verified on the employment verification form signed by Kesha Krathers. If this income is not from Educare, also verify that source of income. If the household's circumstances have changed, the property can perform a new certification using current income and asset sources and current income limit to evidence eligibility. If eligible, submit copies of the new application, income and asset verifications, and the executed Income Certification. If the household is not eligible, follow the corrective action listed above.	
<b>Potential Administrative Penalty</b>	\$1000 per violation	
<b>Unit # 221</b>	<b>Bldg. # 2</b>	<b>BIN # TX0912602</b>
<b>Finding</b>	Household income above income limit upon initial occupancy / Program Unit not leased to Low-Income household	
<b>Noncompliance Date</b>	01/01/2013	<b>Current Status</b> Corrected - Not Reportable to IRS <b>Correction Date</b> 09/18/2014
<b>Reason</b>	The Department questions the accuracy of employment information provided. The application and the employment verification lacked employer identifying information.	
<b>Corrective Action</b>	Obtain paystubs or a payroll print-out employment income from time of initial certification. If eligible, submit copies to the Department. If the household's circumstances have changed, the property can perform a new certification using current income and asset sources and current income limit to evidence eligibility. If eligible, submit copies of the new application, income and asset verifications, and the executed Income Certification. If the household is not eligible, follow the corrective action listed above.	
<b>Potential Administrative Penalty</b>	\$1000 per violation	
<b>Unit # 316</b>	<b>Bldg. # 3</b>	<b>BIN # TX0912603</b>
<b>Finding</b>	Household income above income limit upon initial occupancy / Program Unit not leased to Low-Income household	
<b>Noncompliance Date</b>	08/01/2012	<b>Current Status</b> Corrected - Not Reportable to IRS <b>Correction Date</b> 06/21/2013
<b>Reason</b>	The Department is unable to determine total annual income. Child support income reported on the application was not verified.	
<b>Corrective Action</b>	Obtain all pages of the most current court order for child support OR the most current Income Withholding For Support Administrative Writ of Withholding. Add income to the existing Income Certification. If eligible, submit copies of all to the	

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**  
**COMPLIANCE REVIEW**  
**DETAIL FINDINGS AND CORRECTIVE ACTION**  
*By program*

PROGRAM: ALL FILE#

Continued

**UNIT FINDINGS**

Department. If the household's circumstances have changed, the property can perform a new certification using current income and asset sources and current income limit to evidence eligibility. If eligible, submit copies of the new application, income and asset verifications, and the executed Income Certification. If the household is not eligible, follow the corrective action listed above

**Potential Administrative Penalty** \$1000 per violation

PROGRAM: HOME FILE# 1001139

**PROPERTY FINDINGS**

**Finding** Failure to provide annual HQS HOME inspection  
**Noncompliance Date** 02/21/2013 **Current Status** Corrected - Not Reportable **Correction Date** 06/04/2013  
to IRS  
**Reason** 24 CFR §92.251 HOME Final Rule requires rental property assisted with HOME funds to be maintained in compliance with all local codes and Housing Qualified Standards or HQS. To meet this requirement, all HOME rental development owners must annually complete an HQS inspection of all HOME assisted units (24 CFR §982.401.) During the onsite monitoring review the Department was unable to identify that HQS inspections had been completed.  
**Corrective Action** Review HUD's Housing Quality Standards requirements. Complete an HQS inspection of all HOME assisted units. Provide the Department with a copy of the completed HQS inspection forms.  
**Potential Administrative Penalty** \$500 per violation

PROGRAM: HTC Exchange FILE# 15090009994

**UNIT FINDINGS**

**Unit # 121** **Bldg. # 1** **BIN # TX0912601**  
**Finding** Low-income unit occupied by nonqualified full-time student(s) / Program unit occupied by nonqualified full-time students  
**Noncompliance Date** 07/01/2012 **Current Status** Corrected - Not Reportable **Correction Date** 03/01/2013  
to IRS  
**Reason** The application reports this household to be comprised of students. The file did not include a verification of status to document whether full time or part time. Additionally, no indication of an exception to the student rule was indicated in the file.  
**Corrective Action** Verify the student status for the resident eligibility is based on for all calendar months of 2012 and 2013. If this documentation

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**  
**COMPLIANCE REVIEW**  
**DETAIL FINDINGS AND CORRECTIVE ACTION**  
*By program*

**PROGRAM:** HTC Exchange **FILE#** 15090009994

Continued

**UNIT FINDINGS**

evidences eligibility, submit copies to the Department. If the household is comprised of full time students, obtain evidence of which exception applies to the household and submit to the Department. If the household is not eligible, follow the corrective action listed above.

**Potential Administrative Penalty** \$1000 per violation

<b>Unit # 514</b>	<b>Bldg. # 5</b>	<b>BIN # TX0912605</b>
<b>Finding</b>	Low-income unit occupied by nonqualified full-time student(s) / Program unit occupied by nonqualified full-time students	
<b>Noncompliance Date</b>	07/02/2012	<b>Current Status</b> Corrected - Not Reportable <b>Correction Date</b> 04/16/2013 to IRS

**Reason** Under the Housing Tax Credit Exchange program, households comprised entirely by full time students are not eligible unless they meet specific program exceptions. The Owner failed to determine the student status of this household for calendar year 2012. The Annual Eligibility Certification (AEC) could have been used to make this determination; however, the section that addresses student status was blank.

**Corrective Action** Have the household complete student status information on the AEC and submit a copy to the Department. If the AEC indicates that the household is comprised of all students, verify the student status for the resident eligibility is based on for 2013 and submit copies to the Department. If the household is comprised of full time students, obtain evidence of which exception applies to the household and submit to the Department. If the household is not eligible, follow the corrective action listed above.

**Potential Administrative Penalty** \$1000 per violation



## Attachment 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 all onsite staff responsible for accepting and processing applications sign up for First Thursday Training in order to get a full overview of the process. Sign up at <http://www.tdhca.state.tx.us/pmcomp/COMPtrain.html>. Forms discussed below are available at: <http://www.tdhca.state.tx.us/pmcomp/forms.htm>.

1. **Intake Application:** The Department does not have a required form to screen households, but we make this form available for that purpose. It is required that households 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.
2. **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. **First hand verifications:** 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;
  - b. **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;
  - c. **Verification of non-employment income:** You must obtain verifications for all other income sources, such as child support, social security, and/or unemployment benefits;
  - d. **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;
  - e. **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.

3. **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:** 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** 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 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.
4. **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 (and be signed by) each adult household member.
5. **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 Tex. Admin. Code §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 Tex. Admin. Code §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. The Texas Apartment Association 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.

6. **Fair Housing Choice Disclosure Notice:** Must be signed by all new adult applicants at the time of their application, and no more than 120 days prior to the effective date of their lease. This requirement pertains to all households taking initial occupancy, including households transferring within the same development.

If a household was not provided this notice prior to move in or transfer, the property must ensure that the form is signed no more than 120 days and no less than 30 days prior to the date that each household is legally obligated to provide written notice of their intention to terminate or renew their lease. A calculator is available at <http://www.tdhca.state.tx.us/pmcdocs/FHDNoticeCalculator.xls> in order to help calculate the appropriate execution date.

7. **Amenities and Services Notice:** Must be provided to all tenants at the time that the initial lease is signed and whenever amenities and/or services change. There is no set form, but the notice must describe available and/or required amenities and services and must include the following language:
  - a. "The Texas Department of Housing and Community Affairs (the "Department") is responsible for monitoring this Development for compliance with any land use restriction agreement setting forth required common amenities, unit amenities, or services in connection with programs administered by the Department."; and
  - b. The Department contact information including the mailing address, website and toll free phone number.

1d

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**NOVEMBER 13, 2014**

Presentation, Discussion, and Possible Action on an order adopting the repeal of 10 TAC Chapter 10, Subchapter E, concerning Post Award and Asset Management Requirements, and an order adopting new 10 TAC Chapter 10, Subchapter E, and directing its publication in the *Texas Register*.

**RECOMMENDED ACTION**

**WHEREAS**, at its September 2014 meeting the Board approved for publication and public comment in the *Texas Register*, the proposed repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter E, concerning Post Award and Asset Management Requirements. The proposed repeal was published in the *Texas Register* on September 19, 2014, and

**WHEREAS**, at its September 2014 meeting the Board approved for publication and public comment in the *Texas Register*, proposed new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter E, concerning Post Award and Asset Management Requirements. The proposed new rule was published in the *Texas Register* on September 19, 2014. Public comment was accepted through October 20, 2014. Staff received comments from nine commenters and incorporated those non-substantive changes into the final rule for adoption.

Now therefore it is hereby,

**RESOLVED**, that the repeal of 10 TAC, Chapter 10, Subchapter E and the adoption of new 10 TAC, Chapter 10, Uniform Multifamily Rules, Subchapter E, concerning Post Award and Asset Management Requirements are hereby ordered and approved, together with the preambles presented to this meeting, for publication in the *Texas Register*, and

**FURTHER RESOLVED**, that the Executive Director and his designees be and each them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter E, concerning Post Award and Asset Management Requirements, and an order adopting the new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter E, concerning Post Award and Asset Management Requirements §§10.400 – 10.408, in the form presented to this meeting, to be published in the *Texas Register* for final adoption, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

## **BACKGROUND**

The Department's rules regarding Post Award and Asset Management Requirements are part of the Uniform Multifamily Rules at 10 TAC, Chapter 10. Subchapter E describes all activities that occur for multifamily developments after an award or funding decision has been made. The new rule clarifies, corrects, and adds additional information in all sections to ensure accurate processing of post award activities and more effective communication with multifamily development owners regarding their responsibilities after funding or award by the Department.

The new rule was published in the September 19, 2014, issue of the *Texas Register* to allow for public comment. The rule was also posted to the TDHCA website on the same date. A multifamily roundtable workshop was conducted on September 30, 2014, to discuss all sections of the Uniform Multifamily Rules. The public comment period closed on October 20, 2014. Comments were received from nine people. Based on those comments, staff has incorporated changes into the rule proposed today for final adoption.

Attachment A includes the Preamble, Reasoned Response, and Adoption of the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter E, §§10.400 – 10.408, concerning Post Award and Asset Management Requirements for publication in the *Texas Register*. Attachment B includes the Preamble, Reasoned Response, and Adoption of the new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter E, §§10.400 – 10.408, concerning Post Award and Asset Management Requirements for publication in the *Texas Register*.

**Attachment A: Preamble, Reasoned Response, and Repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter E, §§10.400 – 10.408, concerning Post Award and Asset Management Requirements.**

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC, Chapter 10, Subchapter E, §§10.400 – 10.408, concerning Post Award and Asset Management Requirements, without changes, as published in the September 19, 2014 issue of the *Texas Register* (39 TexReg 7443).

REASONED JUSTIFICATION. This repeal was published concurrently with the proposed new 10 TAC, Chapter 10, Subchapter E, §§10.400 – 10.408. The purpose of the repeal is to allow for the adoption of the new rule.

The Department accepted public comments between September 19, 2014 and October 20, 2014. Comments regarding the repeal were accepted in writing via fax and email. No comments were received concerning the proposed repeal.

The Board approved the final order adopting the repeal on November 13, 2014.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Specifically Texas Government Code §2306.141 gives the Department the authority to promulgate rules governing the administration of its housing programs. The repeal affects no other code, article or statute.

§10.400. Purpose.

§10.401. General Commitment or Determination Notice Requirements and Documentation.

§10.402. Housing Tax Credit and Tax Exempt Bond Developments.

§10.403. Direct Loans.

§10.404. Reserve Accounts.

§10.405. Amendments and Extensions.

§10.406. Ownership Transfers (§2306.6713).

§10.407. Right of First Refusal.

§10.408. Qualified Contract Requirements.

**Attachment B the Preamble, Reasoned Response, and Adoption of the new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter E, §§10.400 – 10.408, concerning Post Award and Asset Management Requirements for publication in the *Texas Register*.**

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 10, Subchapter E, §§10.400 -10.408, concerning Post Award and Asset Management Requirements. Sections 10.403, 10.406, 10.407, and 10.408 are adopted with changes to the proposed text as published in the September 19, 2014 issue of the *Texas Register* (39 TexReg 7443). Sections 10.400, 10.401, 10.402, 10.404 and 10.405 are adopted without changes and will not be republished. The purpose of the changes to the sections is to clarify and correct information from the prior rule to ensure accurate processing of post award activities and communicate more effectively with multifamily development owners regarding their responsibilities after funding or award by the Department. Post award activities include requests for action to be considered on developments awarded funding from the Department through the end of the affordability period.

REASONED JUSTIFICATION FOR THE RULE. New 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter E, §§10.400 – 10.408, concerning Post Award and Asset Management Requirements was proposed concurrently with the proposed repeal of the same sections. The new rule clarifies language that was previously potentially causing uncertainty and will ensure accurate processing of post award activities and communicate more effectively with multifamily development owners regarding their responsibilities after funding or award by the Department.

REASONED RESPONSE TO PUBLIC COMMENT AND STAFF RECOMMENDATIONS. The Department's response to all comments received are set out below. The comments and responses include both administrative clarifications and corrections to the amendments recommended by staff and substantive comments on the amendments and the corresponding Departmental responses. Comments and responses are presented in the order they appear in the rules.

Public comments were accepted through October 20, 2014, with nine comments received in writing from: (1) Frank Ainsa, Ainsa Hutson LLP, (2) Rick Morrow, Locke Lord LLP, (3) Douglas W. Clapp, Holland & Knight LLP and John R. Condon, Nixon Peabody LLP, (4) Cynthia Bast, Locke Lord LLP, (5) Andrea Hope J. Steel, Coats Rose, (6) Matt Hull, Texas Association of Community Development Corporations, (7) Sarah Anderson, S Anderson Consulting, (8) K. Nicole Flores, City Real Estate Advisors, Inc., and (9) Frank Jackson, Texas Affiliation of Affordable Housing Providers. Commenters #7, #8, and #9 made comments to the Real Estate Analysis rule §10.302; however, since these comments directly relate to long term feasibility which is also analyzed at cost certification review, these comments will be addressed herein as well.

COMMENT SUMMARY:

Section 10.402 Housing Tax Credit and Tax Exempt Bond Developments



Three commenters provided comment to the REA rules out for public comment. These comments are also correlated with subsection 10.402(j) of the Asset Management rules relating to Cost Certification. Commenter #7, #8, and #9 provided the same general comment regarding long term feasibility analysis through the debt coverage and 65% expense/income ratios used during initial underwriting at application and at cost certification review for the issuance of IRS form 8609.

The commenters made two recommendations regarding the feasibility analysis, which was to “Limit the DCR upper limit test to sizing the award” and “Make both the 65% rule and DCR 1.15 be a determination of infeasibility – rather than one or the other” so that if you exceed the 65% rule, then you must be able to stay about 1.15 at year 15. Specific recommendations to change §10.302(d)(4)(D) Acceptable Debt Coverage Ratio Range and §10.302(i) Feasibility Conclusion will be thoroughly discussed in the response to that section of the rule.

STAFF RESPONSE: Staff believe the recommended changes to be substantive in nature, requiring additional public comment and discussion prior to implementation. A differentiation of the underwriting criteria at cost certification would create an inconsistency with how the evaluation required in IRC Section 42(m) is conducted through the full allocation process.

#### Section 10.403 Direct Loans.

Commenter #2 suggested that the initial statement in subsection (a) is “not entirely clear” as to when the closing is to occur and suggested the following amendment:

(a) Loan Closing. The loan closing must occur no more than nine (9) months from the date of the Direct Loan Commitment, which may be extended with...

STAFF RESPONSE: Staff generally agrees with commenter that the word “of” be added to clarify the Department’s intent.

Commenter #2 suggested that the initial statement in this section is “not entirely clear” as to the number of items required at Closing and suggested the following amendment to subsection (a):

In Preparation for closing any Direct Loan, the Development Owner must submit the items described in paragraphs (1)-(407) of this subsection:...

STAFF RESPONSE: Staff agrees with commenter that by changing the number of items to “7”, the number of items match the actual number of items required at closing.

Commenter #2 suggested that the initial statement in this section “would not be applicable to all transactions” and “the description of the type of assignment and security documents is very broad” and suggested the following amendment to subsection (b):

(b) Loan Documents. The Development Owner is required to execute all loan closing documents required by and in form and substance acceptable to the Legal Division including but 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, Direct Loan contract,

Architect and/or licensed engineer certification of understanding to complete environmental mitigation if such mitigation is identified in HUD's environmental clearance and by the Real Estate Analysis Division, 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, ~~such as the any rights, liens, charges, security interests, ownership interests, mortgages, pledges, hypothecations, or other rights, legally or beneficially, collaterally or directly, to provide protection of the Department against any failure to adhere to the program's requirements.~~

STAFF RESPONSE: Staff agrees with commenter that the revised language proposed in amendment will more accurately reflect the type of documents that the Department typically uses and is more specific to the Department's intent.

Commenter #2 suggested that the initial statement in this section is "not entirely clear" as to the number of items required for Disbursement of Funds and suggested the following amendment to subsection (c):

"The parenthetical "(10)" should be changed to "(9)".

STAFF RESPONSE: Staff agrees with commenter that by changing the number of items to "9", the number of items match the actual number of items required for Disbursement of Funds.

Commenter #2 suggested that the initial statement in this section be changed to allow less funds to be withheld from initial disbursement under certain circumstances at closing and suggested the following amendment to subsection (c):

"(3) the Department will require that at least 50 percent of the funds be withheld from the initial disbursement to allow for period disbursements, or such lesser amount provided it meets all ~~as may be required to meet~~ federal requirements."

STAFF RESPONSE: Staff agrees with commenter and changes have been made.

Commenter #2 suggested that the initial statement in this section be changed to clarify circumstances which the Department can withhold disbursement of Developer fee and suggested the following amendment to subsection (c)(5)(C):

"(C) upon delivery of written notice to the Development Owner, the Department may reasonably withhold any disbursement of developer fees if it reasonably determines is determined that the Development is not progressing as necessary to meet Contract the benchmarks for the timely completion of construction of the Development that is set forth in the loan documents, or that cost overruns may have put the Development Owner's ability to repay its Direct Loan or complete the construction of the Development in accordance with the terms of the loan documents and Development's funds or

~~completion~~ or within budget at material risk.”

STAFF RESPONSE: Staff recommends the language below which gives the Department additional flexibility to withhold disbursement of developer fees in the case that the Development is not meeting the benchmarks for timely completion. Staff felt that adding “reasonably” and “material” as Commenter #2 is requesting would in fact make the language less flexible for the Department.

(C) the Department may reasonably withhold any disbursement of developer fees if it ~~is determined~~ that the Development is not progressing as necessary to meet ~~Contract~~ the benchmarks for the timely completion of construction of the Development that is set forth in the loan documents, or that cost overruns ~~may have put the Development Owner’s ability to repay its Direct Loan or complete the construction of the Development Owner’s ability to repay its Direct Loan or complete the construction of the Development in accordance with the terms of the loan documents and Department’s funds or completion~~ within budget at ~~material~~-risk.

Commenter #2 suggested that the initial statement in this section is “not entirely clear” as to the specific items required for final disbursement of funds and suggested the following amendment to subsection (c)(9):

"(B) A down date endorsement dated at least 30 calendar days after the date of completion as certified on the Certificate of Substantial Completion (AIA Form G704); ~~AIA Form G704.~~"

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

"(E) Receipt ~~receipt~~ of Certificates of Occupancy for New Construction, or a Certificate of Substantial Completion (AIA Form G704); ~~a certification of completion~~ from the Development Architect ~~architects~~ for Rehabilitation; ~~and~~"

"(F) Development completion reports which may include documentation of full compliance with the Uniform Relocation Act, and the Davis Bacon Act, Section 3, if either are applicable to the Development, and any other applicable requirements; and"

"(G) If applicable to the Development, certification ~~Certification~~ from Architect or a licensed engineer

STAFF RESPONSE:

Staff recommends the language below which adds further clarification to the AIA Form G704 and Section 3 as well as addresses punctuation and capitalization issues:

"(B) A down date endorsement dated at least 30 calendar days after the date of completion as certified on the Certificate of Substantial Completion (AIA Form G704); ~~AIA Form G704.~~"

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

"(E) Receipt ~~receipt~~ of Certificates of Occupancy for New Construction, or a Certificate of Substantial Completion (AIA Form G704); ~~a certification of completion~~ from the Development Architect ~~architects~~ for Rehabilitation; ~~and~~"

"(F) Development completion reports which may include documentation of full compliance with the Uniform Relocation Act, ~~and~~ the Davis Bacon Act, and Section 3 of the Housing and Urban Development Act of 1968, ~~if~~

~~either are~~ as applicable to the Development, and any other applicable requirements; and"

"(G) If applicable to the Development, certification ~~Certification~~ from Architect or a licensed engineer that all HUD and REA environmental mitigation conditions have been met."

#### Section 10.406 Ownership Transfers (§2306.6713).

Commenter #1 provided public comment at the board meeting on September 4, 2014 which prompted a revision to the rule proposed to the board. The commenter suggested that the original language was too restrictive in complying with the statute with an undefined "good cause" term. After working with staff, the revised language for subsection (e) was presented to the Board and approved for publishing in the Texas Register to garner public comment.

Commenter #3 and #4 agreed with the revised language in subsection (e) but recommended the addition of language that would cover a default by the HUB general partner wherein the HUB was involuntarily removed. Commenter #3 stated that many times, the HUB general partner becomes "unable or unwilling to perform its duties as a general partner" and sustain the operation of the housing development and therefore, the requirement for a HUB to actively sell of its own volition may not be possible.

Commenter #4 recommended inserting a provision acknowledging that a Development Owner that is unable to find a replacement HUB, after a good faith effort, may request a LURA amendment. Commenter #3 suggested that language in subsection (e) be revised by making the following changes:

(e) Historically Underutilized Business ("HUB") Organizations. If a HUB is the general partner of a Development Owner and it (i) is being removed as the result of a default under the organizational documents of the Development Owner or (ii) determines to sell its ownership interest, in either case, after the issuance of 8609's, the purchaser of that general partnership interest is not required to be a HUB as long as the LURA does not require such continual ownership or a material LURA amendment is approved. Such approval can be obtained concurrent with Board approval described herein. All such transfers must be approved by the Board and require that the Board find that:

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

(2) the participation by the HUB has been substantive and meaningful, or would have been substantial and meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operation of affordable housing; and

(3) the proposed purchaser meets the Department's standards for ownership transfers.

STAFF RESPONSE: The language in this section was revised at the TDHCA Board meeting on September 4, 2014 in response to comment made by Commenter #1. Commenters #3 and #4 support these changes and staff agrees with the commenters and their additional proposed changes and this change has been incorporated as written above. However, Commenter #4 also recommended that language be added regarding the Development Owner's ability to request a LURA amendment. Language specific to a LURA amendment is already in the first paragraph of the subsection.

Staff agrees with all three commenters (aside from the LURA amendment language addition which is already in the rule) and changes have been incorporated as follows:

(e) Historically Underutilized Business (“HUB”) Organizations. If a HUB is the general partner of a Development Owner and it (i) is being removed as the result of a default under the organizational documents of the Development Owner or (ii) determines to sell its ownership interest, in either case, after the issuance of 8609's, the purchaser of that general partnership interest is not required to be a HUB as long as the LURA does not require such continual ownership or a material LURA amendment is approved. Such approval can be obtained concurrent with Board approval described herein. All such transfers must be approved by the Board and require that the Board find that:

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

(2) the participation by the HUB has been substantive and meaningful, or would have been substantial and meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operation of affordable housing; and

(3) the proposed purchaser meets the Department's standards for ownership transfers

#### Section 10.407 Right of First Refusal

Some of the comments described below would require a substantive change to the proposed new rule that was published in the *Texas Register* and, therefore, even if the Department contemplated making the recommended change to the rule, it would need to be republished for public comment on this substantive change. Therefore, the Department may undertake future rulemaking to open §10.407 for public comment with regard to the changes contemplated by these comments.

Commenter #4 made comments to several subsections of this section, including (d), (d)(1)(B), (d)(3), and (e)(2). More specifically, Commenter #4 objects to an extended timeframe of thirty days to process ROFR requests under subsection (d). Currently the rule states that that the Department will review the submitted documents and notify the Development Owner of any deficiencies within five (5) business days of receipt. These packages are often times complex and require extensive review of property specific documents such as an appraisal, purchase contract, LURA, and ROFR price calculation. Because of this, staff proposed a more consistent, 30 day period for review. Commenter #4 argues that this is too long and is a “burdensome delay”.

STAFF RESPONSE: Staff partially agrees with the commenter and has made the following change:

(d) Process. Within ten (10) business days of receipt ~~thirty (30) calendar days of receipt~~ of all required documentation, the Department will review the submitted documents and notify the Development Owner of any deficiencies.

Commenter #4 objects to the additional language in subsection (d)(1)(B) requiring “the Development Owner to continue to go through the non-profit offerors until it finds one that can close”. The actual language added to this subsection clarifies that if the Development Owner accepts an offer from a nonprofit organization and that organization either fails to close or is subsequently not approved during the ownership transfer process under previous participation review, the ROFR requirement will be deemed met as long as there are no other acceptable offers received; implying that if other offers had been received, the Development Owner would need to go through each of these and accept one and proceed to closing with another nonprofit organization.

*STAFF RESPONSE:* Staff understands the commenter concern, however, disagrees with incorporating the change at this time as it is inconsistent with the Departments historic approach to the ROFR. This may be reconsidered when a review of the underlying policies associated with this section is open for public comment.

Commenter #4 objects to the new language in subsection (d)(3) “imposing the most restrictive ROFR period possible” when there is an absence of a defined ROFR period in the LURA. The statute that describes the two-year ROFR time period is found in Section 2306.6726 of the Texas Government Code and was enacted effective September 1, 1997. Commenter #4 proposes that the rule should state that “in the absence of a defined ROFR period in the LURA, any Development that received a tax credit allocation prior to September 1, 1997 should use a 90-day ROFR period and any Development that received a tax credit allocation on or after September 1, 1997 should use the 2-year ROFR period”.

STAFF RESPONSE: Staff agrees with the commenter and change has been incorporated as follows:

(3) If the LURA does not specify a required ROFR posting timeframe, or, ~~in the sole determination of the Department,~~ is unclear on the required ROFR posting timeframe, and the required ROFR value is determined by the Minimum Purchase Price method, any Development that received a tax credit allocation prior to September 1, 1997 is required to post for a 90-day ROFR period and any Development that received a tax credit allocation on or after September 1, 1997 is required to post for a 2-year ROFR period ~~the Development Owner must adhere to the timeframe as~~ described in Texas Government Code, §2306.6726.

Commenter #4 objects to the changes made in subsection (e)(2) regarding the removal of the materiality standard in the review of subsequent ownership transfers that occur after satisfying the ROFR requirement of the LURA and views “the removal of the materiality standard as a fundamental change to the spirit of” the roundtable discussions held during the original drafting of this rule.

STAFF RESPONSE: Staff agrees with the commenter and this change has been incorporated.

Commenter #5 suggested that there be three changes made to subsection (a). The first recommendation is to allow for the termination of the ROFR requirement in the LURA after it is satisfied once. The commenter states that “there is no IRS requirement that once the ROFR has been exercised, that the exercising entity needs to continue to be bound by a ROFR” but the entity will still be bound by the affordability requirements of the LURA. This scenario would allow the purchaser to re-syndicate the Development adding a new placement in service and a new thirty year affordability period. The second recommendation is that the Department allow purchasers that would have qualified for the non-profit set-aside, through an ownership entity structured as a partnership with a for-profit investor and a nonprofit general partner, to purchase the Development without going through the ROFR process. The commenter opined that this would allow the tax benefits to be realized by an investor while still proceeding in line with the purpose of fostering low income housing as a Qualified Nonprofit General Partner and would require any future sale to go through the ROFR process with the LURA and ROFR requirement “entirely undisturbed”. The third recommendation would “allow a sale to any purchaser without going through the ROFR process, but only to the extent that Substantial Rehab will be completed and a new LURA would be put in place that would include a ROFR provision and would cover the new Compliance Period and Extended Use Period”. Commenter recommends the following revision to subsection (a):

(a) General. This section applies to LURAs that provided an incentive for Development Owners to offer a Right of First Refusal (ROFR) to a Qualified ROFR Organization which is defined as a qualified nonprofit organization under §42(h)(5)(c) of the Code or tenant organizations. The Development Owner may market the Property for sale and sell the Property to a Qualified ROFR Organization without going through the ROFR process outlined in this section and such a sale will terminate ongoing application of the ROFR requirement as to any subsequent Development Owner (but will not terminate the LURA or the Qualified Contract Requirements). The Development Owner may market the Property for sale and sell the Property to a purchaser with an ownership structure that would cause the Development to meet the definition of a "qualified low-income housing project" as defined by Section 42(h)(5)(b) without going through the ROFR process outlined in this section and such a sale will not terminate the LURA or the ongoing application of the ROFR requirement to any subsequent Development Owner. The Development Owner may market the Property for sale and sell the Property to any purchaser who is re-syndicating the Development without going through the ROFR process outlined in this section, but only so long as the purchaser is expending the minimum Rehabilitation amounts set forth in §10.101(b)(3) of this Chapter using an allocation of Housing Tax Credits and provided that the existing LURA will be terminated and replaced by a new LURA that shall include a ROFR requirement, regardless of whether any related Housing Tax Credit application or request contemplated including a ROFR provision in its LURA. The purpose of this section is to provide administrative procedures and guidance on the process and valuation of properties under the LURA. All requests for ROFR submitted to the Department, regardless of existing regulations, must adhere to this process. A ROFR request must be made in accordance with the LURA for the Development. If there is a conflict between the Development's LURA and this subchapter, requirements in the LURA supersede the subchapter. If a LURA includes the ROFR provision, the Development Owner may not request a Preliminary Qualified Contract until the requirements outlined in this section

have been satisfied. The Department reviews and approves all ownership transfers, including transfers to a nonprofit or tenant organization through a ROFR. Properties subject to a LURA may not be transferred to an entity that is considered an ineligible entity under the Department's most recent Qualified Allocation Plan. In addition, ownership transfers to a Qualified ROFR Organization during the ROFR period are subject to §1.5 of this title (relating to Previous Participation Reviews). A Qualified ROFR Organization that wishes to pursue the acquisition of a Development through a ROFR but that is not approved for transfer under the Previous Participation Review, pursuant to §1.5 of this title, may appeal the denial to the Board. Satisfying the ROFR requirement does not terminate the LURA or the ongoing application of the ROFR requirement to any subsequent Development Owner.

**STAFF RESPONSE:** Staff thinks the recommended changes to be substantive in nature, requiring additional public comment and discussion prior to implementation, and plans to propose amendments to this specific section of the rule for public comment at an upcoming Board meeting. This action will allow for additional public comment on these changes to assist Department staff with final recommendation to the Board. However, it should be noted that the language in previous QAPs granting a point for providing a ROFR to a non-profit organization was exclusive of §42(h)(5)(C) of the Code and incorporated in the LURA. Throughout this section of the rule, the Department emphasizes that a ROFR request must be made in accordance with the LURA for the Development. The ROFR section of a Development's LURA references only §42(h)(5)(C) of the Code and therefore, the Development must be offered to an entity that meets the requirements of this section only.

Commenter #6 suggested that “several nonprofits have concerns with appraisals related to the LIHTC 15-year end of compliance and nonprofit right of first refusal for property purchases.” This stems from Development Owners who protest tax assessment appraisals to the appraisal districts to keep property values as low as possible to minimize their tax obligations while they own the property but then seek appraisals that “seem based on market rate rents, not restricted rents at the end of the compliance period” for the purpose of requesting to go through the ROFR process under the fair market value assumption. In the opinion of this commenter, this inconsistency in appraisal valuation results in the ROFR price “being artificially high, often at levels that would require an amount of debt that cannot be supported with cash flow from rents”. Commenter recommends a policy that encourages the sale of LIHTC properties at the end of the 15-year compliance period “at or below the appraisal district's valuation of the property”.

The subsection this commenter is addressing, although not specifically identified in their letter, is (c)(2)(B) which states that the appraisal submitted must be completed within the last three months prior to submission of the ROFR request and comply with Subchapter D relating to Underwriting and Loan Policy. The appraisal should take into account the existing and continuing requirements to operate the Property under the LURA and any other restrictions that may exist.

**STAFF RESPONSE:** Staff disagrees with commenter. Subchapter D, §10.304(d)(10), requires appraisers to conduct various value estimates and base their final value on the “as-is as-restricted” value and therefore, the commenter's statement that values seem based on market rate rents, is not supported by current rule and processing.



## Section 10.408 Qualified Contract

Commenter #4 objects to the revised language in subsection (b)(2)(E) that adds a requirement to submit a physical condition assessment in the preliminary qualified contract request. Pursuant to §2306.186(e) of the Texas Government Code, beginning with the 11<sup>th</sup> year after the awarding of financial assistance the Development Owner is to contract for a third-party physical needs assessment at appropriate intervals that are consistent with the lender requirements. If the first lien lender does not require a third-party physical needs assessment or if the Department is the first lien lender, the physical needs assessment should be conducted at least once during each five-year period beginning with the 11<sup>th</sup> year after the award with copies submitted to the Department.

STAFF RESPONSE: Staff agrees with the commenter and this change has been incorporated by deleting subsection (b)(2)(E) in its entirety.

~~(E) a copy of the most recent property condition assessment of the property consistent with Subchapter D of this chapter and in accordance with the requirement described in Texas Government Code, §2306.186(e).~~

The Board approved the final order adopting the new sections on November 13, 2014.

STATUTORY AUTHORITY. The new sections were adopted pursuant to the authority of Texas Government Code, §2306.053, which authorizes the Department to adopt rules. Specifically Texas Government Code §2306.141 gives the Department the authority to promulgate rules governing the administration of its housing programs. The proposed adoption affects no other code, article or statute.

### *§10.400.Purpose.*

The purpose of this subchapter is to establish the requirements governing the post award and asset management activities associated with awards of multifamily development assistance pursuant to Texas Government Code, Chapter 2306 and its regulation of multifamily funding provided through the Texas Department of Housing and Community Affairs (the "Department") as authorized by the legislature. This subchapter is designed to ensure that Developers and Development Owners of low-income Developments that are financed or otherwise funded through the Department maintain safe, decent and affordable housing for the term of the affordability period. Therefore, unless otherwise indicated in the specific section of this subchapter, any uncorrected issues of noncompliance outside of the Corrective Action Period or outstanding fees (related to the Development subject to the request) owed to the Department, must be resolved, as detailed in each subsection, before a request for any post award activity described in this subchapter will be completed.

### *§10.401.General Commitment or Determination Notice Requirements and Documentation.*

(a) A Commitment or Determination Notice shall not be issued with respect to any Development for an unnecessary amount or where the cost for the total development, acquisition, construction or rehabilitation exceeds the limitations established from time to time by the Department and the Board.

(b) All Commitments or Determination Notices, whether reflected in the Commitment or Determination Notice or not, are made subject to full compliance with all provision of law and rule, including compliance with the Qualified Allocation Plan, the Uniform Multifamily Rules, the Multifamily Housing Revenue Bond Rules, completion of underwriting and satisfactory compliance with the results thereof, full and satisfactory addressing of any Administrative Deficiencies and conditions of award, Commitment, Contract or any other matters.

(c) The Department shall notify, in writing, the mayor, chief county judge, or other appropriate official of the municipality or county, as applicable, in which the Development is located informing him/her of the Board's issuance of a Commitment or Determination Notice, as applicable.

(d) The Department may cancel a Commitment, Determination Notice or Carryover Allocation prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or completion of construction with respect to a Development and/or apply administrative penalties if:

(1) the Applicant or the Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure to meet any of the conditions of such Commitment, Determination Notice or Carryover Allocation or any of the undertakings and commitments made by the Development Owner in the Application process for the Development;

(2) any material statement or representation made by the Development Owner or made with respect to the Development Owner or the Development is untrue or misleading;

(3) an event occurs with respect to the Applicant or the Development Owner which would have made the Application ineligible for funding pursuant to Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules or Pre-Clearance for Applications) if such event had occurred prior to issuance of the Commitment, Determination Notice or Carryover Allocation; or

(4) the Applicant or the Development Owner or the Development, as applicable, fails after written notice and a reasonable opportunity to cure to comply with this chapter or other applicable Department rules or the procedures or requirements of the Department.

(e) Direct Loan Commitment. The Department shall execute, with the Development Owner, a Commitment which shall confirm that the Board has approved the loan and provide the loan terms. The Commitment may be abbreviated and will generally not express all terms and conditions that will be included in the loan documents. Department staff may choose to issue an "Award Letter" in lieu of a Commitment in instances in which a Federal Commitment cannot be made until loan closing or until all financing is secured. An Award Letter is subject to all of the same terms and conditions as a Commitment except that it may not constitute a Federal

Commitment. For HOME Direct Loans, an actual Federal Commitment may not occur in the HUD IDIS system until all financing is secured or loan closing, whichever comes first, at which time all terms and conditions will be included in the loan documents. The Award Letter shall list an expiration date no earlier than thirty (30) days from the date issued by the Department unless signed and returned. To the extent the terms reflected in an Award Letter are amended by the Department, a new Award Letter would be issued by the Department to govern the award.

*§10.402.Housing Tax Credit and Tax Exempt Bond Developments.*

(a) Commitment. For Competitive HTC Developments the Department shall issue a Commitment to the Development Owner which shall confirm that the Board has approved the Application and state the Department's commitment to make a Housing Credit Allocation to the Development Owner in a specified amount, subject to the feasibility determination described in Subchapter D of this chapter (relating to Underwriting and Loan Policy) and that the Development satisfies the requirements of this chapter and other applicable Department rules. The Commitment shall expire on the date specified therein, which shall be thirty (30) calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Commitment, pays the required fee specified in §10.901 of this chapter (relating to Fee Schedule), and satisfies any conditions set forth therein by the Department. The Commitment expiration date may not be extended.

(b) Determination Notices. For Tax Exempt Bond Developments the Department shall issue a Determination Notice which shall confirm the Board's determination that the Development satisfies the requirements of this chapter as applicable and other applicable Department rules in accordance with the §42(m)(1)(D) of the Internal Revenue Code (the "Code"). The Determination Notice shall also state the Department's commitment to issue IRS Form(s) 8609 to the Development Owner in a specified amount, subject to the requirements set forth in the Department's rules, as applicable. The Determination Notice shall expire on the date specified therein, which shall be thirty (30) calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Determination Notice, pays the required fee specified in §10.901 of this chapter and satisfies any conditions set forth therein by the Department. The Determination Notice expiration date may not be extended without prior Board approval for good cause. The Determination Notice will terminate if the Tax Exempt Bonds are not closed within the timeframe provided for by the Board on its approval of the Determination Notice or if the financing or Development changes significantly as determined by the Department pursuant to its rules and any conditions of approval included in the Board approval or underwriting report.

(c) The amount of tax credits reflected in the IRS Form(s) 8609 may be greater or less than the amount set forth in the Determination Notice based upon the Department's and the bond issuer's determination as of each building's placement in service. Any increase of tax credits, from the amount specified in the Determination Notice, at the time of each building's placement in service will only be permitted if it is determined necessary by the Department, as required by §42(m)(2)(D) of the Code through the submission of the Cost Certification package. Increases to the amount of tax credits that exceed 110 percent of the amount of credits reflected in the Determination Notice are contingent upon approval by the Board. Increases to the amount of tax

credits that do not exceed 110 percent of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director. Increases to the tax credit amount are subject to the Credit Increase Fee as described in §10.901 of this chapter.

(d) Documentation Submission Requirements at Commitment of Funds. No later than the expiration date of the Commitment (or no later than December 31 for Competitive HTC Applications, whichever is earlier) or Determination Notice, the documentation described in paragraphs (1) - (6) of this subsection must be provided. Failure to provide these documents may cause the Commitment or Determination Notice to be rescinded:

(1) for entities formed outside the state of Texas, evidence that the entity filed a Certificate of Application for foreign qualification in Texas, a Franchise Tax Account Status from the Texas Comptroller of Public Accounts and a Certificate of Fact from the Office of the Secretary of State. If the entity is newly registered in Texas and the Franchise Tax Account Status or Certificate of Fact are not available, a statement can be provided to that effect;

(2) for Texas entities, a copy of the Certificate of Filing for the Certificate of Formation from the Office of the Secretary of State; a Certificate of Fact from the Secretary of State and a Franchise Tax Account Status from the Texas Comptroller of Public Accounts. If the entity is newly registered and the Certificate of Fact and the Franchise Tax Account Status are not available, a statement can be provided to that effect;

(3) evidence that the signer(s) of the Commitment or Determination Notice have the authority to sign on behalf of the Applicant in the form of a corporate resolution which indicates the sub-entity in Control and that the Person(s) signing the Application constitute all Persons required to sign or submit such documents;

(4) evidence of final zoning that was proposed or needed to be changed pursuant to the Development plan;

(5) evidence of satisfaction of any conditions identified in the Real Estate Analysis report or any other conditions of the award required to be met at Commitment or Determination Notice; and

(6) documentation of any changes to representations made in the Application subject to §10.405 of this chapter (relating to Amendments and Extensions).

(e) Post Bond Closing Documentation Requirements.

(1) Regardless of the issuer of the bonds, no later than sixty (60) calendar days following closing on the bonds, the Development Owner must submit:

(A) a Management Plan and an Affirmative Marketing Plan created in compliance with the Department's Affirmative Marketing Rule in §10.617 of Subchapter F;

(B) A training certificate from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager has attended at least five (5) hours of Fair Housing training within the last year;

(C) A training certificate from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineer responsible for certifying compliance with the Department's accessibility and construction standards has attended at least five (5) hours of Fair Housing training within the last year;

(D) evidence that the financing has closed, such as an executed settlement statement; and

(E) if the Development has an existing LURA with the Department, a fully executed and recorded Agreement of Assignment and Assumption of LURA (aka "Agreement to Comply").

(2) Certifications required under paragraph (1)(B) and (C) of this subsection must not be older than two (2) years from the date of the submission deadline.

(f) Carryover (Competitive HTC Only). All Developments which received a Commitment, and will not be placed in service and receive IRS Form(s) 8609 in the year the Commitment was issued, must submit the Carryover documentation, in the form prescribed by the Department in the Carryover Manual, no later than the Carryover Documentation Delivery Date as identified in §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) of the year in which the Commitment is issued pursuant to §42(h)(1)(C) of the Code.

(1) Commitments for credits will be terminated if the Carryover documentation has not been received by this deadline, unless an extension has been approved. This termination is final and not appealable, and immediately upon issuance of notice of termination staff is directed to award the credits to other qualified Applicants based on the approved waiting list.

(2) If the interim or permanent financing structure, syndication rate, amount of debt or syndication proceeds are finalized but different at the time of Carryover from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be reevaluated by the Department and a reduction of credit or change in conditions may result.

(3) All Carryover Allocations will be contingent upon the Development Owner providing evidence that they have and will maintain Site Control through the 10 Percent Test or through the anticipated closing date, whichever is earlier. For purposes of this paragraph, Site Control must be identical to the Development Site that was submitted at the time of Application submission as determined by the Department.

(4) Confirmation of the right to transact business in Texas, as evidenced by the Franchise Tax Account Status (the equivalent of the prior Certificate of Account Status) from the Texas Comptroller of Public Accounts and a Certificate of Fact from the Office of the Secretary of State must be submitted with the Carryover Allocation.

(g) 10 Percent Test (Competitive HTC Only). No later than July 1 of the year following the submission of the Carryover Allocation Agreement, documentation must be submitted to the Department verifying that the Development Owner has expended more than 10 percent of the Development Owner's reasonably expected basis, pursuant to §42(h)(1)(E)(i) and (ii) of the Code (as amended by The Housing and Economic Recovery Act of 2008), and Treasury Regulations, §1.42-6. The Development Owner must submit, in the form prescribed by the Department, documentation evidencing paragraphs (1) - (5) of this subsection, along with all information outlined in the Post Carryover Activities Manual. Satisfaction of the 10 Percent Test will be contingent upon the submission of the items described in paragraphs (1) - (5) of this subsection as well as all other conditions placed upon the Application in the Commitment. Documentation to be submitted includes:

(1) an Independent Accountant's Report and Taxpayer's Basis Schedule form. The report must be prepared on the accounting firm's letterhead and addressed to the Development Owner or an Affiliate of the Development Owner. The Independent Accountant's Report and Taxpayers Basis Schedule form must be signed by the Development Owner.

(2) evidence that the Development Owner has purchased, transferred, leased, or otherwise has ownership of the Development Site;

(3) for New Construction, Reconstruction, and Adaptive Reuse Developments, a certification from a Third Party civil engineer or architect stating that all necessary utilities will be available at the Development Site and that there are no easements, licenses, royalties, or other conditions on or affecting the Development that would materially and adversely impact the ability to acquire, develop, and operate as set forth in the Application. Copies of such supporting documents will be provided upon request;

(4) For the Development Owner and on-site or regional property manager, a training certificate from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager attended at least five (5) hours of Fair Housing training. For architects and engineers, a training certificate from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineers responsible for certifying compliance with the Department's accessibility and construction standards has attended at least five (5) hours of Fair Housing training within the last year. Training certificates must demonstrate training on or before the date the 10 Percent Test Documentation is submitted; and

(5) a Certification from the lender and syndicator identifying all Guarantors known at that time.

(h) Construction Status Report. Within three (3) months of the close of the construction loan or partnership agreement, whichever comes first, and every quarter thereafter all multifamily developments must submit a construction status report. The initial report shall consist of the items identified in paragraphs (1) - (4) of this subsection. All subsequent reports shall contain items identified in paragraphs (3) and (4) of this subsection and must include any changes or amendments to items in paragraphs (1) - (2) if applicable. Construction status reports shall be due by the tenth day of the month following each quarter end (January, April, July, and October)

and continue on a quarterly basis until the entire development is complete as evidenced by the final Application and Certificate for Payment (AIA Document G702 and G703) or equivalent form approved for submission by the construction lender and/or investor. The construction status report submission consists of:

(1) the executed partnership agreement with the investor (identifying all Guarantors) or other documents setting forth the legal structure and ownership;

(2) the executed construction contract and construction loan agreement. If the loan has not closed, the anticipated closing date must be provided and, upon closing, the agreement must be provided to the Department;

(3) the most recent Application and Certificate for Payment (AIA Document G702 and G703) certified by the Architect of Record (or equivalent form approved for submission by the construction lender and/or investor); and

(4) all Third Party construction inspection reports not previously submitted.

(i) LURA Origination (Competitive HTC Only). The Department will draft a LURA for the Development Owner that will impose the income and rent restrictions identified in the Development's final underwriting report and other representations made in the Application, including but not limited to specific commitments to provide tenant services, to lease to Persons with Disabilities and/or to provide specific amenities. The executed LURA and all exhibits and addendums will be sent to the Development Owner whereupon the Development Owner will then execute the LURA and have the fully-executed document recorded in the real property records for the county in which the Development is located. The original recorded LURA must be returned to the Department no later than the end of the first year of the Credit Period. In general, no Housing Tax Credits are allowed to be issued for a building unless there is a properly executed and recorded LURA in effect at the end of the first year of the Credit Period. Nothing in this section negates a Development Owner's responsibility for full compliance with §42(h)(6) of the Code. The Department will not issue IRS Form(s) 8609 until it receives the original, properly-recorded LURA, or has alternative arrangements which are acceptable to the Department and approved by the Executive Director. In instances where the document is electronically recorded and the electronic recorded file is provided to the Department, the Development Owner will not be responsible for returning the original and executed LURA in addition to the electronic version.

(j) Cost Certification. The Department conducts a feasibility analysis in accordance with §42(m)(2)(C)(i)(III) of the Code and Subchapter D of this chapter (relating to Underwriting and Loan Policy) to make a final determination on the allocation of Housing Tax Credits. The requirements for cost certification include those identified in paragraphs (1) - (3) of this subsection.

(1) Development Owners must file cost certification documentation no later than January 15 following the first year of the Credit Period, as defined in §42(f)(1) of the Code.

(2) The Department will evaluate the cost certification documentation and notify the Development Owner of any additional required documentation. The Department reserves the right to request additional documents or certifications as it deems necessary or useful in the determination of the Development's eligibility for a final Housing Tax Credit allocation amount. Any communication issued to the Development Owner pertaining to the cost certification documentation may also be sent to the syndicator.

(3) IRS Form(s) 8609 will not be issued until the conditions as stated in subparagraphs (A) - (H) of this paragraph have been met. The Development Owner has:

(A) provided evidence that all buildings in the Development have been placed in service by:

(i) December 31 of the year the Commitment was issued;

(ii) December 31 of the second year following the year the Carryover Allocation Agreement was executed; or

(iii) the approved Placed in Service deadline;

(B) provided a complete final cost certification package in the format prescribed by the Department. As used herein, a complete final cost certification package means a package that meets all of the Department's criteria with all required information and exhibits listed in clauses (i) - (xxxviii) of this subparagraph, and pursuant to the Post Carryover Activities Manual. If any item on this list is determined to be deficient or inconsistent with the cost certification review completed by the Department, a Request for Information (RFI) will be sent to the Development Owner. Failure to respond to the requested information within a thirty (30) day period from the date of request may result in the termination of the cost certification review and request for 8609s and require a new request be submitted with a Cost Certification Extension Fee as described in Subchapter G of this chapter (relating to Fee Schedule, Appeals and Other Provisions). Furthermore, cost certification reviews that remain open for an extended period of time (more than 365 days) will be reported to the EARAC during any related party previous participation review conducted by the Department.

(i) Cost Certification Requirements List

(ii) Owner's Statement of Certification

(iii) Owner Summary & Organization Chart

(iv) Carryover or Determination Notice

(v) Evidence of Nonprofit and CHDO Participation

(vi) Evidence of Historically Underutilized Business (HUB) Participation

(vii) Development Team



- (viii) Development Summary with Architect's Certification
- (ix) Development Change Documentation
- (x) As Built Survey
- (xi) Closing Statement
- (xii) Title Policy
- (xiii) Title Policy Update
- (xiv) Placement in Service
- (xv) Evidence of Placement in Service
- (xvi) Architect's Certification of Completion Date and Date Ready for Occupancy
- (xvii) Auditor's Certification of Acquisition/Rehabilitation Placement in Service Election
- (xviii) Independent Auditor's Report
- (xix) Independent Auditor's Report of Bond Financing
- (xx) Development Cost Schedule
- (xxi) Contractor's Application for Final Payment (G702/G703)
- (xxii) Additional Documentation of Offsite Costs
- (xxiii) Rent Schedule
- (xxiv) Utility Allowances
- (xxv) Annual Operating Expenses
- (xxvi) 15 Year Rental Housing Operating Pro Forma
- (xxvii) Current Operating Statement
- (xxviii) Current Rent Roll
- (xxix) Summary of Sources and Uses of Funds
- (xxx) Financing Narrative

- (xxxix) Final Limited Partnership Agreement
- (xxxii) Loan Agreements and Promissory Notes
- (xxxiii) Architect's Certification of Fair Housing Requirements
- (xxxiv) Development Owner Assignment of Individual to Compliance Training
- (xxxv) TDHCA Compliance Training Certificate
- (xxxvi) Recorded Land Use Restriction Agreement (LURA)
- (xxxvii) TDHCA Final Inspection Clearance Letter
- (xxxviii) Other Documentation as Required

(C) informed the Department of and received written approval for all amendments, extensions, and changes in ownership relating to the Development in accordance with §10.405 of this chapter (relating to Amendments and Extensions) and §10.406 of this chapter (relating to Ownership Transfers (§2306.6713));

(D) paid all applicable Department fees, including any past due fees;

(E) met all conditions noted in the Department underwriting report;

(F) corrected all issues of noncompliance, including but not limited to noncompliance status with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for the subject Development, as described in this chapter. Developments with any uncorrected issues of noncompliance, outside of the Corrective Action Period, will not be issued IRS Form(s) 8609s until all events of noncompliance are corrected or otherwise approved by the Executive Award Review and Advisory Committee;

(G) received all required environmental clearances and met all mitigation requirements. Developments that received HOME funding from the Department will not be issued IRS Forms(s) 8609 until a certification has been received from the Architect or Engineer of record stating that all clearance and mitigation requests have been met; and

(H) completion by the Department of an updated underwriting evaluation in accordance with Subchapter D of this chapter based on the most current information at the time of the review.

*§10.403. Direct Loans.*

(a) Loan Closing. The loan closing must occur no more than nine (9) months from the date of the Commitment or similar document is executed, which may be extended in accordance with the provisions in this subchapter. In preparation for closing any Direct Loan, the Development Owner must submit the items described in paragraphs (1) – ~~(10)~~(7) of this subsection:

(1) documentation of the prior or reasonable assurance of a concurrent closing with any superior lien holders or any other sources of funds determined to be necessary for the long-term financial feasibility of the Development and all due diligence determined by the Department to be prudent and necessary to meet the Department's rules and to secure the interests of the Department. Where the Department will have a first lien position and the Applicant provides documentation that closing on other sources is reasonably expected to occur within three (3) months, the Executive Director or authorized designee may approve a closing to move forward without the closing on other sources. The Executive Director as the authorized designee of the Department must require a personal guarantee, in form and substance acceptable to the Department, from a Principal of the Development Owner for the interim period;

(2) when Department funds have a first lien position, assurance of completion of the Development in the form of payment and performance bonds in the full amount of the construction contract will be required or equivalent guarantee in the sole determination of the Department. Such assurance of completion will run to the Department as obligee. Development Owners also utilizing the USDA §515 program are exempt from this requirement but must meet the alternative requirements set forth by USDA;

(3) Owner/General Contractor agreement and Owner/ Architect agreement;

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

(5) if layered with Housing Tax Credits, a fully executed limited partnership agreement between the General Partner and the tax credit investor entity (may be provided concurrent with closing);

(6) a revised development cost schedule, sources and uses, operating proforma, planned cost categories for the use of Direct Loan funds, updated written financial commitments/term sheets and any additional budget schedules that have changed since the time of application. If the budget or sources of funds reflect material changes from what was approved by the Board that may affect the financial feasibility of the Development, the Department may request additional documentation to ensure that the Development continues to meet the requirements of Subchapter D of this chapter (relating to Underwriting and Loan Policy);

(7) if required for the Direct Loan, prior to closing, the Development Owner must have received verification of:

(A) environmental clearance;

(B) verification of HUD Site and Neighborhood clearance;

(C) documentation necessary to show compliance with the Uniform Relocation Act and any other relocation requirements that may apply; and

(D) any other documentation that is necessary or prudent to meet program requirements or state or federal law in the sole determination of the Department.

(b) Loan Documents. The Development Owner is required to execute all loan closing documents required by and in form and substance acceptable to the Legal Division including but 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, HOME contract, Architect and/or licensed engineer certification of understanding to complete environmental mitigation if such mitigation is identified in HUD's environmental clearance and by the Real Estate Analysis Division (REA) 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~~any rights, liens, charges, security interests, ownership interests, mortgages, pledges, hypothecations, or other rights, legally or beneficially, collaterally or directly, to provide for the protection of the Department against any failure to adhere to the program's requirements.~~ Repayment provisions will require repayment on a per unit basis for units that have not been rented to eligible households within eighteen (18) months of project completion; termination and repayment of the HOME award in full will be required for any development that is not completed within four (4) years of the date of funding commitment.

(c) Disbursement of Funds (including developer fees). The Development Owner must comply with the requirements in paragraphs (1) – ~~(4)~~(9) of this subsection for a request for disbursement of funds to reimburse eligible costs incurred. Submission of documentation related to the Development Owner's compliance with these requirements may be required with a request for disbursement:

(1) except for disbursement requests made for acquisition and closing costs or requests made for soft costs only, a down-date endorsement to the title policy not older than the Architect's certification date on AIA form G702 or sixty (60) calendar days, whichever is later. For release of retainage the down-date endorsement must be dated at least thirty (30) calendar days after the date of the construction completion as certified on the Certificate of Substantial Completion (AIA Form G704);

(2) for hard construction costs, 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 or G703;

(3) the Department will require that at least 50 percent of the funds be withheld from the initial disbursement to allow for periodic disbursements, or such lesser amount provided it meets all as ~~may be necessary to meet~~ federal requirements. For HOME Direct Loans: The initial draw request for the development must be entered no later than ten business days prior to the one year anniversary of the commitment date (as defined in 24 CFR Part 92) or funds may be cancelled in HUD's IDIS system;

(4) if applicable, up to 75 percent of Direct Loan funds may be drawn before providing evidence of Match. Thereafter, each Development Owner must provide evidence of Match in the form of a

formal contract or commitment with the vendor clearly delineating the donated portion of the contract price, invoices showing the forgiven amount, or other equally verifiable third party documentation prior to release of the final 25 percent of funds. If funds are requested on the day of closing, an executed formal contract specifying the terms of the Match must be provided;

(5) Developer fee disbursement shall be conditioned upon:

(A) for Developments in which the loan is secured by a first lien deed of trust against the Property, 75 percent shall be disbursed in accordance with percent of construction completed (i.e. 75 percent 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 percent shall be disbursed at the time of release of retainage; or

(B) 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 unless the other lenders and syndicator confirm in writing 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. Provided this requirement is met, developer fees shall be reimbursed in the same manner as described in subparagraph (A) of this paragraph; and

(C) the Department may reasonably withhold any disbursement of developer fees if it ~~is determined~~ that the Development is not progressing as necessary to meet ~~Contract—the benchmarks for the timely completion of construction of the Development that is set forth in the loan documents,~~ or that cost overruns ~~may have put the Development Owner's ability to repay its Direct Loan or complete the construction of the Development Owner's ability to repay its Direct Loan or complete the construction of the Development in accordance with the terms of the loan documents and Department's funds or completion~~ within budget at ~~material~~ risk. Once a reasonable alternative that is deemed acceptable by the Department has been provided, disbursement of the remaining fee may occur;

(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 requested. 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. For HOME Direct Loans: Pre-award costs for predevelopment activities, as specified in the loan documents, are allowable only if they were incurred less than 24 months prior to the commitment date (as defined in 24 CFR Part 92) and were associated with the Application Round in which the project was awarded;

(7) table funding requests will not be considered unless:

(A) a "Commitment to a specific local project" as defined in 24 CFR Part 92 has been made, if applicable; and

(B) ten (10) days prior to anticipated closing, all table funding draw documentation has been completed and submitted to the Department;

(8) each Development Owner must request a progress inspection from Department staff once the property passes 25 percent construction completion based on the AIA G702-703. Up to 50 percent of the HOME award will be released prior to receipt of documentation that the progress inspection has occurred;

(9) Following fifty percent construction completion, the remaining HOME funds will be released in accordance with the percentage of construction completion, not to exceed ninety percent of award, at which point funds will be held as retainage until the final draw request. Retainage will be held until all of the items described in subparagraphs (A) - (G) of this paragraph are received:

(A) Certificate of Substantial Completion (AIA Form G704);

(B) A down date endorsement dated at least 30 calendar days after the date of completion as certified on the Certificate of Substantial Completion ~~on~~ (AIA Form G704);

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

(D) For developments subject to the Davis-Bacon Act, evidence from the Senior Labor Standards Specialist that the final wage compliance report was received and approved;

(E) ~~Receipt~~ of Certificates of Occupancy for New Construction or ~~a certification of completion from the Development architect~~ a Certificate of Substantial Completion (AIA Form G704); from from the Development Architect for Rehabilitation;

(F) Development completion reports which may include documentation of full compliance with the Uniform Relocation Act, ~~and Davis-Bacon Act,~~ and Section 3 of the Housing and Urban Development Act of 1968, and any other applicable requirements as applicable to the Development, and any other applicable requirement; and

(G) If applicable to the Development, Certification from Architect or a licensed engineer that all HUD and REA environmental mitigation conditions have been met.

#### *§10.404. Reserve Accounts.*

(a) Replacement Reserve Account (§2306.186). The Department will require Development Owners to provide regular maintenance to keep housing sanitary, safe and decent by establishing and maintaining a reserve for replacement account for the Development in accordance with Texas Government Code, §2306.186. The reserve account must be established, in accordance with paragraphs (3), (4), (5), and (6) of this subsection, and maintained through annual deposit, for each Unit in a Development of 25 or more rental units regardless of the amount of rent charged for the Unit. If the Department is processing a request for loan modification or other workout request, and the Development does not have an existing replacement reserve account

sufficient to meet future capital expenditure needs of the Development, the Development Owner will be required to establish and maintain a replacement reserve account regardless of the number of units at the Development. The Department shall, through cooperation of its divisions responsible for asset management and compliance, ensure compliance with this section. The duties of the Development Owner under this section cease on the date of a change in ownership of the Development; however, the subsequent Development Owner of the Development is subject to the requirements of this section.

(1) The LURA requires the Development Owner to begin making annual deposits to the replacement reserve account on the later of the:

(A) date that occupancy of the Development stabilizes as defined by the First Lien Lender or, in the absence of a First Lien Lender other than the Department, the date the Property is at least 90 percent occupied; or

(B) the date when the permanent loan is executed and funded.

(2) The Development Owner shall continue making deposits into the replacement reserve account until the earliest of the:

(A) date on which the owner suffers a total casualty loss with respect to the Development or the date on which the Development becomes functionally obsolete, if the Development cannot be or is not restored;

(B) date on which the Development is demolished;

(C) date on which the Development ceases to be used as a multifamily rental property; or

(D) end of the Affordability Period specified by the LURA or the end of the repayment period of the first lien loan.

(3) If the Department is the First Lien Lender with respect to the Development or if the establishment of a Reserve Account for repairs has not been required by the First Lien Lender or Bank Trustee, each Development Owner receiving Department assistance for multifamily rental housing shall deposit annually into a Reserve Account through the date described in paragraph (2) of this subsection.

(A) For New Construction Developments, not less than \$250 per Unit; or

(B) For Adaptive Reuse, Rehabilitation and Reconstruction Developments, the greater of the amount per Unit per year either established by the information presented in a Property Condition Assessment in conformance with Subchapter D of this chapter (relating to Underwriting and Loan Policy) or \$300 per Unit per year.

(4) For all Developments, a Property Condition Assessment ("PCA") will be conducted at appropriate intervals that are consistent with requirements of the First Lien Lender, other than

the Department. If the Department is the First Lien Lender, or the First Lien Lender does not require a Third Party PCA, a PCA will be conducted at least once during each five (5) year period beginning with the eleventh (11th) year after the awarding of any financial assistance from the Department.

(5) Where there is a First Lien Lender other than the Department or a Bank Trustee as a result of a bond trust indenture or tax credit syndication, the Development Owner shall comply with the lesser of the replacement reserve requirements of the First Lien Lender or the requirements in paragraph (3) of this section. In addition, the Department should be listed as a party to receive notice under any replacement reserve agreement entered into by the Development Owner. The Development Owner shall submit on an annual basis within the Department's required Development Owner's Financial Certification packet a statement describing:

(A) the reserve for replacement requirements under the first lien loan agreement (if applicable) referencing where those requirements are contained within the loan documents;

(B) compliance with the first lien lender requirements outlined in paragraph (A) of this subsection; and

(C) if the Owner is not in compliance with the lender requirements, the Development Owner's plan of action to bring the Development in compliance with all established reserve for replacement requirements.

(6) Where there is no First Lien Lender but the allocation of funds by the Department and Texas Government Code, §2306.186 requires that the Department oversee a Reserve Account, the Development Owner shall provide at their sole expense for appointment of an escrow agent acceptable to the Department to act as Bank Trustee as necessary under this section. The Department shall retain the right to replace the escrow agent with another Bank Trustee or act as escrow agent at a cost plus fee payable by the Development Owner due to breach of the escrow agent's responsibilities or otherwise with thirty (30) days prior notice of all parties to the escrow agreement.

(7) Penalties and Non-Compliance. If the Development Owner fails to comply with the replacement reserve account requirements stated herein, and request for extension or waiver of these requirements is not approved by the Department, then a penalty of up to \$200 per dwelling Unit in the Development and/or characterization of the Development as being in default with this requirement, may be imposed:

(A) a Reserve Account, as described in this section, has not been established for the Development;

(B) the Department is not a party to the escrow agreement for the Reserve Account, if required;

(C) money in the Reserve Account:

(i) is used for expenses other than necessary repairs, including property taxes or insurance; or



(ii) falls below mandatory deposit levels;

(D) Development Owner fails to make a required deposit;

(E) Development Owner fails to obtain a Third-Party Property Condition Assessment as required under this section; or

(F) Development Owner fails to make necessary repairs in accordance with the third party property condition assessment or §10.621 of this chapter (relating to Property Condition Standards).

(8) Department-Initiated Repairs. The Department or its agent may make repairs to the Development if the Development Owner fails to complete necessary repairs indicated in the submitted Property Condition Assessment or identified by Department physical inspection. Repairs may be deemed necessary if the Development Owner fails to comply with federal, state, and/or local health, safety, or building code requirements. Payment for necessary repairs must be made directly by the Development Owner or through a replacement Reserve Account established for the Development under this section. The Department or its agent will produce a Request for Bids to hire a contractor to complete and oversee necessary repairs. On a case-by-case basis, the Department may determine that the money in the Reserve Account may be used for expenses other than necessary repairs, including property taxes or insurance, if:

(A) Development income before payment of return to Development Owner or deferred developer fee is insufficient to meet operating expense and debt service requirements; and the funds withdrawn from the Reserve Account are replaced as Cash Flow after payment of expenses, but before payment of return to Development Owner or Developer; or

(B) Development income after payment of operating expenses, but before payment of return to Development Owner or deferred developer fee is insufficient to fund the mandatory deposit levels; and subsequent deposits to the Reserve Account exceed mandatory deposit levels as Cash Flow after payment of operating expenses, but before payment of return to Development Owner or deferred developer fee is available until the Reserve Account has been replenished to the mandatory deposit level less capital expenses to date.

(9) Exceptions to Replacement Reserve Account. This section does not apply to a Development for which the Development Owner is required to maintain a Reserve Account under any other provision of federal or state law.

(b) Lease-up Reserve Account. A lease-up reserve funds start-up expenses in excess of the revenue produced by the Development prior to stabilization. The Department will consider a reasonable lease-up reserve account based on the documented requirements from a third-party lender, third-party syndicator, or the Department. During the underwriting at the point of the Cost Certification review, the lease-up reserve may be counted as a use of funds only to the extent that it represents operating shortfalls net of escrows for property taxes and property insurance. Funds from the lease-up reserve used to satisfy the funding requirements for other reserve accounts may not be included as a use of funds for the lease-up reserve. Funds from the

lease-up reserve distributed or distributable as cash flow to the Development Owner will be considered and restricted as developer fee.

(c) Operating Reserve Account. At various stages during the application, award process, and during the operating life of a Development, the Department will conduct a financial analysis of the Development's total development costs and operating budgets, including the estimated operating reserve account deposit required. For example, this analysis typically occurs at application and cost certification review. The Department will consider a reasonable operating reserve account deposit in this analysis based on the needs of the Development and requirements of third-party lenders or investors. The amount used in the analysis will be the amount described in the project cost schedule or balance sheet, if it is within the range of two (2) to six (6) months of stabilized operating expenses plus debt service. The Department may consider a greater amount proposed or required by the Department, any superior lien lender, or syndicator, if the detail for such greater amount is reasonable and well documented. Reasonable operating reserves in this chapter do not include capitalized asset management fees, guaranty reserves, or other similar costs. In no instance will operating reserves exceed twelve (12) months of stabilized operating expenses plus debt service (exclusive of transferred replacement reserves for USDA or HUD financed rehabilitation transactions). Operating reserves are generally for the term of the permanent loan. In no instance will operating reserves released within five (5) years be included as a cost.

(d) Special Reserve Account. If the funding program requires or allows for the establishment and maintenance of a Special Reserve Account for the purpose of assisting residents at the Development with expenses associated with their tenancy, this will be established in accordance with a written agreement with the Development Owner.

(1) The Special Reserve Account is funded annually through an agreed upon percentage of net cash flow generated by the Development, excess development funds at completion as determined by the Department, or as otherwise set forth in the written agreement. For the purpose of this account, net cash flow is defined as funds available from operations after all expenses and debt service required to be paid have been considered. This does not include a deduction for depreciation and amortization expense, deferred developer fee payment, or other payments made to related parties, except as allowed by the Department for property management. Proceeds from any refinancing or other fund raising from the Development will be considered net cash flow for purposes of funding the Special Reserve Account. The account will be structured to require Department concurrence for withdrawals.

(2) All disbursements from the account must be approved by the Department.

(3) The Development Owner will be responsible for setting up a separate and distinct account with a financial institution acceptable to the Department. A Special Reserve Account Agreement will be drafted, at the Department's discretion, and executed by the Department, Development Owner and financial institution representative.

(4) Use of the funds in the Special Reserve Account is determined by a plan that is preapproved by the Department. The Owner must create, update and maintain a plan for the disbursement of

funds from the Special Reserve Account. The plan should be established at the time the account is created and updated and submitted for approval by the Department as needed. The plan should consider the needs of the tenants of the property and the existing and anticipated fund account balances such that all of the fund uses provide benefit to tenants. Disbursements from the fund will only be approved by the Department if they are in accordance with the current approved plan.

(e) Other Reserve Accounts. Additional reserve accounts may be recognized by the Department as necessary and required by the Department, superior lien lender or syndicator.

*§10.405.Amendments and Extensions.*

(a) Amendments to Housing Tax Credit (HTC) Application or Award Prior to Land Use Restriction Agreement (LURA) recording or amendments that do not result in a change to the LURA. (§2306.6712) Regardless of development stage, the Board shall reevaluate a Development that undergoes a substantial change, as identified in paragraph (4) of this subsection at any time after the initial Board approval of the Development. (§2306.6731(b)) The Board may deny an amendment request and subsequently may revoke any Commitment or Determination Notice issued for a Development and for Competitive HTC Applications, and reallocates the credits to other Applicants on the waiting list.

(1) If a proposed modification would alter a Development approved for an allocation of Housing Tax Credits by changing any item that received points, by significantly affecting the most recent underwriting analysis, or by materially altering the Development as further described in this subsection, the Department shall require the Applicant to file a formal, written request for an amendment to the Application. Such request must include a detailed explanation of the amendment request and other information as determined to be necessary by the Department, and the applicable fee as identified in §10.901(13) of this chapter (relating to Fee Schedule) in order to be received and processed by the Department.

(2) Department staff will evaluate the amendment request. The Executive Director may administratively approve all non-material amendments, including those involving changes to the Developer, Guarantor or Person used to meet the experience requirement in §10.204(6) of this chapter (relating to Required Documentation for Application Submission). Amendments considered material pursuant to paragraph (4) of this subsection must be approved by the Board. Amendment requests which require Board approval must be received by the Department at least forty-five (45) calendar days prior to the Board meeting in which the amendment is anticipated to be considered. Before the fifteenth (15th) day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting. (§2306.6717(a)(4))

(3) Amendment requests may be denied if the Board determines that the modification proposed in the amendment:

(A) would materially alter the Development in a negative manner; or

(B) would have adversely affected the selection of the Application in the Application Round.

(4) Material alteration of a Development includes, but is not limited to:

(A) a significant modification of the site plan;

(B) a modification of the number of units or bedroom mix of units;

(C) a substantive modification of the scope of tenant services;

(D) a reduction of 3 percent or more in the square footage of the units or common areas;

(E) a significant modification of the architectural design of the Development;

(F) a modification of the residential density, other than changes under subparagraph (G) of this paragraph which are the result of a change required by local government, of at least 5 percent;

(G) an increase or decrease in the site acreage, other than changes required by local government, of greater than 10 percent from the original site under control and proposed in the Application;

(H) exclusion of any requirements as identified in Subchapter B of this chapter (relating to Site and Development Requirements and Restrictions) and Subchapter C of this chapter (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules or Pre-Clearance for Applications); or

(I) any other modification considered significant by the Board.

(5) In evaluating the amendment under this subsection, Department Staff shall consider whether changes to the selection or threshold criteria would have resulted in an equivalent or higher score and if the need for the proposed modification was reasonably foreseeable by the Applicant at the time the Application was submitted or preventable by the Applicant. Amendment requests will be denied if the score would have changed the allocation decision or if the circumstances were reasonably foreseeable and preventable unless good cause is found for the approval of the amendment.

(6) This section shall be administered in a manner that is consistent with §42 of the Code.

(7) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants identified in the Credit Underwriting Analysis Report at the time of award and as approved by the Board, the procedure described in subparagraphs (A) and (B) of this paragraph will apply to the extent such request is not prohibited based on statutory and/or regulatory provisions:

(A) for amendments that involve a reduction in the total number of Low-Income Units, or a reduction in the number of Low-Income Units at any rent or income level, as approved by the Board, evidence must be presented to the Department to support the amendment. In addition, the

lender and syndicator must submit written confirmation that the Development is infeasible without the adjustment in Units. The Board may or may not approve the amendment request; however, any affirmative recommendation to the Board is contingent upon concurrence from Department staff that the Unit adjustment is necessary for the continued feasibility of the Development; and

(B) if it is determined by the Department that the loss of low-income targeting points would have resulted in the Application not receiving an award in the year of allocation, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all Persons or entities with any ownership interest in the Application (excluding any tax credit purchaser/syndicator), from participation in the Housing Tax Credit Program (for both the Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for twenty-four (24) months from the time that the amendment is approved.

(b) Amendments to the LURA. Department staff will evaluate the amendment request and provide the Development Owner an amended LURA for execution and recordation in the county where the Development is located. LURAs will not be amended if the subject Development has any uncorrected issues of noncompliance outside of the Corrective Action Period (other than the provision being amended) unless otherwise approved by the Executive Award Review and Advisory Committee. LURAs will not be amended if the Development Owner owes fees to the Department. The Executive Director or designee may administratively approve all non-material LURA amendments. Board approval is required if a Development Owner requests a reduction in the number of Low-Income Units, a change in the income or rent restrictions, a change in the Target Population, a substantive modification in the scope of tenant services, or a delay in the Right of First Refusal (ROFR) requirements. The Department will not approve changes that would violate state or federal laws including the requirements of §42 of the Code, 24 CFR Part 92 (HOME Final Rule), Chapter 11 of this title (relating to Housing Tax Credit Program Qualified Allocation Plan), Texas Government Code, Chapter 2306, the Fair Housing Act, and, for Tax Exempt Bond Developments, compliance with their trust indenture and corresponding bond issuance documents. An amendment to the LURA is not considered material if the change is the result of a Department work out arrangement as recommended by the Department's Asset Management Division. Prior to staff taking a recommendation to the Board for consideration, the procedures described in paragraphs (1) - (5) of this subsection must be followed:

(1) the Development Owner must submit a written request accompanied by an amendment fee as identified in §10.901 of this chapter, specifying the requested change, the reason the change is necessary, the good cause for the change and if the necessity for the amendment was reasonably foreseeable at the time of Application;

(2) the Development Owner must supply financial information for the Department to evaluate the financial impact of the change;

(3) the Department may order a Market Study or appraisal to evaluate the request which shall be at the expense of the Development Owner and the Development Owner will remit funds necessary for such report prior to the Department commissioning such report;

(4) the Development Owner must hold a public hearing at least seven (7) business days prior to the Board meeting where the Board will consider their request,. The notice of the hearing and requested change must be provided to each tenant of the Development, the current lender and/or investors, the State Senator and Representative for the district containing the Development, and the chief elected official for the municipality, if located in a municipality, or the county commissioners, if located outside of a municipality; and

(5) ten (10) business days before the public hearing, the Development Owner must submit a draft notice of the hearing for approval by the Department. The Department will create and provide upon request a sample notice and approve or amend the notice within three (3) business days of receipt.

(c) Amendments to Direct Loan Terms. An Applicant may request a change to the terms of a loan. Requests for changes to the loan post closing will be processed as a loan modification and may require additional approval by the Department's Asset Management Division The Executive Director or authorized designee may approve amendments to loan terms as described in paragraphs (1) - (6) of this subsection prior to closing. Board approval is necessary for any other changes prior to closing. A post closing loan modification that is the result of a Department work out arrangement or other condition recommended by the Department's Asset Management Division will not require additional Executive Director or Board approval except where the post closing change could have been anticipated prior to closing as determined by staff:

(1) extensions of up to twelve (12) months to the loan closing date specified in §10.403(a) of this chapter (relating to Direct Loans). An Applicant must document good cause, which may include constraints in arranging a multiple-source closing;

(2) changes to the loan maturity date to accommodate the requirements of other lenders or to maintain parity of term;

(3) extensions of up to six (6) months for the construction completion or loan conversion date based on documentation that the extension is necessary to complete construction and that there is good cause for the extension. Such a request will generally not be approved prior to initial loan closing;

(4) changes to the loan amortization or interest rate that cause the annual repayment amount to decrease less than 20 percent or any changes to the amortization or interest rate that increases the annual repayment amount;

(5) decreases in the Direct Loan amount, provided the decrease does not jeopardize the financial viability of the Development. Increases will generally not be approved unless the Applicant competes for the additional funding under an open NOFA; and

(6) changes to other loan terms or requirements as necessary to facilitate the loan closing without exposing the Department to undue financial risk.

(d) HTC Extensions. Extensions must be requested if the original deadline associated with carryover, the 10 Percent Test (including submission and expenditure deadlines), or cost certification requirements will not be met. Extension requests submitted at least thirty (30) calendar days in advance of the applicable deadline will not be required to submit an extension fee as described in §10.901 of this chapter. Any extension request submitted fewer than thirty (30) days in advance of the applicable deadline or after the applicable deadline will not be processed unless accompanied by the applicable fee. Extension requests will be approved by the Executive Director or Designee, unless, at staff's discretion it warrants Board approval due to extenuating circumstances stated in the request. The extension request must specify a requested extension date and the reason why such an extension is required. If the Development Owner is requesting an extension to the Carryover submission or 10 percent Test deadline(s), a point deduction evaluation will be completed in accordance with Texas Government Code, §2306.6710(b)(2), and §11.9(f) of this title (relating to Competitive HTC Selection Criteria). Therefore, the Development Owner must clearly describe in their request for an extension how the need for the extension was beyond the reasonable control of the Applicant/Development Owner and could not have been reasonably anticipated. Carryover extension requests will not be granted an extended deadline later than December 1st of the year the Commitment was issued.

*§10.406. Ownership Transfers (§2306.6713).*

(a) Ownership Transfer Notification. All multifamily Development Owners must provide written notice to the Department at least thirty (30) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Transfers that are the result of an involuntary removal of the general partner by the investment limited partner must be reported to the Department, as soon as possible due to the sensitive timing and nature of this decision. 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, 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 §1.5 of this title (relating to Previous Participation Reviews), prior to recommending any new financing or allocation of credits.

(b) Requirement. Department approval must be requested for any new member to join in the ownership of a Development. Exceptions include changes to the investment limited partner, non-controlling limited partner, or other partners affiliated with the investment limited partner, or changes resulting from foreclosure wherein the lender or financial institution involved in the transaction is the resulting owner. Any subsequent transfer of the Development will be required to adhere to the process in this section. Furthermore, a Development Owner may not transfer an allocation of tax credits or ownership of a Development supported with an allocation of tax credits to any Person or entity unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section. Notwithstanding the foregoing, 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 members or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(c) Transfers Prior to 8609 Issuance or Construction Completion. Transfers (other than those that do not require Executive Director approval, as set forth in subsection (b) of this section) will not be approved 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) unless the Development Owner can provide evidence that the need for the transfer is due to a hardship (ex. potential bankruptcy, removal by a partner, etc.). The Development Owner must provide the Department with a written explanation describing the hardship and a copy of any applicable agreement between the parties to the transfer, including any Third-Party agreement.

(d) Non-Profit Organizations. If the ownership transfer request is to replace a non-profit organization within the Development ownership entity, the replacement non-profit 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 Non-Profit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Non-Profit Organization that meets the requirements of §42(h)(5) of the Code and Texas Government Code §2306.6706.

(2) If the LURA requires ownership or material participation in ownership by a qualified non-profit organization, but the Development did not receive Tax Credits pursuant to §42(h)(5) of the Code, the Development Owner must show that the transferee is a non-profit organization that complies with the LURA.

(e) Historically Underutilized Business (“HUB”) Organizations. If a HUB is the general partner of a Development Owner and it (i) is being removed as the result of a default under the organizational documents of the Development Owner or (ii) determines to sell its ownership interest, in either case, after the issuance of 8609’s, the purchaser of that general partnership interest is not required to be a HUB as long as the LURA does not require such continual ownership or a material LURA amendment is approved. Such approval can be obtained concurrent with Board approval described herein. All such transfers must be approved by the Board and require that the Board find that:

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

(2) the participation by the HUB has been substantive and meaningful, or would have been substantial and meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operation of affordable housing; and

(3) the proposed purchaser meets the Department’s standards for ownership transfers (f) Documentation Required. A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances that gave



rise to the need for the transfer and the effects of approval or denial. Documentation includes but is not limited to:

- (1) a written explanation outlining the reason for the request;
  - (2) a list of the names of transferees and Related Parties;
  - (3) detailed information describing the experience and financial capacity of transferees and related parties holding an ownership interest of 10 percent or greater in any Principal or Controlling entity;
  - (4) evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least thirty (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.
- (g) Within five (5) business days after the date the Department receives all necessary information under this section, staff shall initiate a qualifications review of a transferee, in accordance with §1.5 of this title, to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter.
- (h) 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 (5) years prior to the transfer request date.
- (i) Penalties. 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 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.
- (j) Ownership Transfer Processing Fee. The ownership transfer request must be accompanied by corresponding ownership transfer fee as outlined in §10.901 of this chapter (relating to Fee Schedule).

*§10.407. Right of First Refusal.*

(a) General. This section applies to LURAs that provided an incentive for Development Owners to offer a Right of First Refusal (ROFR) to a Qualified ROFR Organization which is defined as a qualified nonprofit organization under §42(h)(5)(c) of the Code or tenant organizations. The

Development Owner may market the Property for sale and sell the Property to a Qualified ROFR Organization without going through the ROFR process outlined in this section. The purpose of this section is to provide administrative procedures and guidance on the process and valuation of properties under the LURA. All requests for ROFR submitted to the Department, regardless of existing regulations, must adhere to this process. A ROFR request must be made in accordance with the LURA for the Development. If there is a conflict between the Development's LURA and this subchapter, requirements in the LURA supersede the subchapter. If a LURA includes the ROFR provision, the Development Owner may not request a Preliminary Qualified Contract until the requirements outlined in this section have been satisfied. The Department reviews and approves all ownership transfers, including transfers to a nonprofit or tenant organization through a ROFR. Properties subject to a LURA may not be transferred to an entity that is considered an ineligible entity under the Department's most recent Qualified Allocation Plan. In addition, ownership transfers to a Qualified ROFR Organization during the ROFR period are subject to §1.5 of this title (relating to Previous Participation Reviews). A Qualified ROFR Organization that wishes to pursue the acquisition of a Development through a ROFR but that is not approved for transfer under the Previous Participation Review, pursuant to §1.5 of this title, may appeal the denial to the Board. Satisfying the ROFR requirement does not terminate the LURA or the ongoing application of the ROFR requirement to any subsequent Development Owner.

(b) Right of First Refusal Offer Price. There are two general expectations of the ROFR offer or sale price identified in the outstanding LURAs. The descriptions in paragraphs (1) and (2) of this subsection do not alter the requirements or definitions included in the LURA but provide further clarification as applicable:

(1) Fair Market Value is established using either a current appraisal (completed within three months prior to the ROFR request and in accordance with §10.304 of this chapter (relating to Appraisal Rules and Guidelines)) of the Property or an executed purchase offer that the Development Owner would like to accept. The purchase offer must contain specific language that the offer is conditioned upon satisfaction of the ROFR requirement. If a subsequent ROFR request is made within six months of the previously approved ROFR posting, the lesser of the prior ROFR posted value or new appraisal/purchase contract amount must be used in establishing Fair Market Value;

(2) Minimum Purchase Price, pursuant to §42(i)(7)(B) of the Code, is the sum of:

(A) the principal amount of outstanding indebtedness secured by the project (other than indebtedness incurred within the five (5)-year period immediately preceding the date of said notice); and

(B) all federal, state, and local taxes incurred or payable by the Development Owner as a consequence of such sale. If the Property has a minimum Applicable Fraction of less than 1, the offer must take this into account by multiplying the purchase price by the applicable fraction and the fair market value of the non-Low-Income Units.

(c) Required Documentation. Upon establishing the value of the Property, the ROFR process is the same for all types of LURAs. To proceed with the ROFR request, submit all documents listed in paragraphs (1) - (12) of this subsection:

(1) upon the Development Owner's determination to sell the Development to an entity other than a Qualified ROFR Organization, the Development Owner shall provide a notice of intent to the Department and to such other parties as the Department may direct at that time. If the LURA identifies a Qualified ROFR Organization that has a limited priority in exercising a ROFR to purchase the Development, the Development Owner must first offer the Property to this entity. If the nonprofit entity does not purchase the Property, this denial of offer must be in writing and submitted to the Department along with the notice of intent to sell the Property and the ROFR Fee. The Department will determine from this documentation whether the ROFR requirement has been met. In the event that the organization is not operating or in existence when the ROFR is to be made, the ROFR must be provided to another Qualified ROFR Organization that is not related to or affiliated with the current Development Owner. Upon review and approval of the notice of intent and denial of offer letter, the Department will notify the Development Owner in writing whether the ROFR requirement has been satisfied or not. Upon receipt of written notice, the Development Owner may pursue the Qualified Contract process or proceed with the sale to another buyer at or above the posted price;

(2) documentation verifying the ROFR offer price of the property:

(A) if the Development Owner receives an offer to purchase the Property from any buyer other than a Qualified ROFR Organization that the Development Owner would like to accept, the Development Owner may execute a sales contract, conditioned upon satisfaction of the ROFR requirement, and submit the executed sales contract to establish fair market value; or

(B) if the Development Owner of the Property chooses to establish fair market value using an appraisal, the Development Owner must submit an appraisal of the Property completed during the last three (3) months prior to the date of submission of the ROFR request, establishing a value for the Property in compliance with Subchapter D of this chapter (relating to Underwriting and Loan Policy) in effect at the time of the request. The appraisal should take into account the existing and continuing requirements to operate the Property under the LURA and any other restrictions that may exist. Department staff will review all materials within thirty (30) calendar days of receipt. If, after the review, the Department does not agree with the fair market value proposed in the Development Owner's appraisal, the Department may order another appraisal at the Development Owner's expense; or

(C) if the LURA requires valuation through the Minimum Purchase Price calculation, submit documentation verifying the calculation of the Minimum Purchase Price as described in subsection (b)(2) of this section regardless of any existing offer or appraised value;

(3) description of the Property, including all amenities and current zoning requirements;

(4) copies of all documents imposing income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Property;

(5) copy of the most current title report, commitment or policy in the Development Owner's possession;

(6) the most recent Physical Needs Assessment, pursuant to Texas Government Code, §2306.186(e), conducted by a Third-Party and in the Development Owner's possession;

(7) copy of the monthly operating statements, including income statements and balance sheets for the Property for the most recent twelve (12) consecutive months (financial statements should identify amounts held in reserves);

(8) the three (3) most recent consecutive audited annual operating statements, if available;

(9) detailed set of photographs of the Property, including interior and exterior of representative units and buildings, and the Property's grounds (including digital photographs that may be easily displayed on the Department's website);

(10) current and complete rent roll for the entire Property;

(11) if any portion of the land or improvements is leased for other than residential purposes, copies of the commercial leases; and

(12) ROFR fee as identified in §10.901 of this chapter (relating to Fee Schedule).

(d) Process. Within ~~thirty (30) calendar~~ ten (10) business days of receipt of all required documentation, the Department will review the submitted documents and notify the Development Owner of any deficiencies. Once the deficiencies are resolved and the Development Owner and Department come to an agreement on the ROFR offer price of the Property, the Department will list the Property for sale on the Department's website and contact entities on the nonprofit buyer list maintained by the Department to inform them of the availability of the Property at the agreed upon ROFR offer price as determined under this section. The Department will notify the Development Owner when the Property has been listed and of any inquiries or offers generated by such listing. If the Department or Development Owner receives offers to purchase the Property from more than one Qualified ROFR Organization, the Development Owner may accept back up offers. To satisfy the ROFR requirement, the Development Owner may sell the Property to the Qualified ROFR Organization selected by the Development Owner on such basis as it shall determine appropriate and approved by the Department. The period of time required for offering the property at the ROFR offer price is based upon the period identified in the LURA and clarified in paragraphs (1) - (3) of this subsection:

(1) if the LURA requires a ninety (90) day ROFR posting period, within ninety (90) days from the date listed on the website, the process as identified in subparagraphs (A) - (D) of this paragraph shall be followed:

(A) if a bona fide offer from a qualified ROFR organization is received at or above the posted ROFR offer price, and the Development Owner does not accept the offer, the ROFR requirement will not be satisfied;

(B) if a bona fide offer from a qualified ROFR organization is received at or above the posted ROFR offer price and the Development Owner accepts the offer, and the nonprofit fails to close the purchase, if the failure is determined to not be the fault of the Development Owner, the ROFR requirement will be deemed met so long as no other acceptable offers have been timely received. If the proposed Development Owner is subsequently not approved by the Department during the ownership transfer review due to issues identified during the Previous Participation Review process pursuant to §1.5 of this title, the ROFR requirement will be deemed met so long as no other acceptable offers have been timely received;

(C) if an offer from a nonprofit is received at a price below the posted ROFR offer price, the Development Owner is not required to accept the offer, and the ROFR requirement will be deemed met if no other offers at or above the price are received during the ninety (90) day period;

(D) if no bona fide offers are received during the ninety (90) day period, the Department will notify the Development Owner in writing that the ROFR requirement has been met. Upon receipt of written notice, the Development Owner may pursue the Qualified Contract process or proceed with the sale to a for-profit buyer at or above the posted price;

(2) if the LURA requires a two year ROFR posting period, and the Development Owner intends to sell the Property upon expiration of the Compliance Period, the notice of intent described in this section may be submitted within two (2) years before the expiration of the Compliance Period, as required by Texas Government Code, §2306.6726. If the Development Owner determines that it will sell the Development at some point later than the end of the Compliance Period, the notice of intent shall be given within two (2) years before the date upon which the Development Owner intends to sell the Development in order for the two year ROFR posting period to be completed prior to intended sale. The two (2) year period referenced in this paragraph begins when the Department has received and approved all documentation required under subsection (c)(1) - (12) of this section. During the two (2) years following the notice of intent and in order to satisfy the ROFR requirement of the LURA, the Development Owner may enter into an agreement to sell the Development only with the parties listed, and in order of priority:

(A) during the first six (6) month period after notice of intent, only with a Qualified Nonprofit Organization that is also a Community Housing Development Organization, as defined in the HOME Final Rule and is approved by the Department;

(B) during the second six (6) month period after notice of intent, only with a Qualified Nonprofit Organization or a tenant organization;

(C) during the second year after notice of intent, only with the Department or with a Qualified Nonprofit Organization approved by the Department or a tenant organization approved by the Department;

(D) if, during the two (2) year period, the Development Owner shall receive an offer to purchase the Development at or above the Minimum Purchase Price from one of the organizations designated in subparagraphs (A) - (C) of this paragraph (within the period(s) appropriate to such organization), the Development Owner may sell the Development to such organization. If, during such period, the Development Owner shall receive more than one offer to purchase the Development at or above the Minimum Purchase Price from one or more of the organizations designated in subparagraphs (A) - (C) of this paragraph (within the period(s) appropriate to such organizations), the Development Owner may sell the Development at or above the Minimum Purchase Price to the organization selected by the Development Owner on such basis as it shall determine appropriate and approved by the Department; and

(E) upon expiration of the two (2) year period, if no Minimum Purchase Price offers were received from a Qualified ROFR Organization or by the Department, the Department will notify the Development Owner in writing that the ROFR requirement has been met. Upon receipt of written notice, the Development Owner may pursue the Qualified Contract process or proceed with the sale to a for-profit buyer at or above the minimum purchase price.

(3) If the LURA does not specify a required ROFR posting timeframe, or, ~~in the sole determination of the Department,~~ is unclear on the required ROFR posting timeframe, and the required ROFR value is determined by the Minimum Purchase Price method, any Development that received a tax credit allocation prior to September 1, 1997 is required to post for a 90-day ROFR period and any Development that received a tax credit allocation on or after September 1, 1997 is required to post for a 2-year ROFR period ~~the Development Owner must adhere to the timeframe as~~ described in Texas Government Code, §2306.6726.

(e) Closing the Transaction. The Department shall have the right to enforce the Development Owner's obligation to sell the Development as herein contemplated by obtaining a power-of-attorney from the Development Owner to execute such a sale or by obtaining an order for specific performance of such obligation or by such other means or remedy as shall be, in the Department's discretion, appropriate.

(1) Prior to closing a sale of the Property, the Development Owner must obtain Department approval of the transfer through the ownership transfer process in accordance with §10.406 of this chapter (relating to Ownership Transfers (§2306.6713)). The request should include, among other required transfer documents outlined in the Post Carryover Activities Manual, the final settlement statement and final sales contract with all amendments. If there is no material change in the sales price or terms and conditions of the sale, as approved at the conclusion of the ROFR process, and there are no issues identified during the Ownership Transfer review process, the Department will notify the Development Owner in writing that the transfer is approved.

(2) If the closing price is materially less than the amount identified in the sales contract or appraisal that was submitted in accordance with subsection (c)(2)(A) - (C) of this section or the terms and conditions of the sale change materially, in the Department's sole determination, the Development Owner must go through the ROFR process again.

(3) Following notice that the ROFR requirement has been met, if the Development Owner fails to proceed with a request for a Qualified Contract or sell the Property to a for-profit entity within twenty-four (24) months of the Department's written approval, the Development Owner must again offer the Property to nonprofits in accordance with the applicable section prior to any transfer. If the Department determines that the ROFR requirement has not been met during the ROFR posting period, the Owner may not re-post under this provision at a ROFR price that is higher than the originally posted ROFR price until twenty-four (24) months has expired from the Department's written denial. The Development Owner may market the Property for sale and sell the Property to a Qualified ROFR Organization during this twenty-four month period.

(f) Appeals. A Development Owner may appeal a staff decision in accordance with §10.902 of this chapter (relating to the Appeals Process (§2306.0321; §2306.6715)). The appeal may include:

- (1) the best interests of the residents of the Development;
- (2) the impact the decision would have on other Developments in the Department's portfolio;
- (3) the source of the data used as the basis for the Development Owner's appeal;
- (4) the rights of nonprofits under the ROFR;
- (5) any offers from an eligible nonprofit to purchase the Development; and
- (6) other factors as deemed relevant by the Executive Director.

*§10.408. Qualified Contract Requirements.*

(a) General. Pursuant to §42(h)(6) of the Code, after the end of the 14th year of the Compliance Period, the Development Owner of a Development utilizing Housing Tax Credits can request that the allocating agency find a buyer at the Qualified Contract Price. If a buyer cannot be located within one (1) year, the Extended Use Period will expire. This section provides the procedures for the submittal and review of Qualified Contract Request.

(b) Eligibility. Development Owners who received an award of credits on or after January 1, 2002 are not eligible to request a Qualified Contract prior to the thirty (30) year anniversary of the date the property was placed in service. (§2306.185) Unless otherwise stated in the LURA, Development Owners awarded credits prior to 2002 may submit a Qualified Contract Request at any time after the end of the year proceeding the last year of the Initial Affordability Period, following the Department's determination that the Development Owner is eligible. The Initial Affordability Period starts concurrently with the credit period, which begins at placement-in-

service or is deferred until the beginning of the next tax year, if there is an election. Unless the Development Owner has elected an Initial Affordability Period longer than the Compliance Period, as described in the LURA, this can commence at any time after the end of the 14th year of the Compliance Period. References in this section to actions which can occur after the 14th year of the Compliance Period shall refer, as applicable, to the year preceding the last year of the Initial Affordability Period, if the Development Owner elected an Initial Affordability Period longer than the Compliance Period.

(1) If there are multiple buildings placed in service in different years, the end of the Initial Affordability Period will be based upon the date the last building placed in service. For example, if five buildings in the Development began their credit periods in 1990 and one began in 1991, the 15th year would be 2005.

(2) If a Development received an allocation in multiple years, the end of the Initial Affordability Period will be based upon the last year of a multiple allocation. For example, if a Development received its first allocation in 1990 and a subsequent allocation and began the credit period in 1992, the 15th year would be 2006.

(c) Preliminary Qualified Contract Request. All eligible Development Owners must file a Preliminary Qualified Contract Request.

(1) In addition to determining the basic eligibility described in subsection (b) of this section, the pre-request will be used to determine that:

(A) the Property does not have any uncorrected issues of noncompliance outside the Corrective Action Period;

(B) there is a Right of First Refusal (ROFR) connected to the Property that has been satisfied;

(C) the Compliance Period has not been extended in the LURA and, if it has, the Development Owner is eligible to file a pre-request as described in paragraph (2) of this subsection; and

(2) In order to assess the validity of the pre-request, the Development Owner must submit:

(A) Preliminary Request Form;

(B) Qualified Contract Pre-Request fee as outlined in §10.901 of this chapter (relating to Fee Schedule);

(C) copy of all regulatory agreements or LURAs associated with the property (non-TDHCA);

(D) local code compliance report, TDHCA UPCS Inspection Report, or HUD-certified REAC or UPCS inspection within the last twelve (12) months. ~~and~~

~~(E) a copy of the most recent property condition assessment of the property consistent with Subchapter D of this chapter and in accordance with the requirement described in Texas Government Code, §2306.186(e).~~



(3) The pre-request will not bind the Development Owner to submit a Request and does not start the One (1) Year Period (1YP). A review of the pre-request will be conducted by the Department within ninety (90) days of receipt of all documents and fees described in paragraph (2) of this subsection. If the Department determines that this stage is satisfied, a letter will be sent to the Development Owner stating that they are eligible to submit a Qualified Contract (QC) Request.

(d) Qualified Contract Request. A Development Owner may file a QC Request anytime after written approval is received from the Department verifying that the Development Owner is eligible to submit the Request.

(1) Documentation that must be submitted with a Request is outlined in subparagraphs (A) - (P) of this paragraph:

(A) a completed application and certification;

(B) the Qualified Contract price calculation worksheets completed by a Third-Party certified public accountant (CPA). The CPA shall certify that they have reviewed annual partnership tax returns for all years of operation, loan documents for all secured debt, and partnership agreements. They shall also certify that they are not being compensated for the assignment based upon a predetermined outcome;

(C) a thorough description of the Development, including all amenities;

(D) a description of all income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Development;

(E) a current title report;

(F) a current appraisal with the effective date within three months prior to the date of the QC Request and consistent with Subchapter D of this chapter (relating to Underwriting and Loan Policy);

(G) a current Phase I Environmental Site Assessment (Phase II if necessary) with the effective date within six months of the date of the QC Request and consistent with Subchapter D of this chapter;

(H) a copy of the most recent property condition assessment of the property, if different from the assessment submitted during the preliminary qualified contract request, consistent with Subchapter D of this chapter and in accordance with the requirement described in Texas Government Code, §2306.186(e);

(I) a copy of the monthly operating statements for the Development for the most recent twelve (12) consecutive months;

(J) the three most recent consecutive annual operating statements;

(K) a detailed set of photographs of the development, including interior and exterior of representative units and buildings, and the property's grounds (including digital photographs that may be easily displayed on the Department's website);

(L) a current and complete rent roll for the entire Development;

(M) a certification that all tenants in the Development have been notified in writing of the request for a Qualified Contract. A copy of the letter used for the notification must also be included;

(N) if any portion of the land or improvements is leased, copies of the leases;

(O) the Qualified Contract Fee as identified in §10.901 of this chapter; and

(P) additional information deemed necessary by the Department.

(2) Unless otherwise directed by the Department pursuant to subsection (g) of this section, the Development Owner shall contract with a broker to market and sell the Property. The Department may, at its sole discretion, notify the Owner that the selected Broker is not approved by the Department. The fee for this service will be paid by the seller, not to exceed 6 percent of the QC Price.

(3) Within ninety (90) days of the submission of a complete Request, the Department will notify the Development Owner in writing of the acceptance or rejection of the Development Owner's QC Price calculation. The Department will have one (1) year from the date of the acceptance letter to find a Qualified Purchaser and present a QC. The Department's rejection of the Development Owner's QC Price calculation will be processed in accordance with subsection (e) of this section and the 1YP will commence as provided therein.

(e) Determination of Qualified Contract Price. The QC Price calculation is not the same as the Minimum Purchase Price calculation for the ROFR. The CPA contracted by the Development Owner will determine the QC Price in accordance with §42(h)(6)(F) of the Code taking the following into account:

(1) distributions to the Development Owner of any and all cash flow, including incentive management fees and reserve balance distributions or future anticipated distributions, but excluding payments of any eligible deferred developer fee. These distributions can only be confirmed by a review of all prior year tax returns for the Development;

(2) all equity contributions will be adjusted based upon the lesser of the consumer price index or 5 percent for each year, from the end of the year of the contribution to the end of year fourteen or the end of the year of the request for a QC Price if requested at the end of the year or the year prior if the request is made earlier than the last year of the month; and

(3) these guidelines are subject to change based upon future IRS Rulings and/or guidance on the determination of Development Owner distributions, equity contributions and/or any other element of the QC Price.

(f) Appeal of Qualified Contract Price. The Department reserves the right, at any time, to request additional information to document the QC Price calculation or other information submitted. If the documentation does not support the price indicated by the CPA hired by the Development Owner, the Department may engage its own CPA to perform a QC Price calculation and the cost of such service will be paid for by the Development Owner. If a Development Owner disagrees with the QC Price calculated by the Department, a Development Owner may appeal in writing. A meeting will be arranged with representatives of the Development Owner, the Department and the CPA contracted by the Department to attempt to resolve the discrepancy. The 1YP will not begin until the Department and Development Owner have agreed to the QC Price in writing. Further appeals can be submitted in accordance with §10.902 of this title (relating to Appeals Process (§2306.0321; §2306.6715)).

(g) Marketing of Property. By submitting a Request, the Development Owner grants the Department the authority to market the Development and provide Development information to interested parties. Development information will consist of pictures of the Development, location, amenities, number of Units, age of building, etc. Development Owner contact information will also be provided to interested parties. The Development Owner is responsible for providing staff to assist with site visits and inspections. Marketing of the Development will continue until such time that a Qualified Contract is presented or the 1YP has expired. Notwithstanding subsection (d)(2) of this section, the Department reserves the right to contract directly with a Third Party in marketing the Development. Cost of such service, including a broker's fee not to exceed 6 percent, will be paid for by the existing Development Owner. The Department must have continuous cooperation from the Development Owner. Lack of cooperation will cause the process to cease and the Development Owner will be required to comply with requirements of the LURA for the remainder of the Extended Use Period. A prospective purchaser must complete all requirements of an ownership transfer request and be approved by the Department prior to closing on the purchase. The Department will assess if the prospective purchaser is a Qualified Purchaser during the Ownership Transfer review process. Responsibilities of the Development Owner include but are not limited to the items described in paragraphs (1) - (3) of this subsection. The Development Owner must:

- (1) allow access to the Property and tenant files;
- (2) keep the Department informed of potential purchasers; and
- (3) notify the Department of any offers to purchase.

(h) Presentation of a Qualified Contract. If the Department finds a Qualified Purchaser willing to present an offer to purchase the property for an amount at or above the QC Price, the Development Owner may accept the offer and enter into a commercially reasonable form of earnest money agreement or other contract of sale for the property and provide a reasonable time for necessary due diligence and closing of the purchase. If the Development Owner chooses not

to accept the QC offer that the Department presents, the QC request will be closed and the possibility of terminating the Extended Use Period through the Qualified Contract process is eliminated; the Property remains bound by the provisions of the LURA. If the Development Owner decides to sell the development for the QC Price pursuant to a QC, the consummation of such a sale is not required for the LURA to continue to bind the Development for the remainder of the Extended Use Period.

(1) The Department will attempt to procure a QC only once during the Extended Use Period. If the transaction closes under the contract, the new Development Owner will be required to fulfill the requirements of the LURA for the remainder of the Extended Use Period.

(2) If the Department fails to present a QC before the end of the 1YP, the Department will file a release of the LURA and the Development will no longer be restricted to low-income requirements and compliance. However, in accordance with §42(h)(6)(E)(ii) of the Code, for a three (3) year period commencing on the termination of the Extended Use Period, the Development Owner may not evict or displace tenants of Low-Income Units for reasons other than good cause and will not be permitted to increase rents beyond the maximum tax credit rents. Additionally, the Development Owner should submit to the Department a request to terminate the LURA and evidence, in the form of a signed certification and a copy of the letter, to be approved by the Department, that the tenants in the Development have been notified in writing that the LURA will be terminated and have been informed of their protections during the three (3) year time frame.

(3) Prior to the Department filing a release of the LURA, the Development Owner must correct all instances of noncompliance at the Property.

(i) Compliance Monitoring during Extended Use Period. For Developments that continue to be bound by the LURA and remain affordable after the end of the Compliance Period, the Department will monitor in accordance with the Extended Use Period Compliance Policy in Subchapter F of this chapter (relating to Compliance Monitoring).

1e

**BOARD ACTION REQUEST**  
**REAL ESTATE ANALYSIS DIVISION**  
**NOVEMBER 13, 2014**

Presentation, Discussion, and Possible Action on an order adopting the repeal of 10 TAC, Chapter 10, Subchapter D, concerning Underwriting and Loan Policy, and an order adopting new 10 TAC, Chapter 10, Subchapter D, concerning Underwriting and Loan Policy and directing its publication in the *Texas Register*

**RECOMMENDED ACTION**

**WHEREAS**, pursuant to Chapter 2306 of the Texas Government Code, the Department is provided the authority to adopt rules governing the administration of the Department and its programs; and,

**WHEREAS**, at the September 4, 2014, Board meeting the proposed repeal of 10 TAC, Chapter 10, Subchapter D, concerning Underwriting and Loan Policy and proposed new 10 TAC, Chapter 10, Subchapter D, concerning Underwriting and Loan Policy, were approved for publication in the *Texas Register* for public comment, and the public comment period has ended; and,

**NOW, therefore, it is hereby**

**RESOLVED**, that the referenced repeal and new rules are hereby adopted and 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 of the repeal of 10 TAC, Chapter 10, Subchapter D, concerning Underwriting and Loan Policy, and the adoption of new 10 TAC, Chapter 10, Subchapter D concerning Underwriting and Loan Policy, in the forms presented to this meeting, to be published in the *Texas Register*, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation subchapter specific preambles.

**BACKGROUND**

On September 4, 2014, the Department's Governing Board approved the proposed repeal and new Underwriting and Loan Policy rules for publication in the *Texas Register* and public comment.

On September 19, 2014, the repeal and proposed 2015 rules were published in the *Texas Register*. Upon publication, an official public comment period commenced on September 19, 2014, and ended on October 20, 2014.

In addition to publishing the proposed new rule in the *Texas Register*, a copy was made available on the Department's web site. The Department held a public hearing in Austin on October 6, 2014. No public comment was received at the hearing. No comment was received regarding the repeal of the rules. Six written comments were received regarding the proposed new rule and are addressed in the Reasoned Response.

In keeping with the requirements of the Administrative Procedures Act staff has reviewed the comments received and is providing a reasoned response to each comment herein. As part of each response, staff also provides a recommendation as to accepting the comment or not accepting the comment.

**Attachment A: Preamble, Reasoned Response and Repeal of 10 TAC, Chapter 10, Subchapter D, concerning 2014 Underwriting and Loan Policy.**

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 10, Subchapter D, §§10.301 – 10.307 concerning 2014 Underwriting and Loan Policy without changes to the proposed text as published in the September 19, 2014 issue of the *Texas Register* (39 TexReg 7442).

REASONED JUSTIFICATION. This repeal was published concurrently with the proposed adoption of the new 10 TAC Chapter 10, Subchapter D, §§10.301 – 10.307 concerning 2015 Underwriting and Loan Policy. The purpose of the repeal is to allow for the rewrite of portions of the rule.

The Department accepted public comments between September 19, 2014 and October 20, 2014. Comments regarding the repeal were accepted in writing via fax and email. No comments were received concerning the proposed repeal.

The Board approved the final order adopting the repeal on November 13, 2014.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Specifically Texas Government Code §2306.141 gives the Department the authority to promulgate rules governing the administration of its housing programs. The proposed repeal affects no other code, article or statute.

§10.301. General Provisions.

§10.302. Underwriting Rules and Guidelines.

§10.303. Market Analysis Rules and Guidelines.

§10.304. Appraisal Rules and Guidelines.

§10.305. Environmental Site Assessment Rules and Guidelines.

§10.306. Property Condition Assessment Guidelines.

§10.307. Direct Loan Requirements.



**Attachment B: Preamble, Reasoned Response and New 10 TAC, Chapter 10, Uniform Multifamily Rules, Subchapter D, §§10.301 – 10.307, Underwriting and Loan Policy**

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC, Chapter 10, Subchapter D, §§10.301 – 10.307, concerning Underwriting and Loan Policy, without changes to the proposed text as published in the September 19, 2014 issue of the *Texas Register* (39 TexReg 7442).

**REASONED JUSTIFICATION FOR THE RULE:** The proposed new 10 TAC, Chapter 10, Subchapter D, §§10.301 – 10.307, concerning Underwriting and Loan Policy was published concurrently with the proposed repeal of the same section. The new rule clarifies language that was previously potentially causing uncertainty and will ensure accurate processing of underwriting activities and communicate the underwriting analysis and recommendations for funding or award by the Department more effectively.

**SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS:** The Department accepted public comments between September 19, 2014 and October 20, 2014. Comments regarding the new sections were accepted at a public hearing and in writing and by facsimile. Written comments were received from: (1) Frank Jackson, Texas Affiliation of Affordable Housing Providers; (2) Sarah Anderson, S. Anderson Consulting; (3) James (Bill) Fisher, Sonoma Housing Advisors, LLC; and, (4) K. Nicole Flores, City Real Estate Advisors, Inc.

**§10.302(d)(4)(D) Acceptable Debt Coverage Range**

Commenters: 1, 2, 4

Commenters state that the acceptable debt coverage range outlined in the rule (1.15 to 1.35) should only be applied at the time of initial underwriting of the transaction (for tax credit sizing purposes) and should not apply at cost certification. The commenters state that by applying the 1.35 DCR at cost certification could potentially increase the supportable debt assumption used by the underwriter which could have the effect under the GAP/DCR Method (as defined in §10.302(c)(2)) of reducing the credit allocation at cost certification. The commenters further state that because the capitalization structure at cost certification is finalized, the reduction in credit potentially causes less equity in the transaction requiring additional deferral of developer fee.

The commenters further state “This fee is the incentive for private developers to developer affordable housing and limit the cash flow for their developments. Requiring deferred fee and/or reducing the income to a property is not in the best long term interest or health of a development.” (SIC)

Specific language changes suggested by commenters 1 and 2:

**“§10.302(d)(4)(D): Acceptable Debt Coverage Ratio Range. *For the purposes of sizing the initial credit award only, the acceptable first year stabilized pro forma DCR for all priority or foreclosable lien financing plus the Department's proposed financing must be between a minimum of 1.15 and a maximum of 1.35.*”**

**STAFF RESPONSE:** Staff disagrees with commenters suggested change primarily because it would be inconsistent with the evaluation required under IRC 42(m)(2)

The acceptable debt coverage ratio range serves two purposes. First, the minimum 1.15 times DCR serves to cap the amount of debt on a property to minimize default risk. TDHCA's 1.15 times DCR minimum requirement is lower than the industry standard of 1.20 to 1.25 times providing applicants with more flexibility in structuring their transaction. Lenders and syndicators are going to apply their own credit standards and underwriting guidelines that will certainly be different than the Department's guidelines.

Second, the maximum 1.35 times DCR serves to ensure that tax credits are being efficiently allocated (serves as a sizing tool). This tool addresses the requirement in IRC 42(m)(2)(A) that "The housing credit dollar amount allocated to a project shall not exceed the amount the housing credit agency determines is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period." A DCR greater than 1.35 times indicates that a property can support additional debt and therefore require less tax credits. Lenders and syndicators do not have a maximum DCR as their interest is only the default risk.

Each transaction is evaluated at initial underwriting, carryover, (if changed) and cost certification for feasibility and tax credit sizing purposes in order to address the time periods for evaluation according to IRC 42(m)(2)(C). If at any time the DCR is below 1.15 times, the amount of permanent debt must be reduced to an amount that increases the DCR to an acceptable level. Other sources of funds must be found to cover the lost debt proceeds (generally the source is deferral of developer fee if available).

Conversely, if at any point the DCR exceeds 1.35 times, additional permanent debt will be assumed in an amount to reduce the DCR to 1.35 times (using the same terms as the senior permanent debt). This assumed increase in debt may or may not have an impact to the credit sizing depending on whether deferred developer fee already exists in the capital structure as a source of funds. If deferred developer fee exists in the capital structure, the additional assumed debt will go to reduce or eliminate the deferral. If the increase in the permanent debt assumption exceeds the developer fee deferral, a reduction to the tax credit allocation, and therefore equity, is reduced. The tax credit award is not reduced if any of the developer fee remains deferred when the additional debt assumption is used.

At initial underwriting, the capital structure assumptions, including the pro forma NOI, are very preliminary. Each lender and syndicator underwrites the transaction based on their own guidelines and risk tolerances. Regardless, all financing participants including TDHCA recognize that there will be a re-underwriting of the transaction at some point in the future based on actual cost and operating information and not on the up front assumptions.

Given the length of time between the initial determination of the tax credits and delivery of the tax credit units themselves, many assumptions used in the initial underwriting will have changed (development costs, rental rates, operating costs and finance markets). Additionally, many times the actual finance participants are different than those proposed in the original application.

At cost certification, final cost and more realistic operating information is generally known. As it relates to the Gap/DCR method, some level of actual rent and expense information used to determine the final DCR for sizing the final permanent debt becomes known. Financing participants, particularly the permanent lender(s), require a re-underwriting of the transaction at a stabilization point based on the actual stabilized NOI. The stabilized NOI is typically defined in different ways by each financing participant. Depending on where the property is in terms of stabilization assumptions about the NOI still must be made as actual expenses may be higher during a lease-up period.

The re-underwriting done by the lender and investor at stabilization may produce a downward resize of the permanent debt or the equity provided by the investor. The stabilization of the permanent debt may or may not have occurred prior to submission for cost certification.

For TDHCA, the final underwriting continues to serve the same purposes as at the initial underwriting, evaluate risk and size the tax credits. The tax credit sizing continues to be based on supportable debt at the time of final underwriting and not actual debt being underwritten by the lender. The 1.35 DCR limit remains only as a tax credit sizing assumption and does not require the owner to obtain additional debt.

The use of the Gap/Debt Coverage Ratio in sizing the tax credit allocation at cost certification continues to ensure that the state's tax credits are used in an efficient manner and maximizes the number of tax credit units developed.

What the commenters are suggesting is that unlike the other financing participants, TDHCA should not have the ability to resize the credit allocation at cost certification by changing the rule such that the debt service coverage range does not apply at that point in time. Generally, they are seeking a stabilization of tax credits at application.

Staff does not recommend any change based on these comments.

### **§10.302(i) Feasibility Conclusion**

Commenters: 1, 2, 4

Commenters state: "Make both the 65% rule and DCR below 1.15 be a determination of infeasibility – rather than one or the other. This way, if you exceed the 65% rule, then you must be able to stay above 1.15 at year 15. The 65% rule was predicated on the fact that if a development begins above 65% that it will be infeasible by year 15. While there was some research done on this by the Department several years ago, this is not a review factor that is recognized or used by any syndicator or lender in the industry. We do not believe there is any proof from TDHCA's portfolio that this by itself is an indicator of infeasibility and request that it be used in conjunction with the accepted DCR at year 15 review."

Specific operative language changes suggested by commenters 1 and 2:

*(4) Long Term Feasibility.*

~~(4) Initial Feasibility.~~ *(A) The first year stabilized pro forma operating expense divided by the first year stabilized pro forma Effective Gross Income is greater than 68 percent for Rural Developments 36 Units or less and 65 percent for all other Developments; and-*

~~(5) Long Term Feasibility.~~ *(B) Any year in the first fifteen (15) years of the Long Term Pro forma, as defined in subsection (d)(5) of this section, reflects:*

*(Ai) negative Cash Flow; or*

*(Bii) a Debt Coverage Ratio below 1.15.*

**STAFF RESPONSE:** Staff disagrees with commenters suggested change because it would be inconsistent with Tex. Gov't Code §2306.185(c) which requires that the department develop rules to ensure that transactions remain affordable for a minimum of thirty (30) years.

The methodology outlined in the current rule to determine operating feasibility uses both an expense ratio test and a fifteen year cash flow/DCR test. These are separate tests. The pro forma must meet each one of them individually and the failure of either one of the tests results in an infeasibility conclusion by the Department.

The expense ratio test states that a development is infeasible if the anticipated first year operating expenses divided by the anticipated first year Effective Gross Income is too high (greater than 68 percent for Rural Developments 36 Units or less and 65 percent for all other Developments). The test is used at any point in time that the Department underwrites a transaction and creates a pro forma based on the most current information available. It is a snapshot test and calculated based on whose pro forma is underwritten (whether the applicant's or Department's pro forma is being used).

The DCR test is used over the on-going pro forma which is also evaluated at any point in time that the Department underwrites the transaction. The long term pro forma starts with the first year pro forma and applies an income growth rate of 2% and an expense growth rate of 3%. Like the expense ratio test, the DCR test is also calculated based on whose pro forma is underwritten (whether the applicant's or Department's pro forma is being used).

These two feasibility tests work in concert with each other to address the requirement in the Department's enabling statute which calls for the Department to develop rules to assure that a transaction remains affordable for a minimum of thirty (30) years (§2306.185(c)). To remain affordable and not potentially be subject to foreclosure, the Department requires that positive cash flow must be maintained over that thirty (30) year period. The analysis done at the time the rules were initially adopted also holds true today. At an initial DCR of 1.35, an initial expense to income ratio over 65% and with the trending rates established by rule, developments become infeasible by year 30.

The use of each of these two tests independently serves to ensure feasibility over the first fifteen (15) years by maintaining a 1.15 times DCR as well as meeting the positive cash flow requirement over the thirty (30) years.

Mathematically, the application of both tests together (using the suggested word "and") at the maximum expense ratio and the minimum DCR will deem all transactions infeasible. For rural developments 36 units or less with an expense ratio at 68%, the DCR will fall below 1.15 in year four (4). For all other developments with an expense ratio at 65%, the DCR test fails in year thirteen (13). In both cases, the long-term pro forma shows negative cash flow prior to year thirty (30).

To maintain feasibility solely at the 68% maximum expense ratio, the first year DCR must be at least 1.23 times. At the maximum expense ratio of 65%, the first year DCR must be equal to at least 1.165 times. However, the thirty (30) year positive cash flow tests fail.

The expense ratio test is only related to operating feasibility and as such addresses unit mix and excessive deep rent targeting for developments without ongoing rental subsidy. The maximum DCR of 1.35 times is not a feasibility issue but rather a debt and tax credit sizing issue.

### **General Comments not related to specific sections**

Commenter: 3

Commenter states: "...REA must start applying a minimum loan standard to underwriting or a better minimum loan standard. Too many applicants are using out of market, high priced debt packages to show gaps for HTC and HOME when it is not needed. If a developer cannot get reasonable market debt and reasonable HTC pricing, their deal should be rejected. We thrive on competition, so the weak that cannot bring resources consistent with the market should not get extra funds to make their deal work."

STAFF RESPONSE: The kind of change suggested would require consideration of substantial new language which is best addressed in a subsequent rulemaking rather than in the adoption of this final rule.

In consideration of the comment however staff offers the following. There are many reasons considered by lenders and investors in determining the terms offered to applicants on the term sheets. Experience, financial wherewithal of the guarantors and/or development team members, collateral (underwriting the development itself including costs, market, location, etc.) are a few factors. While terms and conditions vary across the debt and equity assumptions used in underwriting, REA must take and use the terms and representations made by the lenders and investors that are presumably made based on their level of due diligence they have chosen. The use of a set of standard terms could negatively affect all applicants. REA does question any debt or equity terms that are outliers.

Staff does not recommend any change based on these comments.

STATUTORY AUTHORITY. The new sections were adopted pursuant to the authority of Texas Government Code, §2306.053 which authorizes the Department to adopt rules. Specifically Texas Government Code §2306.141 gives the Department the authority to promulgate rules governing the administration of its housing programs. The proposed repeal affects no other code, article or statute.

### **§10.301. General Provisions.**

(a) **Purpose.** This subchapter applies to the underwriting, Market Analysis, appraisal, Environmental Site Assessment, Property Condition Assessment, and Direct Loan standards employed by the Department. This subchapter provides rules for the underwriting review of an affordable housing Development's financial feasibility and economic viability that ensures the most efficient allocation of resources while promoting and preserving the public interest in ensuring the long-term health of the Department's portfolio. In addition, this chapter guides staff in making recommendations to the Executive Award and Review Advisory Committee (the "Committee"), Executive Director, and the Board to help ensure procedural consistency in the determination of Development feasibility (Texas Government Code, §§2306.081(c), 2306.185, and 2306.6710(d)). Due to the unique characteristics of each Development the interpretation of the rules and guidelines described in this subchapter is subject to the discretion of the Department and final determination by the Board.

(b) **Appeals.** Certain programs contain express appeal options. Where not indicated, §10.902 of this chapter (relating to Appeals Process (§2306.0321; §2306.6715)) includes general appeal procedures. In addition, the Department encourages the use of Alternative Dispute Resolution (“ADR”) methods, as outlined in §10.904 of this chapter (relating to Alternative Dispute Resolution (ADR) Policy).

### **§10.302. Underwriting Rules and Guidelines.**

(a) **General Provisions.** Pursuant to Texas Government Code, §2306.148 and §2306.185(b), the Board is authorized to adopt underwriting standards as set forth in this section. Furthermore, for Housing Credit Allocation, §42(m)(2) of the Internal Revenue Code (the "Code"), requires the tax credits allocated to a Development not to exceed the amount necessary to assure feasibility. The rules adopted pursuant to the Texas Government Code and the Code are developed to result in a Credit Underwriting Analysis Report used by the Board in decision making with the goal of assisting as many Texans as possible by providing no more financing than necessary based on an independent analysis of Development feasibility. The Report generated in no way guarantees or purports to warrant the actual performance, feasibility, or viability of the Development.

(b) **Report Contents.** The Report provides a synopsis and reconciliation of the Application information submitted by the Applicant. The Report contents will be based solely upon information that is provided in accordance with and within the timeframes set forth in the current Qualified Allocation Plan (“QAP”) or Notice of Funds Availability (“NOFA”), as applicable.

(c) **Recommendations in the Report.** The conclusion of the Report includes a recommended award of funds or Housing Credit Allocation Amount based on the lesser amount calculated by the program limit method, if applicable, gap/debt coverage ratio (“DCR”) method, or the amount requested by the Applicant as further described in paragraphs (1) - (3) of this subsection, and states any feasibility conditions to be placed on the award.

- (1) **Program Limit Method.** For Applicants requesting a Housing Credit Allocation, this method is based upon calculation of Eligible Basis after applying all cost verification measures and program limits as described in this section. The Applicable Percentage used is as defined in §10.3 of this chapter (relating to Definitions). For Applicants requesting funding through a Department program other than Housing Tax Credits, this method is based upon calculation of the funding limit based on the current program rules or NOFA at the time of underwriting.
- (2) **Gap/DCR Method.** This method evaluates the amount of funds needed to fill the gap created by Total Housing Development Cost less total non-Department-sourced funds or Housing Tax Credits. In making this determination, the Underwriter resizes any anticipated deferred developer fee down to zero before reducing the amount of Department funds or Housing Tax Credits. In the case of Housing Tax Credits, the syndication proceeds needed to fill the gap in permanent funds are divided by the syndication rate to determine the amount of Housing Tax Credits. In making this determination and based upon specific conditions set forth in the Report, the Underwriter may assume adjustments to the financing structure or make adjustments to any Department financing, such that the cumulative DCR conforms to the standards described in this section.
- (3) **The Amount Requested.** The amount of funds that is requested by the Applicant as reflected in the original Application documentation.

(d) **Operating Feasibility.** The operating financial feasibility of developments funded by the Department is tested by subtracting operating expenses, including replacement reserves and taxes, from income to determine Net Operating Income. The annual Net Operating Income is divided by the cumulative annual debt service required to be paid to determine the Debt Coverage Ratio (“DCR”). The Underwriter characterizes a Development as infeasible from an operational standpoint when the DCR does not meet the minimum standard set forth in paragraph (4)(D) of this subsection. The Underwriter may model adjustments to the financing structure, which could result in a re-characterization of the Development as feasible based upon specific conditions set forth in the Report.

(1) **Income.** In determining the first year stabilized pro forma, the Underwriter evaluates the reasonableness of the Applicant's income estimate by determining the appropriate rental rate per unit based on contract, program, and market factors. Miscellaneous income, vacancy and collection loss limits as set forth in subparagraphs (B) and (C) of this paragraph, respectively, are applied unless well-documented support is provided.

(A) **Rental Income.** The Underwriter will independently calculate the Pro Forma Rent for comparison to the Applicant's estimate in the Application.

(i) **Market Rents.** The Underwriter will use the Market Analyst's conclusion of Market Rent if reasonably justified and supported by the attribute adjustment matrix of Comparable Units as described in §10.303 of this chapter (relating to Market Analysis Rules and Guidelines). Independently determined Market Rents by the Underwriter may be used based on rent information gained from direct contact with comparable properties, whether or not used by the Market Analyst, and other market data sources.

(ii) **Net Program Rents.** The Underwriter reviews the Applicant's proposed rent schedule and determines if it is consistent with the representations made in the remainder of the Application. The Underwriter uses the Gross Program Rents for the year that is most current at the time the underwriting begins and uses the most current utility information available. When underwriting for a simultaneously funded competitive round, all Applications are underwritten with the Gross Program Rents for the same year. If Gross Program Rents are adjusted by the Department after the close of the Application Acceptance Period, but prior to publication of the Report, the Underwriter may adjust the EGI to account for any increase or decrease in Gross Program Rents for the purposes of determining the reasonableness of the Applicant's EGI.

(I) Units must be individually metered for all utility costs to be paid by the tenant.

(II) Gas utilities are verified on the building plans and elsewhere in the Application when applicable.

(III) Trash allowances paid by the tenant are rare and only considered when the building plans allow for individual exterior receptacles.

(IV) Refrigerator and range allowances are not considered part of the tenant-paid utilities unless the tenant is expected to provide their own appliances, and no eligible appliance costs are included in the Total Housing Development Cost schedule.

(iii) **Contract Rents.** The Underwriter reviews rental assistance contracts to determine the Contract Rents currently applicable to the Development. Documentation supporting the likelihood of continued rental assistance is also reviewed. The Underwriter will take into consideration the Applicant's intent to request a Contract Rent increase. At

the discretion of the Underwriter, the Applicant's proposed rents may be used as the Pro Forma Rent, with the recommendations of the Report conditioned upon receipt of final approval of such increase.

(B) **Miscellaneous Income.** All ancillary fees and miscellaneous secondary income, including, but not limited to late fees, storage fees, laundry income, interest on deposits, carport rent, washer and dryer rent, telecommunications fees, and other miscellaneous income, are anticipated to be included in a \$5 to \$20 per Unit per month range. Exceptions may be made at the discretion of the Underwriter for garage income, pass-through utility payments, pass-through water, sewer and trash payments, cable fees, congregate care/assisted living/elderly facilities, and child care facilities.

- (i) Exceptions must be justified by operating history of existing comparable properties.
- (ii) The Applicant must show that the tenant will not be required to pay the additional fee or charge as a condition of renting a Unit and must show that the tenant has a reasonable alternative.
- (iii) The Applicant's operating expense schedule should reflect an itemized offsetting cost associated with income derived from pass-through utility payments, pass-through water, sewer and trash payments, and cable fees.
- (iv) Collection rates of exceptional fee items will generally be heavily discounted.
- (v) If an additional fee is charged for the use of an amenity, any cost associated with the construction, acquisition, or development of the hard assets needed to produce the additional fee for such amenity must be excluded from Eligible Basis.

(C) **Vacancy and Collection Loss.** The Underwriter generally uses a vacancy rate of 7.5 percent (5 percent vacancy plus 2.5 percent for collection loss). The Underwriter may use other assumptions based on conditions in the immediate market area. Qualified Elderly Developments and 100 percent project-based rental subsidy developments and other well documented cases may be underwritten at a combined 5 percent at the discretion of the Underwriter if the historical performance reflected in the Market Analysis is consistently higher than a 95 percent occupancy rate.

(D) **Effective Gross Income ("EGI").** The Underwriter independently calculates EGI. If the EGI estimate provided by the Applicant is within 5 percent of the EGI calculated by the Underwriter, the Applicant's EGI is characterized as reasonable in the Report; however, for purposes of calculating DCR the Underwriter's pro forma will be used unless the Applicant's pro forma meets the requirements of paragraph (3) of this subsection.

(2) **Expenses.** In determining the first year stabilized pro forma, the Underwriter evaluates the reasonableness of the Applicant's expense estimate by line item comparisons based upon the specifics of each transaction, including the Development type, the size of the Units, and the Applicant's expectations as reflected in their pro forma. Historical stabilized certified financial statements of the Development or Third Party quotes specific to the Development will reflect the strongest data points to predict future performance. The Department's Database of properties in the same location or region as the proposed Development also provides heavily relied upon data points; expense data from the Department's Database is available on the Department's website. Data from the Institute of Real Estate Management's ("IREM") most recent Conventional Apartments-Income/Expense Analysis book for the proposed Development's property type and specific location or region may be referenced. In some cases local or project-specific data such as Public Housing Authority ("PHA") Utility Allowances and property tax rates are also given significant weight in determining the appropriate line item expense estimate. Estimates of utility



savings from green building components, including on-site renewable energy, must be documented by an unrelated contractor or component vendor. Well documented information provided in the Market Analysis, Appraisal, the Application, and other sources may be considered.

- (A) **General and Administrative Expense** (“G&A”)--Expense for operational accounting fees, legal fees, advertising and marketing expenses, office operation, supplies, and equipment expenses. G&A does not include partnership related expenses such as asset management, accounting or audit fees. Costs of tenant services are not included in G&A.
- (B) **Management Fee.** Fee paid to the property management company to oversee the operation of the Property and is most often based upon a percentage of Effective Gross Income as documented in a property management agreement. Typically, 5 percent of the Effective Gross Income is used, though higher percentages for rural transactions may be used. Percentages as low as 3 percent may be used if well documented.
- (C) **Payroll Expense.** Expense for direct on-site staff payroll, insurance benefits, and payroll taxes including payroll expenses for repairs and maintenance typical of a comparable development. It does not, however, include direct security payroll or additional tenant services payroll.
- (D) **Repairs and Maintenance Expense.** Expense for repairs and maintenance, Third-Party maintenance contracts and supplies. It should not include capitalized expenses that would result from major replacements or renovations. Direct payroll for repairs and maintenance activities are included in payroll expense.
- (E) **Utilities Expense.** Utilities expense includes all gas and electric energy expenses paid by the Development.
- (F) **Water, Sewer, and Trash Expense** (“WST”). Includes all water, sewer and trash expenses paid by the Development.
- (G) **Insurance Expense.** Insurance expense includes any insurance for the buildings, contents, and general liability, but not health or workman's compensation insurance.
- (H) **Property Tax.** Includes real property and personal property taxes but not payroll taxes.
  - (i) An assessed value will be calculated based on the capitalization rate published by the county taxing authority. If the county taxing authority does not publish a capitalization rate, a capitalization rate of 10 percent or a comparable assessed value may be used.
  - (ii) Property tax exemptions or a Proposed Payment In Lieu Of Tax (“PILOT”) agreement must be documented as being reasonably achievable. At the discretion of the Underwriter, a property tax exemption that meets known federal, state and local laws may be applied based on the tax-exempt status of the Development Owner and its Affiliates.
- (I) **Reserves.** An annual reserve for replacements of future capital expenses and any ongoing operating reserve requirements. The Underwriter includes minimum reserves of \$250 per Unit for New Construction and Reconstruction Developments and \$300 per Unit for all other Developments. The Underwriter may require an amount above \$300 for the Development based on information provided in the Property Condition Assessment (“PCA”). The Applicant's assumption for reserves may be adjusted by the Underwriter if the amount provided by the Applicant is insufficient to fund capital needs as documented by the

PCA during the first fifteen (15) years of the long term pro forma. Higher reserves may be used if documented by a primary lender or syndicator.

(J) **Other Expenses.** The Underwriter will include other reasonable and documented expenses. These include audit fees, tenant services, security expense and compliance fees. This category does not include depreciation, interest expense, lender or syndicator's asset management fees, or other ongoing partnership fees. The most common other expenses are described in more detail in clauses (i) - (iv) of this subparagraph.

(i) **Tenant Services.** Cost to the Development of any non-traditional tenant benefit such as payroll for instruction or activities personnel and associated operating expenses. Tenant services expenses are considered in calculating the DCR.

(ii) **Security Expense.** Contract or direct payroll expense for policing the premises of the Development.

(iii) **Compliance Fees.** Include only compliance fees charged by the Department and are considered in calculating the DCR.

(iv) **Cable Television Expense.** Includes fees charged directly to the Development Owner to provide cable services to all Units. The expense will be considered only if a contract for such services with terms is provided and income derived from cable television fees is included in the projected EGI. Cost of providing cable television in only the community building should be included in G&A as described in subparagraph (A) of this paragraph.

(K) The Underwriter may request additional documentation supporting some, none or all expense line items. If a rationale acceptable to the Underwriter for the difference is not provided, the discrepancy is documented in the Report. If the Applicant's total expense estimate is within 5 percent of the final total expense figure calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating DCR, the Underwriter's independent calculation will be used unless the Applicant's first year stabilized pro forma meets the requirements of paragraph (3) of this subsection.

(3) **Net Operating Income ("NOI").** The difference between the EGI and total operating expenses. If the first year stabilized NOI figure provided by the Applicant is within 5 percent of the NOI calculated by the Underwriter, the Applicant's figure is characterized as reasonable in the Report; however, for purposes of calculating the first year stabilized pro forma DCR, the Underwriter will maintain and use his independent calculation of NOI, unless the Applicant's first year stabilized EGI, total expenses, and NOI are each within 5 percent of the Underwriter's estimates.

(4) **Debt Coverage Ratio.** DCR is calculated by dividing NOI by the sum of scheduled loan principal and interest payments for all permanent sources of funds. Loan principal and interest payments are calculated based on the terms indicated in the term sheet(s) for financing submitted in the Application. Unusual or non-traditional financing structures may also be considered.

(A) **Interest Rate.** The rate documented in the term sheet(s) will be used for debt service calculations. Term sheets indicating a variable interest rate must provide a breakdown of the rate index and component rates comprising an all-in interest rate. The term sheet(s) must state the lender's underwriting interest rate, or the Applicant must submit a separate statement from the lender with an estimate of the interest rate as of the date of such

statement. The Underwriter may adjust the underwritten interest rate based on data collected on similarly structured transactions or rate index history.

- (B) **Amortization Period.** The Department generally requires an amortization of not less than thirty (30) years, and not more than forty (40) years (fifty (50) years for federally sourced loans), or an adjustment to the amortization is made for the purposes of the analysis and recommendations. In non-Housing Tax Credit transactions a lesser amortization period may be used if the Department's funds are fully amortized over the same period.
- (C) **Repayment Period.** For purposes of projecting the DCR over a 30-year period for developments with permanent financing structures with balloon payments in less than thirty (30) years, the Underwriter will carry forward debt service based on a full amortization at the interest rate stated in the term sheet(s).
- (D) **Acceptable Debt Coverage Ratio Range.** Except as set forth in clauses (i) or (ii) of this subparagraph, the acceptable first year stabilized pro forma DCR for all priority or foreclosable lien financing plus the Department's proposed financing must be between a minimum of 1.15 and a maximum of 1.35.
  - (i) For Developments other than HOPE VI and USDA transactions, if the DCR is less than the minimum, the recommendations of the Report may be based on an assumed reduction to debt service and the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause:
    - (I) a reduction of the interest rate or an increase in the amortization period for Direct Loans;
    - (II) a reclassification of Direct Loans to reflect grants, if permitted by program rules;
    - (III) a reduction in the permanent loan amount for non-Department funded loans based upon the rates and terms in the permanent loan term sheet(s) as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.
  - (ii) If the DCR is greater than the maximum, the recommendations of the Report may be based on an assumed increase to debt service and the Underwriter will make adjustments to the assumed financing structure in the order presented in subclauses (I) - (III) of this clause:
    - (I) reclassification of Department funded grants to reflect loans, if permitted by program rules;
    - (II) an increase in the interest rate or a decrease in the amortization period for Direct Loans;
    - (III) an increase in the permanent loan amount for non-Department funded loans based upon the rates and terms in the permanent loan term sheet as long as they are within the ranges in subparagraphs (A) and (B) of this paragraph.
  - (iii) For Housing Tax Credit Developments, a reduction in the recommended Housing Credit Allocation Amount may be made based on the gap/DCR method described in subsection (c)(2) of this section.
  - (iv) Although adjustments in debt service may become a condition of the Report, future changes in income, expenses, and financing terms could allow for an acceptable DCR.
- (5) **Long Term Pro forma.** The Underwriter will create a 30-year operating pro forma.

- (A) The Underwriter's first year stabilized pro forma is utilized unless the Applicant's first year stabilized EGI, operating expenses, and NOI are each within 5 percent of the Underwriter's estimates.
- (B) A 2 percent annual growth factor is utilized for income and a 3 percent annual growth factor is utilized for expenses.
- (C) Adjustments may be made to the long term pro forma if satisfactory support documentation is provided by the Applicant or as determined by the Underwriter.

(e) **Total Housing Development Costs.** The Development's need for permanent funds and, when applicable, the Development's Eligible Basis is based upon the projected Total Housing Development Cost. The Department's estimate of the Total Housing Development Cost will be based on the Applicant's development cost schedule to the extent that it can be verified to a reasonable degree of certainty with documentation from the Applicant and tools available to the Underwriter. For New Construction Developments, the Underwriter's total cost estimate will be used unless the Applicant's Total Housing Development Cost is within 5 percent of the Underwriter's estimate. The Department's estimate of the Total Housing Development Cost for acquisition/Rehabilitation will be based in accordance with the PCA's estimated cost for the scope of work as defined by the Applicant and §10.306(a)(5) of this chapter (relating to PCA Guidelines). If the Applicant's is utilized and the Applicant's line item costs are inconsistent with documentation provided in the Application or program rules, the Underwriter may make adjustments to the Applicant's Total Housing Development Cost.

(1) **Acquisition Costs.** The underwritten acquisition cost is verified with Site Control document(s) for the Property.

(A) **Excess Land Acquisition.** In cases where more land is to be acquired (by the Applicant or a Related Party) than will be utilized as the Development Site and the remainder acreage is not accessible for use by tenants or dedicated as permanent and maintained green space, the value ascribed to the proposed Development Site will be prorated based on acreage from the total cost reflected in the Site Control document(s). An appraisal containing segregated values for the total acreage, the acreage for the Development Site and the remainder acreage, or tax assessment value may be used by the Underwriter in making a proration determination based on relative value; however, the Underwriter will not utilize a prorated value greater than the total amount in the Site Control document(s).

(B) **Identity of Interest Acquisitions.**

- (i) An acquisition will be considered an identity of interest transaction when the seller is an Affiliate of, a Related Party to, any owner at any level of the Development Team or a Related Party lender; and
  - (I) is the current owner in whole or in part of the Property; or
  - (II) has or had within the prior 36 months, legal or beneficial ownership of the property or any portion thereof or interest therein prior to the first day of the Application Acceptance Period.
- (ii) In all identity of interest transactions the Applicant is required to provide:
  - (I) the original acquisition cost evidenced by an executed settlement statement or, if a settlement statement is not available, the original asset value listed in the most current financial statement for the identity of interest owner; and

- (II) if the original acquisition cost evidenced by subclause (I) of this clause is less than the acquisition cost stated in the application:
  - (-a-) an appraisal that meets the requirements of §10.304 of this chapter (relating to Appraisal Rules and Guidelines); and
  - (-b-) any other verifiable costs of owning, holding, or improving the Property, excluding seller financing, that when added to the value from subclause (I) of this clause justifies the Applicant's proposed acquisition amount.
    - (-1-) For land-only transactions, documentation of owning, holding or improving costs since the original acquisition date may include property taxes, interest expense to unrelated Third Party lender(s), capitalized costs of any physical improvements, the cost of zoning, platting, and any off-site costs to provide utilities or improve access to the Property. All allowable holding and improvement costs must directly benefit the proposed Development by a reduction to hard or soft costs. Additionally, an annual return of 10 percent may be applied to the original capital investment and documented holding and improvement costs; this return will be applied from the date the applicable cost is incurred until the date of the Department's Board meeting at which the Grant, Direct Loan and/or Housing Credit Allocation will be considered.
    - (-2-) For transactions which include existing buildings that will be rehabilitated or otherwise retained as part of the Development, documentation of owning, holding, or improving costs since the original acquisition date may include capitalized costs of improvements to the Property, and in the case of USDA financed Developments the cost of exit taxes not to exceed an amount necessary to allow the sellers to be made whole in the original and subsequent investment in the Property and avoid foreclosure. Additionally, an annual return of 10 percent may be applied to the original capital investment and documented holding and improvement costs; this return will be applied from the date the applicable cost was incurred until the date of the Department's Board meeting at which the Grant, Direct Loan and/or Housing Credit Allocation will be considered. For any period of time during which the existing buildings are occupied or otherwise producing revenue, holding costs may not include capitalized costs, operating expenses, including, but not limited to, property taxes and interest expense.
- (iii) In no instance will the acquisition cost utilized by the Underwriter exceed the lesser of the original acquisition cost evidenced by clause (ii)(I) of this subparagraph plus costs identified in clause (ii)(II)(-b-) of this subparagraph, or if applicable the "as-is" value

conclusion evidenced by clause (ii)(II)(-a-) of this subparagraph. Acquisition cost is limited to appraised land value for transactions which include existing buildings that will be demolished. The resulting acquisition cost will be referred to as the "Adjusted Acquisition Cost."

(C) **Eligible Basis on Acquisition of Buildings.** Building acquisition cost will be included in the underwritten Eligible Basis if the Applicant provided an appraisal that meets the Department's Appraisal Rules and Guidelines as described in §10.304 of this chapter. The underwritten eligible building cost will be the lowest of the values determined based on clauses (i) - (iii) of this subparagraph:

- (i) the Applicant's stated eligible building acquisition cost;
- (ii) the total acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost (as defined in subparagraph (B)(iii) of this paragraph), prorated using the relative land and building values indicated by the applicable appraised value;
- (iii) total acquisition cost reflected in the Site Control document(s), or the Adjusted Acquisition Cost (as defined in subparagraph (B)(iii) of this paragraph), less the appraised "as-vacant" land value; or
- (iv) the Underwriter will use the value that best corresponds to the circumstances presently affecting the Development and that will continue to affect the Development after transfer to the new owner in determining the building value. Any value of existing favorable financing will be attributed prorata to the land and buildings.

(2) **Off-Site Costs.** The Underwriter will only consider costs of Off-Site Construction that are well documented and certified to by a Third Party engineer on the required Application forms and supporting documentation.

(3) **Site Work Costs.** The Underwriter will only consider costs of Site Work that are well documented and certified to by a Third Party engineer on the required Application forms and supporting documentation.

(4) **Building Costs.**

(A) **New Construction and Reconstruction.** The Underwriter will use the Marshall and Swift Residential Cost Handbook, other comparable published Third-Party cost estimating data sources, historical final cost certifications of previous Housing Tax Credit developments and other acceptable cost data available to the Underwriter to estimate Building Cost. Generally, the "Average Quality" multiple, townhouse, or single family costs, as appropriate, from the Marshall and Swift Residential Cost Handbook or other comparable published Third-Party data source, will be used based upon details provided in the Application and particularly building plans and elevations. The Underwriter will consider amenities, specifications and development types not included in the Average Quality standard.

(B) **Rehabilitation and Adaptive Reuse.**

- (i) The Applicant must provide a detailed narrative description of the scope of work for the proposed rehabilitation.
- (ii) The Underwriter will use cost data provided by the PCA. In the case where the PCA is inconsistent with the Applicant's estimate as proposed in the Total Housing Development Cost schedule and/or the Applicant's scope of work, the Underwriter may request a supplement executed by the PCA provider reconciling the Applicant's estimate and detailing the difference in costs. If the Underwriter determines that the

reasons for the initial difference in costs are not well-documented, the Underwriter utilizes the initial PCA estimations.

- (5) **Contingency.** All contingencies identified in the Applicant's project cost schedule, including any soft cost contingency, will be limited to a maximum of 7 percent of Building Cost plus Site Work and off-sites for New Construction and Reconstruction Developments, and 10 percent of Building Cost plus Site Work and off-sites for Rehabilitation and Adaptive Reuse Developments. For Housing Tax Credit Developments, the percentage is applied to the sum of the eligible Building Cost, eligible Site Work costs and eligible off-site costs in calculating the eligible contingency cost. The Applicant's estimate is used by the Underwriter if less than the 7 percent or 10 percent limit, as applicable, but in no instance less than 5 percent.
- (6) **Contractor Fee.** Contractor fees include general requirements, contractor overhead, and contractor profit. General requirements include, but are not limited to, on-site supervision or construction management, off-site supervision and overhead, jobsite security, equipment rental, storage, temporary utilities, and other indirect costs. Contractor fees are limited to a total of 14 percent on Developments with Hard Costs of \$3 million or greater, the lesser of \$420,000 or 16 percent on Developments with Hard Costs less than \$3 million and greater than \$2 million, and the lesser of \$320,000 or 18 percent on Developments with Hard Costs at \$2 million or less. For tax credit Developments, the percentages are applied to the sum of the Eligible Hard Costs in calculating the eligible contractor fees. For Developments also receiving financing from USDA, the combination of builder's general requirements, builder's overhead, and builder's profit should not exceed the lower of TDHCA or USDA requirements. Additional fees for ineligible costs will be limited to the same percentage of ineligible Hard Costs but will not be included in Eligible Basis.
- (7) **Developer Fee.**
  - (A) For Housing Tax Credit Developments, the Developer fees and Development Consultant fees included in Eligible Basis cannot exceed 15 percent of the project's eligible costs, less Developer fees, for Developments proposing fifty (50) Units or more and 20 percent of the project's eligible costs, less Developer fees, for Developments proposing forty-nine (49) Units or less.
  - (B) Any additional Developer fee claimed for ineligible costs will be limited to the same percentage but applied only to ineligible Hard Costs (15 percent for Developments with fifty (50) or more Units, or 20 percent for Developments with forty-nine (49) or fewer Units). Any Developer fee above this limit will be excluded from Total Housing Development Costs. All fees to Affiliates and/or Related Parties for work or guarantees determined by the Underwriter to be typically completed or provided by the Developer or Principal(s) of the Developer will be considered part of Developer fee.
  - (C) In the case of a transaction requesting acquisition Housing Tax Credits:
    - (i) the allocation of eligible Developer fee in calculating Rehabilitation/New Construction Housing Tax Credits will not exceed 15 percent of the Rehabilitation/New Construction eligible costs less Developer fees for Developments proposing fifty (50) Units or more and 20 percent of the Rehabilitation/New Construction eligible costs less Developer fees for Developments proposing forty-nine (49) Units or less; and
    - (ii) no Developer fee attributable to an identity of interest acquisition of the Development will be included.
  - (D) Eligible Developer fee is multiplied by the appropriate Applicable Percentage depending whether it is attributable to acquisition or rehabilitation basis.

- (E) For non-Housing Tax Credit developments, the percentage can be up to 15 percent, but is based upon Total Housing Development Cost less the sum of the fee itself, land costs, the costs of permanent financing, excessive construction period financing described in paragraph (8) of this subsection, reserves, and any identity of interest acquisition cost.
- (8) **Financing Costs.** Eligible construction period interest is limited to the lesser of actual eligible construction period interest, or the interest on one (1) year's fully drawn construction period loan funds at the construction period interest rate indicated in the term sheet(s). Any excess over this amount will not be included in Eligible Basis. Construction period interest on Related Party construction loans is not included in Eligible Basis.
- (9) **Reserves.** The Underwriter will utilize the amount described in the Applicant's project cost schedule if it is within the range of two (2) to six (6) months of stabilized operating expenses plus debt service. Alternatively, the Underwriter may consider a greater amount proposed by the first lien lender or syndicator if the detail for such greater amount is reasonable and well documented. Reserves do not include capitalized asset management fees, guaranty reserves or other similar costs. Lease up reserves, exclusive of initial start-up costs, funding of other reserves and interim interest, may be considered with documentation showing assumptions acceptable to the Underwriter. In no instance will total reserves exceed twelve (12) months of stabilized operating expenses plus debt service (including transferred replacement reserves for USDA or HUD financed rehabilitation transactions).
- (10) **Other Soft Costs.** For Housing Tax Credit Developments, all other soft costs are divided into eligible and ineligible costs. Eligible costs are defined by the Code, but generally are costs that can be capitalized in the basis of the Development for tax purposes. Ineligible costs are those that tend to fund future operating activities and operating reserves. The Underwriter will evaluate and apply the allocation of these soft costs in accordance with the Department's prevailing interpretation of the Code. If the Underwriter questions the amount or eligibility of any soft costs, the Applicant will be given an opportunity to clarify and address the concern prior to completion of the Report.

**(f) Development Team Capacity and Development Plan.**

- (1) The Underwriter will evaluate and report on the overall capacity of the Development Team by reviewing aspects, including but not limited to those identified in subparagraphs (A) - (D) of this paragraph:
- (A) personal credit reports for development sponsors, Developer fee recipients and those individuals anticipated to provide guarantee(s). The Underwriter will evaluate the credit report and identify any bankruptcy, state or federal tax liens or other relevant credit risks for compliance with eligibility and debarment requirements in this chapter;
- (B) quality of construction, Rehabilitation, and ongoing maintenance of previously awarded housing developments by review of construction inspection reports, compliance on-site visits, findings of UPCS violations and other information available to the Underwriter;



(C) for Housing Tax Credit Developments, repeated or ongoing failure to timely submit cost certifications, requests for and clearance of final inspections, and timely response to deficiencies in the cost certification process;

(D) adherence to obligations on existing or prior Department funded developments with respect to program rules and documentation.

(2) While all components of the development plan may technically meet the other individual requirements of this section, a confluence of serious concerns and unmitigated risks identified during the underwriting process will result in an Application being referred to the Committee. The Committee will review any recommendation made under this subsection to deny an Application for a Grant, Direct Loan and/or Housing Credit Allocation prior to completion of the Report and posting to the Department's website.

(g) **Other Underwriting Considerations.** The Underwriter will evaluate additional feasibility elements as described in paragraphs (1) - (3) of this subsection.

(1) **Floodplains.** The Underwriter evaluates the site plan, floodplain map, survey and other information provided to determine if any of the buildings, drives, or parking areas reside within the 100-year floodplain. If such a determination is made by the Underwriter, the Report will include a condition that:

(A) the Applicant must pursue and receive a Letter of Map Amendment (“LOMA”) or Letter of Map Revision (“LOMR-F”); or

(B) the Applicant must identify the cost of flood insurance for the buildings and for the tenant's contents for buildings within the 100-year floodplain and certify that the flood insurance will be obtained; and

(C) the Development must be designed to comply with the QAP, as proposed.

(2) **Proximity to Other Developments.** The Underwriter will identify in the Report any developments funded or known and anticipated to be eligible for funding within one linear mile of the subject. Distance is measured in a straight line from nearest boundary point to nearest boundary point.

(3) **Supportive Housing.** The unique development and operating characteristics of Supportive Housing Developments may require special consideration in these areas:

(A) **Operating Income.** The extremely-low-income tenant population typically targeted by a Supportive Housing Development may include deep-skewing of rents to well below the 50 percent AMGI level or other maximum rent limits established by the Department. The Underwriter should utilize the Applicant's proposed rents in the Report as long as such rents are at or below the maximum rent limit proposed for the units and equal to any project based rental subsidy rent to be utilized for the Development;

(B) **Operating Expenses.** A Supportive Housing Development may have significantly higher expenses for payroll, management fee, security, resident support services, or other items than typical affordable housing developments. The Underwriter will rely heavily upon the historical operating expenses of other Supportive Housing Developments provided by the Applicant or otherwise available to the Underwriter;

- (C) **DCR and Long Term Feasibility.** Supportive Housing Developments may be exempted from the DCR requirements of subsection (d)(4)(D) of this section if the Development is anticipated to operate without conventional or "must-pay" debt. Applicants must provide evidence of sufficient financial resources to offset any projected 15-year cumulative negative Cash Flow. Such evidence will be evaluated by the Underwriter on a case-by-case basis to satisfy the Department's long term feasibility requirements and may take the form of one or a combination of: executed subsidy commitment(s); set-aside of Applicant's financial resources to be substantiated by current financial statements evidencing sufficient resources; and/or proof of annual fundraising success sufficient to fill anticipated operating losses. If either a set aside of financial resources or annual fundraising are used to evidence the long term feasibility of a Supportive Housing Development, a resolution from the Applicant's governing board must be provided confirming their irrevocable commitment to the provision of these funds and activities; and/or
- (D) **Total Housing Development Costs.** For Supportive Housing Developments designed with only Efficiency Units, the Underwriter may use "Average Quality" dormitory costs, or costs of other appropriate design styles from the Marshall & Swift Valuation Service, with adjustments for amenities and/or quality as evidenced in the Application, as a base cost in evaluating the reasonableness of the Applicant's Building Cost estimate for New Construction Developments.

(h) **Work Out Development.** Developments that are underwritten subsequent to Board approval in order to refinance or gain relief from restrictions may be considered infeasible based on the guidelines in this section, but may be characterized as "the best available option" or "acceptable available option" depending on the circumstances and subject to the discretion of the Underwriter as long as the option analyzed and recommended is more likely to achieve a better financial outcome for the property and the Department than the status quo.

(i) **Feasibility Conclusion.** An infeasible Development will not be recommended for a Grant, Direct Loan or Housing Credit Allocation unless the Underwriter can determine an alternative structure and/or conditions the recommendations of the Report upon receipt of documentation supporting an alternative structure. A Development will be characterized as infeasible if paragraph (1) or (2) of this subsection applies. The Development will be characterized as infeasible if one or more of paragraphs (3) - (5) of this subsection applies unless paragraph (6)(B) of this subsection also applies.

- (1) **Gross Capture Rate.** The method for determining the Gross Capture Rate for a Development is defined in §10.303(d)(11)(F) of this chapter. The Underwriter will independently verify all components and conclusions of the Gross Capture Rate and may, at their discretion, use independently acquired demographic data to calculate demand and may make a determination of the effective Gross Capture Rate based upon an analysis of the Sub-market. The Development:
- (A) is characterized as a Qualified Elderly Development and the Gross Capture Rate exceeds 10 percent for the total proposed Units; or
  - (B) is outside a Rural Area and targets the general population, and the Gross Capture Rate exceeds 10 percent for the total proposed Units; or

- (C) is in a Rural Area and targets the general population, and the Gross Capture Rate exceeds 30 percent; or
- (D) is Supportive Housing and the Gross Capture Rate exceeds 30 percent.
- (E) Developments meeting the requirements of subparagraph (A), (B), (C), or (D) of this paragraph may avoid being characterized as infeasible if clause (i) or (ii) of this subparagraph apply.
  - (i) **Replacement Housing.** The proposed Development is comprised of affordable housing which replaces previously existing affordable housing within the Primary Market Area as defined in §10.303 of this chapter on a Unit for Unit basis, and gives the displaced tenants of the previously existing affordable housing a leasing preference.
  - (ii) **Existing Housing.** The proposed Development is comprised of existing affordable housing which is at least 50 percent occupied and gives displaced existing tenants a leasing preference as stated in a relocation plan.
- (2) **Deferred Developer Fee.** Applicants requesting an allocation of tax credits where the estimated deferred Developer Fee, based on the Underwriter's recommended financing structure, is not repayable from Cash Flow within the first fifteen (15) years of the long term pro forma as described in subsection (d)(5) of this section.
- (3) **Pro Forma Rent.** The Pro Forma Rent for Units with rents restricted at 60 percent of AMGI is less than the Net Program Rent for Units with rents restricted at or below 50 percent of AMGI unless the Applicant accepts the Underwriter's recommendation, if any, that all restricted units have rents and incomes restricted at or below the 50 percent of AMGI level.
- (4) **Initial Feasibility.**
  - (A) The first year stabilized pro forma operating expense divided by the first year stabilized pro forma Effective Gross Income is greater than 68 percent for Rural Developments 36 Units or less and 65 percent for all other Developments.
  - (B) The first year DCR is below 1.15
- (5) **Long Term Feasibility.** The Long Term Pro forma, as defined in subsection (d)(5) of this section, reflects a Debt Coverage Ratio below 1.15 or negative cash flow at any time during years two through fifteen.
- (6) **Exceptions.** The infeasibility conclusions may be excepted where either of the criteria apply.
  - (A) The requirements in this subsection may be waived by the Executive Director of the Department or by the Committee if documentation is submitted by the Applicant to support unique circumstances that would provide mitigation.
  - (B) Developments not meeting the requirements of one or more of paragraphs (3), (4)(A) or (5) of this subsection will be re-characterized as feasible if one or more of clauses (i) - (v) of this subparagraph apply.
    - (i) The Development will receive Project-based Section 8 Rental Assistance for at least 50 percent of the Units and a firm commitment, with terms including Contract Rent and number of Units, is submitted at Application.
    - (ii) The Development will receive rental assistance for at least 50 percent of the Units in association with USDA financing.
    - (iii) The Development will be characterized as public housing as defined by HUD for at least 50 percent of the Units or HOPE VI financed transactions.

- (iv) The Development will be characterized as Supportive Housing for at least 50 percent of the Units and evidence of adequate financial support for the long term viability of the Development is provided.
- (v) The Development has other long term project based restrictions on rents for at least 50 percent of the Units that allow rents to increase based upon expenses and the Applicant's proposed rents are at least 10 percent lower than both the Net Program Rent and Market Rent.

### **§10.303. Market Analysis Rules and Guidelines.**

(a) **General Provision.** A Market Analysis prepared for the Department must evaluate the need for decent, safe, and sanitary housing at rental rates or sales prices that eligible tenants can afford. The analysis must determine the feasibility of the subject Property rental rates or sales price and state conclusions as to the impact of the Property with respect to the determined housing needs. The Market Analysis must include a statement that the report preparer has read and understood the requirements of this section.

(b) **Self-Contained.** A Market Analysis prepared for the Department must allow the reader to understand the market data presented, the analysis of the data, and the conclusions derived from such data. All data presented should reflect the most current information available and the report must provide a parenthetical (in-text) citation or footnote describing the data source. The analysis must clearly lead the reader to the same or similar conclusions reached by the Market Analyst. All steps leading to a calculated figure must be presented in the body of the report.

(c) **Market Analyst Qualifications.** A Market Analysis submitted to the Department must be prepared and certified by an approved Qualified Market Analyst. (§2306.67055) The Department will maintain an approved Market Analyst list based on the guidelines set forth in paragraphs (1) - (3) of this subsection.

- (1) The approved Qualified Market Analyst list will be updated and published annually on or about October 1<sup>st</sup>. If not listed as an approved Qualified Market Analyst by the Department, a Market Analyst may request approval by submitting items in subparagraphs (A) - (F) of this paragraph at least thirty (30) days prior to the first day of the competitive tax credit Application Acceptance Period or thirty (30) days prior to submission of any other application for funding for which the Market Analyst must be approved.
  - (A) Franchise Tax Account Status from the Texas Comptroller of Public Accounts (not applicable for sole proprietorships).
  - (B) A current organization chart or list reflecting all members of the firm who may author or sign the Market Analysis.
  - (C) Resumes for all members of the firm or subcontractors who may author or sign the Market Analysis.
  - (D) General information regarding the firm's experience including references, the number of previous similar assignments and timeframes in which previous assignments were completed.

- (E) Certification from an authorized representative of the firm that the services to be provided will conform to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the Application Round in which each Market Analysis is submitted.
- (F) A sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the sample Market Analysis is submitted.

An already approved Qualified Market Analyst will remain on the list so long as at least one (1) Market Analysis has been submitted to the Department in the previous 12 months or items (A),(B),(C) and (E) are submitted prior to October 1<sup>st</sup>. Otherwise, the Market Analyst will automatically be removed from the list.

- (2) During the underwriting process each Market Analysis will be reviewed and any discrepancies with the rules and guidelines set forth in this section may be identified and require timely correction. Subsequent to the completion of the Application Round and as time permits, staff or a review appraiser will re-review a sample set of submitted market analyses to ensure that the Department's Market Analysis Rules and Guidelines are met. If it is found that a Market Analyst has not conformed to the Department's Market Analysis Rules and Guidelines, as certified to, the Market Analyst will be notified of the discrepancies in the Market Analysis and will be removed from the approved Qualified Market Analyst list.
  - (A) In and of itself, removal from the list of approved Market Analysts will not invalidate a Market Analysis commissioned prior to the removal date and at least ninety (90) days prior to the first day of the applicable Application Acceptance Period.
  - (B) To be reinstated as an approved Qualified Market Analyst, the Market Analyst must amend the previous report to remove all discrepancies or submit a new sample Market Analysis that conforms to the Department's Market Analysis Rules and Guidelines, as described in this section, in effect for the year in which the updated or new sample Market Analysis is submitted.
- (3) The list of approved Qualified Market Analysts will be posted on the Department's web site no later than November 1<sup>st</sup>.

(d) **Market Analysis Contents.** A Market Analysis for a rental Development prepared for the Department must be organized in a format that follows a logical progression and must include, at minimum, items addressed in paragraphs (1) - (13) of this subsection.

- (1) **Title Page.** Include Property address or location, effective date of analysis, date report completed, name and address of person authorizing report, and name and address of Market Analyst.
- (2) **Letter of Transmittal.** The date of the letter must be the date the report was completed. Include Property address or location, description of Property, statement as to purpose and scope of analysis, reference to accompanying Market Analysis report with effective date of analysis and summary of conclusions, date of Property inspection, name of persons inspecting subject Property, and signatures of all Market Analysts authorized to work on the assignment. Include a statement that the report preparer has read and understood the requirements of this section.
- (3) **Table of Contents.** Number the exhibits included with the report for easy reference.
- (4) **Market Analysis Summary.** Include the Department's Market Analysis Summary exhibit.

- (5) **Assumptions and Limiting Conditions.** Include a description of all assumptions, both general and specific, made by the Market Analyst concerning the Property.
- (6) **Identification of the Property.** Provide a statement to acquaint the reader with the Development. Such information includes street address, tax assessor's parcel number(s), and Development characteristics.
- (7) **Statement of Ownership.** Disclose the current owners of record and provide a three (3) year history of ownership for the subject Property.
- (8) **Secondary Market Area.** A SMA is not required, but may be defined at the discretion of the Market Analyst to support identified demand. All of the Market Analyst's conclusions specific to the subject Development must be based on only one SMA definition. The entire PMA, as described in this paragraph, must be contained within the SMA boundaries. The Market Analyst must adhere to the methodology described in this paragraph when determining the Secondary Market Area. (§2306.67055)
  - (A) The SMA will be defined by the Market Analyst with:
    - (i) size based on a base year population of no more than 250,000 people inclusive of the PMA; and
    - (ii) boundaries based on U.S. census tracts, ZIP codes, or place, as defined by the U.S. Census Bureau.
  - (B) The Market Analyst's definition of the SMA must include:
    - (i) a detailed description of why the subject Development is expected to draw a significant number of tenants or homebuyers from the defined SMA;
    - (ii) a complete demographic report for the defined SMA; and
    - (iii) a scaled distance map indicating the SMA boundaries showing relevant U.S. census tracts with complete 11-digit identification numbers in numerical order, ZIP codes or places with labels as well as the location of the subject Development and all comparable Developments.
- (9) **Primary Market Area.** All of the Market Analyst's conclusions specific to the subject Development must be based on only one PMA definition. The Market Analyst must adhere to the methodology described in this paragraph when determining the market area. (§2306.67055)
  - (A) The PMA will be defined by the Market Analyst as:
    - (i) size based on a base year population of no more than 100,000 people;
    - (ii) boundaries based on U.S. census tracts, ZIP codes, or place, as defined by the U.S. Census Bureau; and
    - (iii) the population of the PMA may exceed 100,000 if the amount over the limit is contained within a single census tract or ZIP code, and if the PMA is defined by census tract or ZIP code.
  - (B) The Market Analyst's definition of the PMA must include:
    - (i) a detailed description of why the subject Development is expected to draw a majority of its prospective tenants or homebuyers from the defined PMA;
    - (ii) a complete demographic report for the defined PMA; and
    - (iii) a scaled distance map indicating the PMA boundaries showing relevant U.S. census tracts with complete 11-digit identification numbers in numerical order, ZIP codes or

places with labels as well as the location of the subject Development and all comparable Developments.

(C) **Comparable Units.** Identify Developments in the PMA with Comparable Units. In PMAs lacking sufficient rent comparables, it may be necessary for the Market Analyst to collect data from markets with similar characteristics and make quantifiable location adjustments. Provide a data sheet for each Development consisting of:

- (i) development name;
- (ii) address;
- (iii) year of construction and year of Rehabilitation, if applicable;
- (iv) property condition;
- (v) Target Population;
- (vi) unit mix specifying number of Bedrooms, number of baths, Net Rentable Area; and
  - (I) monthly rent and Utility Allowance; or
  - (II) sales price with terms, marketing period and date of sale;
- (vii) description of concessions;
- (viii) list of unit amenities;
- (ix) utility structure;
- (x) list of common amenities; and
- (xi) for rental developments only, the occupancy and turnover.

(10) **Market Information.**

(A) For each of the defined market areas, identify the number of units for each of the categories in clauses (i) - (vi) of this subparagraph; the data must be clearly labeled as relating to either the PMA or the SMA, if applicable:

- (i) total housing;
- (ii) rental developments (all multi-family);
- (iii) Affordable housing;
- (iv) Comparable Units;
- (v) Unstabilized Comparable Units; and
- (vi) proposed Comparable Units.

(B) **Occupancy.** The occupancy rate indicated in the Market Analysis may be used to support both the overall demand conclusion for the proposed Development and the vacancy rate assumption used in underwriting the Development described in §10.302(d)(1)(C) of this chapter (relating to Underwriting Rules and Guidelines). State the overall physical occupancy rate for the proposed housing tenure (renter or owner) within the defined market areas by:

- (i) number of Bedrooms;
- (ii) quality of construction (class);
- (iii) Target Population; and
- (iv) Comparable Units.

(C) **Absorption.** State the absorption trends by quality of construction (class) and absorption rates for Comparable Units.

(D) **Demographic Reports.**

- (i) All demographic reports must include population and household data for a five (5) year period with the year of Application submission as the base year;
  - (ii) All demographic reports must provide sufficient data to enable calculation of income-eligible, age-, size-, and tenure-appropriate household populations;
  - (iii) For Developments targeting seniors, all demographic reports must provide a detailed breakdown of households by age and by income; and
  - (iv) A complete copy of all demographic reports relied upon for the demand analysis, including the reference index that indicates the census tracts or ZIP codes on which the report is based.
- (E) **Demand.** Provide a comprehensive evaluation of the need for the proposed housing for the Development as a whole and each Unit type by number of Bedrooms proposed and rent restriction category within the defined market areas using the most current census and demographic data available.
- (i) **Demographics.** The Market Analyst should use demographic data specific to the characteristics of the households that will be living in the proposed Development. For example, the Market Analyst should use demographic data specific to elderly population for a Qualified Elderly Development, if available, and should avoid making adjustments from more general demographic data. If adjustment rates are used based on more general data for any of the criteria described in subclauses (I) - (V) of this clause, they should be clearly identified and documented as to their source in the report.
    - (I) Population. Provide population and household figures, supported by actual demographics, for a five (5) year period with the year of Application submission as the base year.
    - (II) Target. If applicable, adjust the household projections for the Qualified Elderly targeted by the proposed Development.
    - (III) Household Size-Appropriate. Adjust the household projections or target household projections, as applicable, for the appropriate household size for the proposed Unit type by number of Bedrooms proposed and rent restriction category based on 1.5 persons per Bedroom (round up).
    - (IV) Income Eligible. Adjust the household size appropriate projections for income eligibility based on the income bands for the proposed Unit Type by number of Bedrooms proposed and rent restriction category with:
      - (-a-) the lower end of each income band calculated based on the lowest gross rent proposed divided by 35 percent for the general population and 50 percent for Qualified Elderly households; and
      - (-b-) the upper end of each income band equal to the applicable gross median income limit for the largest appropriate household size based on 1.5 persons per Bedroom (round up) or one person for Efficiency Units.
    - (V) Tenure-Appropriate. Adjust the income-eligible household projections for tenure (renter or owner). If tenure appropriate income eligible target household data is available, a tenure appropriate adjustment is not necessary.



- (ii) **Gross Demand.** Gross Demand is defined as the sum of Potential Demand from the PMA, Demand from Other Sources, and Potential Demand from a Secondary Market Area (SMA) to the extent that SMA demand does not exceed 25 percent of Gross Demand.
- (iii) **Potential Demand.** Potential Demand is defined as the number of income-eligible, age-, size-, and tenure-appropriate target households in the designated market area at the proposed placed in service date.
  - (I) Maximum eligible income is equal to the applicable gross median income limit for the largest appropriate household size based on 1.5 persons per Bedroom (round up) or one person for Efficiency Units.
  - (II) For Developments targeting the general population:
    - (-a-) minimum eligible income is based on a 35 percent rent to income ratio;
    - (-b-) appropriate household size is defined as 1.5 persons per Bedroom (rounded up); and
    - (-c-) the tenure-appropriate population for a rental Development is limited to the population of renter households.
  - (III) For Developments consisting solely of single family residences on separate lots with all Units having three (3) or more Bedrooms:
    - (-a-) minimum eligible income is based on a 35 percent rent to income ratio;
    - (-b-) appropriate household size is defined as 1.5 persons per Bedroom (rounded up); and
    - (-c-) Gross Demand includes both renter and owner households.
  - (IV) For Qualified Elderly Developments or Supportive Housing:
    - (-a-) minimum eligible income is based on a 50 percent rent to income ratio; and
    - (-b-) Gross Demand includes all household sizes and both renter and owner households.
- (iv) **Demand from Secondary Market Area:**
  - (I) Potential Demand from an SMA should be calculated in the same way as Potential Demand from the PMA;
  - (II) Potential Demand from an SMA may be included in Gross Demand to the extent that SMA demand does not exceed 25 percent of Gross Demand; and
  - (III) the supply of proposed and unstabilized Comparable Units in the SMA must be included in the calculation of the capture rate at the same proportion that Potential Demand from the SMA is included in Gross Demand.
- (v) **Demand from Other Sources:**
  - (I) the source of additional demand and the methodology used to calculate the additional demand must be clearly stated;
  - (II) consideration of Demand from Other Sources is at the discretion of the Underwriter;
  - (III) Demand from Other Sources must be limited to households that are not included in Potential Demand; and

(IV) if households with Section 8 vouchers are identified as a source of demand, the Market Study must include:

- (-a-) documentation of the number of vouchers administered by the local Housing Authority; and
- (-b-) a complete demographic report for the area in which the vouchers are distributed.

(F) **Employment.** Provide a comprehensive analysis of employment trends and forecasts in the Primary Market Area.

(11) **Conclusions.** Include a comprehensive evaluation of the subject Property, separately addressing each housing type and specific population to be served by the Development in terms of items in subparagraphs (A) - (I) of this paragraph. All conclusions must be consistent with the data and analysis presented throughout the Market Analysis.

(A) **Unit Mix.** Provide a best possible unit mix conclusion based on the occupancy rates by Bedroom type within the PMA and target, income-eligible, size-appropriate and tenure-appropriate household demand by unit type and income type within the PMA.

(B) **Rents.** Provide a separate Market Rent conclusion for each proposed Unit Type by number of Bedrooms and rent restriction category. Conclusions of Market Rent below the maximum Net Program Rent limit must be well documented as the conclusions may impact the feasibility of the Development under §10.302(i) of this chapter. In support of the Market Rent conclusions, provide a separate attribute adjustment matrix for each proposed Unit Type by number of Bedrooms and rental restriction category.

(i) The Department recommends use of HUD Form 92273.

(ii) A minimum of three developments must be represented on each attribute adjustment matrix.

(iii) Adjustments for concessions must be included, if applicable.

(iv) Total adjustments in excess of 15 percent must be supported with additional narrative.

(v) Total adjustments in excess of 25 percent indicate the Units are not comparable for the purposes of determining Market Rent conclusions.

(C) **Effective Gross Income.** Provide rental income, secondary income, and vacancy and collection loss projections for the subject derived independent of the Applicant's estimates.

(D) **Demand:**

(i) state the Gross Demand for each Unit Type by number of Bedrooms proposed and rent restriction category (e.g. one-Bedroom Units restricted at 50 percent of AMGI; two-Bedroom Units restricted at 60 percent of AMGI); and

(ii) state the Gross Demand for the proposed Development as a whole. If some households are eligible for more than one Unit Type due to overlapping eligible ranges for income or household size, Gross Demand should be adjusted to avoid including households more than once.

(E) **Relevant Supply.** The Relevant Supply of proposed and unstabilized Comparable Units includes:

(i) the proposed subject Units;

(ii) Comparable Units in an Application with priority over the subject pursuant to §10.201(6) of this chapter.

(iii) Comparable Units in previously approved but Unstabilized Developments in the PMA;  
and

(iv) Comparable Units in previously approved but Unstabilized Developments in the SMA,  
in the same proportion as the proportion of Potential Demand from the SMA that is  
included in Gross Demand.

(F) **Gross Capture Rate.** The Gross Capture Rate is defined as the Relevant Supply divided by  
the Gross Demand. The Market Analyst must calculate a Gross Capture Rate for the subject  
Development as a whole, as well as for each Unit Type by number of Bedrooms and rent  
restriction categories, and market rate Units, if applicable. Refer to §10.302(i) of this  
chapter for feasibility criteria.

(G) A complete demand and capture rate analysis is required in every Market Study, regardless  
of the current occupancy level of an existing Development.

(H) **Absorption.** Project an absorption period for the subject Development to achieve Breakeven  
Occupancy. State the absorption rate.

(I) **Market Impact.** Provide an assessment of the impact the subject Development, as  
completed, will have on existing Developments supported by Housing Tax Credits in the  
Primary Market. (§2306.67055)

(12) **Photographs.** Provide labeled color photographs of the subject Property, the neighborhood,  
street scenes, and comparables. An aerial photograph is desirable but not mandatory.

(13) **Appendices.** Any Third Party reports including demographics relied upon by the Market Analyst  
must be provided in appendix form. A list of works cited including personal communications also  
must be provided, and the Modern Language Association (MLA) format is suggested.

(14) **Qualifications.** Current Franchise Tax Account Status from the Texas Comptroller of Public  
Accounts (not applicable for sole proprietorships) and any changes to items listed in  
§10.303(c)(1)(B) and (C) of this chapter.

(e) The Department reserves the right to require the Market Analyst to address such other issues as may  
be relevant to the Department's evaluation of the need for the subject Development and the provisions of  
the particular program guidelines.

(f) In the event that the PMA for a subject Development overlaps the PMA's of other proposed or  
unstabilized comparable Developments, the Underwriter may perform an extended Sub-Market analysis  
considering the combined PMA's and all proposed and unstabilized Units in the extended Sub-Market  
Area; the Gross Capture Rate from such an extended Sub-Market Area analysis may be used as the basis  
for a feasibility conclusion.

(g) All Applicants shall acknowledge, by virtue of filing an Application, that the Department shall not be  
bound by any such opinion or Market Analysis, and may substitute its own analysis and underwriting  
conclusions for those submitted by the Market Analyst.

#### **§10.304. Appraisal Rules and Guidelines.**

(a) **General Provision.** An appraisal prepared for the Department must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the Appraisal Standards Board of the Appraisal Foundation. The appraisal must include a statement that the report preparer has read and understood the requirements of this section.

(b) **Self-Contained.** An appraisal prepared for the Department must describe sufficient and adequate data and analyses to support the final opinion of value. The final value(s) must be reasonable, based on the information included. Any Third Party reports relied upon by the appraiser must be verified by the appraiser as to the validity of the data and the conclusions.

(c) **Appraiser Qualifications.** The qualifications of each appraiser are determined on a case-by-case basis by the Director of Real Estate Analysis or review appraiser, based upon the quality of the report itself and the experience and educational background of the appraiser. At minimum, a qualified appraiser must be appropriately certified or licensed by the Texas Appraiser Licensing and Certification Board.

(d) **Appraisal Contents.** An appraisal prepared for the Department must be organized in a format that follows a logical progression. In addition to the contents described in USPAP Standards Rule 2, the appraisal must include items addressed in paragraphs (1) - (12) of this subsection.

- (1) **Title Page.** Include a statement identifying the Department as the client, acknowledging that the Department is granted full authority to rely on the findings of the report, and name and address of person authorizing report.
- (2) **Letter of Transmittal.** Include reference to accompanying appraisal report, reference to all person(s) that provided significant assistance in the preparation of the report, date of report, effective date of appraisal, date of property inspection, name of person(s) inspecting the property, tax assessor's parcel number(s) of the site, estimate of marketing period, and signatures of all appraisers authorized to work on the assignment including the appraiser who inspected the property. Include a statement indicating the report preparer has read and understood the requirements of this section.
- (3) **Table of Contents.** Number the exhibits included with the report for easy reference.
- (4) **Disclosure of Competency.** Include appraiser's qualifications, detailing education and experience.
- (5) **Statement of Ownership of the Subject Property.** Discuss all prior sales of the subject Property which occurred within the past three (3) years. Any pending agreements of sale, options to buy, or listing of the subject Property must be disclosed in the appraisal report.
- (6) **Property Rights Appraised.** Include a statement as to the property rights (e.g., fee simple interest, leased fee interest, leasehold, etc.) being considered. The appropriate interest must be defined in terms of current appraisal terminology with the source cited.
- (7) **Site/Improvement Description.** Discuss the site characteristics including subparagraphs (A) - (E) of this paragraph.

- (A) **Physical Site Characteristics.** Describe dimensions, size (square footage, acreage, etc.), shape, topography, corner influence, frontage, access, ingress-egress, etc. associated with the Development Site. Include a plat map and/or survey.
  - (B) **Floodplain.** Discuss floodplain (including flood map panel number) and include a floodplain map with the subject Property clearly identified.
  - (C) **Zoning.** Report the current zoning and description of the zoning restrictions and/or deed restrictions, where applicable, and type of Development permitted. Any probability of change in zoning should be discussed. A statement as to whether or not the improvements conform to the current zoning should be included. A statement addressing whether or not the improvements could be rebuilt if damaged or destroyed, should be included. If current zoning is not consistent with the highest and best use, and zoning changes are reasonable to expect, time and expense associated with the proposed zoning change should be considered and documented. A zoning map should be included.
  - (D) **Description of Improvements.** Provide a thorough description and analysis of the improvements including size (Net Rentable Area, gross building area, etc.), number of stories, number of buildings, type/quality of construction, condition, actual age, effective age, exterior and interior amenities, items of deferred maintenance, energy efficiency measures, etc. All applicable forms of depreciation should be addressed along with the remaining economic life.
  - (E) **Environmental Hazards.** It is recognized appraisers are not experts in such matters and the impact of such deficiencies may not be quantified; however, the report should disclose any potential environmental hazards (such as discolored vegetation, oil residue, asbestos-containing materials, lead-based paint etc.) noted during the inspection.
- (8) **Highest and Best Use.** Market Analysis and feasibility study is required as part of the highest and best use. The highest and best use analysis should consider paragraph (7)(A) - (E) of this subsection as well as a supply and demand analysis.
- (A) The appraisal must inform the reader of any positive or negative market trends which could influence the value of the appraised Property. Detailed data must be included to support the appraiser's estimate of stabilized income, absorption, and occupancy.
  - (B) The highest and best use section must contain a separate analysis "as if vacant" and "as improved" (or "as proposed to be improved/renovated"). All four elements (legally permissible, physically possible, feasible, and maximally productive) must be considered.
- (9) **Appraisal Process.** It is mandatory that all three approaches, Cost Approach, Sales Comparison Approach and Income Approach, are considered in valuing the Property. If an approach is not applicable to a particular property an adequate explanation must be provided. A land value estimate must be provided if the Cost Approach is not applicable.
- (A) **Cost Approach.** This approach should give a clear and concise estimate of the cost to construct the subject improvements. The source(s) of the cost data should be reported.
    - (i) Cost comparables are desirable; however, alternative cost information may be obtained from Marshall & Swift Valuation Service or similar publications. The section, class, page, etc. should be referenced. All soft costs and entrepreneurial profit must be addressed and documented.

- (ii) All applicable forms of depreciation must be discussed and analyzed. Such discussion must be consistent with the description of the improvements.
- (iii) The land value estimate should include a sufficient number of sales which are current, comparable, and similar to the subject in terms of highest and best use. Comparable sales information should include address, legal description, tax assessor's parcel number(s), sales price, date of sale, grantor, grantee, three (3) year sales history, and adequate description of property transferred. The final value estimate should fall within the adjusted and unadjusted value ranges. Consideration and appropriate cash equivalent adjustments to the comparable sales price for subclauses (I) - (VII) of this clause should be made when applicable.
  - (I) Property rights conveyed.
  - (II) Financing terms.
  - (III) Conditions of sale.
  - (IV) Location.
  - (V) Highest and best use.
  - (VI) Physical characteristics (e.g., topography, size, shape, etc.).
  - (VII) Other characteristics (e.g., existing/proposed entitlements, special assessments, etc.).

(B) **Sales Comparison Approach.** This section should contain an adequate number of sales to provide the reader with a description of the current market conditions concerning this property type. Sales data should be recent and specific for the property type being appraised. The sales must be confirmed with buyer, seller, or an individual knowledgeable of the transaction.

- (i) Sales information should include address, legal description, tax assessor's parcel number(s), sales price, financing considerations and adjustment for cash equivalency, date of sale, recordation of the instrument, parties to the transaction, three (3) year sale history, complete description of the Property and property rights conveyed, and discussion of marketing time. A scaled distance map clearly identifying the subject and the comparable sales must be included.
- (ii) The method(s) used in the Sales Comparison Approach must be reflective of actual market activity and market participants.
  - (I) Sale Price/Unit of Comparison. The analysis of the sale comparables must identify, relate, and evaluate the individual adjustments applicable for property rights, terms of sale, conditions of sale, market conditions, and physical features. Sufficient narrative must be included to permit the reader to understand the direction and magnitude of the individual adjustments, as well as a unit of comparison value indicator for each comparable.
  - (II) Net Operating Income/Unit of Comparison. The Net Operating Income statistics or the comparables must be calculated in the same manner. It should be disclosed if reserves for replacement have been included in this method of analysis. At least one other method should accompany this method of analysis.

(C) **Income Approach.** This section must contain an analysis of both the actual historical and projected income and expense aspects of the subject Property.

- (i) **Market Rent Estimate/Comparable Rental Analysis.** This section of the report should include an adequate number of actual market transactions to inform the reader of current market conditions concerning rental Units. The comparables must indicate current research for this specific property type. The comparables must be confirmed with the landlord, tenant or agent and individual data sheets must be included. The individual data sheets should include property address, lease terms, description of the property (e.g., Unit Type, unit size, unit mix, interior amenities, exterior amenities, etc.), physical characteristics of the property, and location of the comparables. Analysis of the Market Rents should be sufficiently detailed to permit the reader to understand the appraiser's logic and rationale. Adjustment for lease rights, condition of the lease, location, physical characteristics of the property, etc. must be considered.
  - (ii) **Comparison of Market Rent to Contract Rent.** Actual income for the subject along with the owner's current budget projections must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. The Contract Rents should be compared to the market-derived rents. A determination should be made as to whether the Contract Rents are below, equal to, or in excess of market rates. If there is a difference, its impact on value must be qualified.
  - (iii) **Vacancy/Collection Loss.** Historical occupancy data and current occupancy level for the subject should be reported and compared to occupancy data from the rental comparables and overall occupancy data for the subject's Primary Market.
  - (iv) **Expense Analysis.** Actual expenses for the subject, along with the owner's projected budget, must be reported, summarized, and analyzed. If such data is unavailable, a statement to this effect is required and appropriate assumptions and limiting conditions should be made. Historical expenses should be compared to comparables expenses of similar property types or published survey data (such as IREM, BOMA, etc.). Any expense differences should be reconciled. Include historical data regarding the subject's assessment and tax rates and a statement as to whether or not any delinquent taxes exist.
  - (v) **Capitalization.** The appraiser should present the capitalization method(s) reflective of the subject market and explain the omission of any method not considered in the report.
    - (I) **Direct Capitalization.** The primary method of deriving an overall rate is through market extraction. If a band of investment or mortgage equity technique is utilized, the assumptions must be fully disclosed and discussed.
    - (II) **Yield Capitalization (Discounted Cash Flow Analysis).** This method of analysis should include a detailed and supportive discussion of the projected holding/investment period, income and income growth projections, occupancy projections, expense and expense growth projections, reversionary value and support for the discount rate.
- (10) **Value Estimates.** Reconciliation of final value estimates is required. The Underwriter may request additional valuation information based on unique existing circumstances that are relevant for deriving the market value of the Property.

- (A) All appraisals shall contain a separate estimate of the "as vacant" market value of the underlying land, based upon current sales comparables. The appraiser should consider the fee simple or leased fee interest as appropriate.
  - (B) For existing Developments with any project-based rental assistance that will remain with the property after the acquisition, the appraisal must include an "as-is as-currently-restricted value" inclusive of the value associated with the rental assistance. If the rental assistance has an impact on the value, such as use of a lower capitalization rate due to the lower risk associated with rental rates and/or occupancy rates on project-based developments, this must be fully explained and supported to the satisfaction of the Underwriter.
  - (C) For existing Developments with rent restrictions, the appraisal must include the "as-is as-restricted" value. In particular, the restricted rents should be contemplated when deriving the value based on the income approach.
  - (D) For all other existing Developments, the appraisal must include the "as-is" value.
  - (E) For any Development with favorable financing (generally below market debt) that will remain in place and transfer to the new owner, the appraisal must include a separate value for the existing favorable financing with supporting information.
  - (F) If required the appraiser must include a separate assessment of personal property, furniture, fixtures, and equipment ("FF&E") and/or intangible items. If personal property, FF&E, or intangible items are not part of the transaction or value estimate, a statement to such effect should be included.
- (11) **Marketing Time.** Given property characteristics and current market conditions, the appraiser(s) should employ a reasonable marketing period. The report should detail existing market conditions and assumptions considered relevant.
- (12) **Photographs.** Provide good quality color photographs of the subject Property (front, rear, and side elevations, on-site amenities, interior of typical Units if available). Photographs should be properly labeled. Photographs of the neighborhood, street scenes, and comparables should be included. An aerial photograph is desirable but not mandatory.

(e) **Additional Appraisal Concerns.** The appraiser(s) must be aware of the Department program rules and guidelines and the appraisal must include analysis of any impact to the subject's value.

### **§10.305. Environmental Site Assessment Rules and Guidelines.**

(a) **General Provisions.** The Environmental Site Assessments (ESA) prepared for the Department must be conducted and reported in conformity with the standards of the American Society for Testing and Materials ("ASTM"). The initial report must conform with the Standard Practice for Environmental Site Assessments: Phase I Assessment Process (ASTM Standard Designation: E1527- 13 or any subsequent standards as published). Any subsequent reports should also conform to ASTM standards and such other recognized industry standards as a reasonable person would deem relevant in view of the Property's anticipated use for human habitation. The ESA shall be conducted by a Third Party environmental professional at the expense of the Applicant, and addressed to the Department as a User of the report (as defined by ASTM standards). Copies of reports provided to the Department which were commissioned by other financial institutions must either address Texas Department of Housing and Community Affairs



as a co-recipient of the report or letters from both the provider and the recipient of the report may be submitted extending reliance on the report to the Department. The ESA report must also include a statement that the person or company preparing the ESA report will not materially benefit from the Development in any other way than receiving a fee for performing the ESA, and that the fee is in no way contingent upon the outcome of the assessment. The ESA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

(b) In addition to ASTM requirements, the report must:

- (1) state if a noise study is recommended for a property in accordance with current HUD guidelines and identify its proximity to industrial zones, major highways, active rail lines, civil and military airfields, or other potential sources of excessive noise;
- (2) provide a copy of a current survey, if available, or other drawing of the site reflecting the boundaries and adjacent streets, all improvements on the site, and any items of concern described in the body of the ESA or identified during the physical inspection;
- (3) provide a copy of the current FEMA Flood Insurance Rate Map showing the panel number and encompassing the site with the site boundaries precisely identified and superimposed on the map;
- (4) if the subject Development Site includes any improvements or debris from pre-existing improvements, state if testing for asbestos containing materials would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;
- (5) if the subject Development Site includes any improvements or debris from pre-existing improvements, state if testing for Lead Based Paint would be required pursuant to local, state, and federal laws, or recommended due to any other consideration;
- (6) state if testing for lead in the drinking water would be required pursuant to local, state, and federal laws, or recommended due to any other consideration such as the age of pipes and solder in existing improvements;
- (7) assess the potential for the presence of Radon on the Property, and recommend specific testing if necessary;
- (8) identify and assess the presence of oil, gas or chemical pipelines, processing facilities, storage facilities or other potentially hazardous explosive activities on-site or in the general area of the site that could potentially adversely impact the Development. Location of these items must be shown on a drawing or map in relation to the Development Site and all existing or future improvements. The drawing must depict any blast zones (in accordance with HUD guidelines) and include HUD blast zone calculations; and
- (9) include a vapor encroachment screening in accordance with Vapor Intrusion E2600-10.

(c) If the report recommends further studies or establishes that environmental hazards currently exist on the Property, or are originating off-site, but would nonetheless affect the Property, the Development Owner must act on such a recommendation, or provide a plan for either the abatement or elimination of the hazard. Evidence of action or a plan for the abatement or elimination of the hazard must be presented upon Application submittal.

(d) For Developments in programs that allow a waiver of the Phase I ESA such as a USDA funded Development, the Development Owners are hereby notified that it is their responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(e) Those Developments which have or are to receive first lien financing from HUD may submit HUD's environmental assessment report, provided that it conforms to the requirements of this section.

#### **§10.306. Property Condition Assessment Guidelines.**

(a) **General Provisions.** The objective of the Property Condition Assessment (PCA) for Rehabilitation Developments is to provide cost estimates for repairs and replacements, and new construction of additional buildings or amenities, which are: immediately necessary repairs and replacements; improvements proposed by the Applicant as outlined in a scope of work narrative submitted by the Applicant to the PCA provider that is consistent with the scope of work provided in the Application; and expected to be required throughout the term of the Affordability Period and not less than thirty (30) years. The PCA prepared for the Department should be conducted and reported in conformity with the American Society for Testing and Materials "Standard Guide for Property Condition Assessments. Baseline Property Condition Assessment Process (ASTM Standard Designation: E 2018") except as provided for in subsections (b) and (c) of this section. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section. The PCA must include the Department's PCA Cost Schedule Supplement which details all Rehabilitation costs and projected repairs and replacements through at least twenty (20) years. The PCA must also include discussion and analysis of:

- (1) **Useful Life Estimates.** For each system and component of the property the PCA should assess the condition of the system or component, and estimate its remaining useful life, citing the basis or the source from which such estimate is derived;
- (2) **Code Compliance.** The PCA should review and document any known violations of any applicable federal, state, or local codes. In developing the cost estimates specified herein, it is the responsibility of the Applicant to ensure that the PCA adequately considers any and all applicable federal, state, and local laws and regulations which may govern any work performed to the subject Property. For transactions with Direct Loan funding from the Department, the PCA provider must also evaluate cost estimates to meet the International Existing Building Code and other property standards;
- (3) **Program Rules.** The PCA should assess the extent to which any systems or components must be modified, repaired, or replaced in order to comply with any specific requirements of the housing program under which the Development is proposed to be financed, particular consideration being given to accessibility requirements, the Department's Housing Quality Standards, and any scoring criteria for which the Applicant may claim points;
- (4) **Reconciliation of Scope of Work and Costs.** The PCA report must include an analysis, detailed and shown on the Department's PCA Cost Schedule Supplement, that reconciles the scope of

work and immediate costs identified in the PCA with the Applicant's scope of work and costs (Hard Costs) as presented on the Applicant's development cost schedule; and

- (5) **Cost Estimates for Repair and Replacement.** It is the responsibility of the Applicant to ensure that the PCA provider is apprised of all development activities associated with the proposed transaction and consistency of the total immediately necessary and proposed repair and replacement cost estimates with the Total Housing Development Cost schedule and scope of work submitted as an exhibit of the Application.

(A) **Immediately Necessary Repairs and Replacement.** Systems or components which are expected to have a remaining useful life of less than one (1) year, which are found to be in violation of any applicable codes, which must be modified, repaired or replaced in order to satisfy program rules, or which are otherwise in a state of deferred maintenance or pose health and safety hazards should be considered immediately necessary repair and replacement. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or maintenance of each system or component which is identified as being an immediate need, citing the basis or the source from which such cost estimate is derived.

(B) **Proposed Repair, Replacement, or New Construction.** If the development plan calls for additional repair, replacement, or New Construction above and beyond the immediate repair and replacement described in subparagraph (A) of this paragraph, such items must be identified and the nature or source of obsolescence or improvement to the operations of the Property discussed. The PCA must provide a separate estimate of the costs associated with the repair, replacement, or new construction which is identified as being above and beyond the immediate need, citing the basis or the source from which such cost estimate is derived.

(C) **Expected Repair and Replacement Over Time.** The term during which the PCA should estimate the cost of expected repair and replacement over time must equal the longest term of any land use or regulatory restrictions which are, or will be, associated with the provision of housing on the Property. The PCA must estimate the periodic costs which are expected to arise for repairing or replacing each system or component or the property, based on the estimated remaining useful life of such system or component as described in paragraph (1) of this subsection adjusted for completion of repair and replacement immediately necessary and proposed as described in subparagraphs (A) and (B) of this paragraph. The PCA must include a separate table of the estimated long term costs which identifies in each line the individual component of the property being examined, and in each column the year during the term in which the costs are estimated to be incurred and no less than fifteen (15) years. The estimated costs for future years should be given in both present dollar values and anticipated future dollar values assuming a reasonable inflation factor of not less than 2.5 percent per annum.

(b) Any costs not identified and discussed in the PCA as part of subsection (a)(4), (5)(A) and (5)(B) of this section will not be included in the underwritten Total Development Cost in the Report.

(c) If a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are

satisfied, the Department will also accept copies of reports commissioned or required by the primary lender for a proposed transaction, which have been prepared in accordance with:

- (1) Fannie Mae's criteria for Physical Needs Assessments;
- (2) Federal Housing Administration's criteria for Project Capital Needs Assessments;
- (3) Freddie Mac's guidelines for Engineering and Property Condition Reports;
- (4) USDA guidelines for Capital Needs Assessment.

(d) The Department may consider for acceptance reports prepared according to other standards which are not specifically named in subsection (b) of this section, if a copy of such standards or a sample report have been provided for the Department's review, if such standards are widely used, and if all other criteria and requirements described in this section are satisfied.

(e) The PCA shall be conducted by a Third Party at the expense of the Applicant, and addressed to Texas Department of Housing and Community Affairs as the client. Copies of reports provided to the Department which were commissioned by other financial institutions should address Texas Department of Housing and Community Affairs as a co-recipient of the report, or letters from both the provider and the recipient of the report should be submitted extending reliance on the report to Texas Department of Housing and Community Affairs. The PCA report should also include a statement that the person or company preparing the PCA report will not materially benefit from the Development in any other way than receiving a fee for performing the PCA. The PCA report must contain a statement indicating the report preparer has read and understood the requirements of this section.

#### **§10.307. Direct Loan Requirements.**

(a) Direct Loans through the Department must be structured according to the criteria as identified in paragraphs (1) - (5) of this subsection:

- (1) the interest rate may be as low as zero percent provided all applicable program requirements are met as well as requirements in this subchapter;
- (2) unless structured only as an interim construction or bridge loan, the loan term shall be no less than fifteen (15) years and no greater than forty (40) years and the amortization schedule shall be no less than thirty (30) years and no greater than forty (40) years. The Department's debt will match within six (6) months of the shortest term or amortization of any senior debt so long as neither exceeds forty (40) years.
- (3) the loan shall be structured with a regular monthly payment beginning on the first day of the 25<sup>th</sup> full month following the actual date of loan closing and continuing for the loan term. If the first lien mortgage is a federally insured HUD or FHA mortgage, the Department may approve a loan structure with annual payments payable from surplus cash flow provided that the debt coverage ratio, inclusive of the loan, continues to meet the requirements in this subchapter. The Board may also approve, on a case-by-case basis, a cash flow loan structure provided it determines that the financial risk is outweighed by the need for the proposed housing;

- (4) the loan shall have a deed of trust with a permanent lien position that is superior to any other sources for financing including hard repayment debt that is less than or equal to the Direct Loan amount and for 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. The Board may also approve, on a case-by-case basis, an alternative lien priority provided it determines that the financial risk is outweighed by the need for the proposed housing; and,
  - (5) If the Direct Loan amounts to more than 50 percent of the Total Housing Development Cost, except for Developments also financed through the USDA §515 program, the Application must include the documents as identified in subparagraphs (A) - (B) of this paragraph:
    - (A) a letter from a Third Party CPA verifying the capacity of the Applicant, Developer or Development Owner to provide at least 10 percent 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 equal to at least 10 percent of the Total Housing Development Cost from a financial institution that is available for use during the proposed Development activities.
- (b) HOME Direct Loans through the Department must observe the following construction, occupancy, and repayment provisions in accordance with 24 CFR 92 and as included in the HOME Direct Loan documents:
- (1) Construction must begin no later than twelve (12) months from the date of “Committing to a specific local project” as defined in 24 CFR Part 92 and must be completed within twenty-four (24) months of the actual date of loan closing as reflected by the development’s certificate(s) of occupancy and Certificate of Substantial Completion (AIA Form G704). A final construction inspection request must be sent to the Department within 18 months of the actual loan closing date, with the repayment period beginning on the first day of the 25th month following the actual date of loan closing. Extensions to the construction or development period may only be made for good cause and approved by the Executive Director or authorized designee provided the start of construction is no later than twelve (12) months from the date of committing to a specific local project;
  - (2) Initial occupancy by eligible tenants shall occur within six (6) months of project completion. Requests to extend the initial occupancy period must be accompanied by marketing information and a marketing plan which will be submitted by the Department to HUD for final approval;
  - (3) repayment will be required on a per unit basis for units that have not been rented to eligible households within twenty-four (24) months of project completion; and
  - (4) termination and repayment of the HOME award in full will be required for any development that is not completed within four (4) years of the date of funding commitment.

1f

**BOARD ACTION REQUEST**  
**COMMUNITY AFFAIRS DIVISION**  
**NOVEMBER 13, 2014**

Presentation, Discussion, and Possible Action on an order adopting amendments to 10 TAC Chapter 5, Subchapter A, §5.2 concerning Definitions; and §5.19 concerning Client Income Guidelines, and directing their publication in the *Texas Register*.

**RECOMMENDED ACTION**

**WHEREAS**, pursuant to Texas Government Code, §§2306.053 and 2306.092, the Department is provided the authority to adopt rules governing the administration of the Department and its Community Affairs programs;

**WHEREAS**, the amendments to 10 TAC Chapter 5, Subchapter A, §5.2 define program terms and remove some definitions, and the proposed amendments to §5.19 clarify program requirements for determining income eligibility; and

**WHEREAS**, the proposed amendments were published in the *Texas Register* on October 3, 2014, for public comment;

**NOW, therefore, it is hereby**

**RESOLVED**, that the final order adopting the amendments to 10 TAC Chapter 5, Subchapter A, §§5.2 and 5.19 is hereby ordered and approved, together with the preamble presented to this meeting, for publication in the *Texas Register*; and

**FURTHER RESOLVED**, that the Executive Director and his designees be and each them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the adopted amendments, 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.

**BACKGROUND**

The proposed amendments were approved for publication on September 4, 2014, by the Board, and were published in the October 3, 2014, issue of the *Texas Register* to allow for public comment. The public comment period closed on November 3, 2014. Comments were received from seven (7) commenters.

## **Attachment A: Preamble and Amended 10 TAC Chapter 5, Subchapter A, §§5.2 and 5.19**

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 5, Subchapter A, §§5.2 Definitions and 5.19 Client Income Guidelines with changes to the proposed text as published in the October 3, 2014, issue of the *Texas Register* (39 TexReg 7843).

**REASONED JUSTIFICATION.** The amendments to §5.2 include additional defined terms, including Award Date, Contract, and Life Threatening Crisis; removal of terms that are no longer relevant to these rules including Targeting, and Terms and Conditions; modified definitions due to changes in federal law (such as OMB Circulars and Supplies); and staff administrative corrections. The amendments to §5.19 are to clarify what income sources are to be included and excluded during benefit determinations, to incorporate eligibility determination requirements, and to affect grammatical and capitalization matters.

### **SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.**

The Department received comments to the proposed amendments. The Department's response to all comments received is set out below. The comments and responses include both administrative clarifications and corrections to the amendments recommended by staff and substantive comments on the amendments and the corresponding Departmental responses. Comments and responses are presented in the order they appear in the rules. Comments were accepted from October 3, 2014, through November 3, 2014, with comments received from:

- (1) Carlos Rivera, Director, Austin/Travis County Health and Human Services Department
- (2) Stella Rodriguez, Executive Director, Texas Association of Community Action Agencies (TACAA)
- (3) Vicki Smith, Executive Director, Community Action Committee of Victoria, Texas, in support of comments filed by TACAA
- (4) Emma Vasquez, Executive Director, Big Bend Community Action Committee, Inc., in support of comments filed by TACAA
- (5) Karen Swenson, Executive Director, Greater East Texas Community Action Program, in support of comments filed by TACAA
- (6) Carole Belver, Executive Director, Community Action, Inc. of Central Texas, in support of comments filed by TACAA
- (7) Dennis Chapman, Social Services Program Administrator, Travis County Health and Human Services and Veterans Service

### **§5.2. Definitions**

**COMMENT SUMMARY** (2, 3, 4, 5, 6): Regarding (a), commenter suggested a revised sentence structure.

**STAFF RESPONSE:** Staff agrees and recommended clerical changes based on this comment.

**COMMENT SUMMARY** (2, 3, 4, 5, 6): Regarding (b)(2) Award Date and (b)(11) Contract, commenter seeks clarification of why these definitions are not consistent.

**STAFF RESPONSE:** Staff wishes to clarify that the Award Date and the date on which the Subrecipient may consider awarded funds available for expenditure are purposefully distinct from each other. The Award Date identifies a date on which the Department's board took action in awarding funds to a Subrecipient. Awarded funds expended prior to the date a Contract commences may not be eligible for reimbursement by the Department.



COMMENT SUMMARY (2, 3, 4, 5, 6): Regarding (b)(6) Community Action Agencies (CAAs), commenter suggests replacing Community Action Program with Community Services Block Grant Program.

STAFF RESPONSE: The 1964 Economic Opportunity Act established the Community Action Program, which includes more than just the CSBG. Staff recommends no changes based on this comment.

COMMENT SUMMARY (1): Regarding (b)(13) Declaration of Income Statement, commenter suggested that the Texas Secretary of State's office requirement that an applicant provide an identification card issued by a governmental agency in order for the Declaration of Income Statement ("DIS") to be notarized may create a barrier for persons seeking services through the Community Services Block Grants program ("CSBG"). Since CSBG does not require that the DIS be notarized, the commenter requests that the CSBG program be excluded from the notary requirement.

STAFF RESPONSE: The requirement that self certifications of income be notarized is a Department of Energy requirement contained in the annual release of its program notice regarding Poverty Income Guidelines and Definition of Income. To maintain consistency across programs that share applications and clients, the Department applies the requirements to the CSBG, CEAP, and LIHEAP WAP programs.

Further, §406.014 of the Texas Government Code gives a notary options for notarizing a document for persons who are not able to provide an identification card issued by a governmental agency.

(5) whether the signer, grantor, or maker is personally known by the notary public, was identified by an identification card issued by a governmental agency or a passport issued by the United States, or was introduced to the notary public and, if introduced, the name and residence or alleged residence of the individual introducing the signer, grantor, or maker;

(6) if the instrument is proved by a witness, the residence of the witness, whether the witness is personally known by the notary public or was introduced to the notary public and, if introduced, the name and residence of the individual introducing the witness;

Staff recommends no changes based on this comment.

COMMENT SUMMARY (2, 3, 4, 5, 6): Regarding (b)(18) Discretionary Funds, commenter suggested that the Department remove "...and not designated for distribution on a statewide basis to CSBG Eligible Entities." Because the CSBG Act does not prohibit a CSBG Eligible Entity from conducting statewide activities.

STAFF RESPONSE: Staff wishes to clarify that the this language is included to distinguish the distribution of CSBG Discretionary funds from the distribution of the 90 percent of CSBG funds that is designated for distribution on a statewide basis to CSBG Eligible Entities. The definition does not prohibit a CSBG Eligible Entity from conducting statewide activities.

COMMENT SUMMARY (2, 3, 4, 5, 6): Regarding (b)(23) Eligible Entity, commenter suggested a revised sentence structure.

STAFF RESPONSE: Staff agrees and recommended changes based on this comment.

COMMENT SUMMARY (2, 3, 4, 5, 6): Regarding (b)(29) Families with Young Children, commenter suggested that text be added for a clear and consistent definition for all Subrecipients.

STAFF RESPONSE: Staff does not believe the clarification is necessary and recommends no change based on this comment.

COMMENT SUMMARY (2, 3, 4, 5, 6): Regarding (b)(38) Low Income, commenter suggested that the Department increase the income amount from 125% of the HHS Poverty Income Guidelines to 150% for CEAP and LIHEAP WAP to be in line with allowable federal guidelines and to allow Subrecipients to serve clients up to the higher threshold.

STAFF RESPONSE: Staff recommends that the income levels remain unchanged in order to enhance the ability of service providers to provide the greatest array of services to the very lowest income households. Staff recommends no change based on this comment.

COMMENT SUMMARY (2, 3, 4, 5, 6): Regarding (b)(43) National Performance Indicator, commenter suggested a revised sentence structure.

STAFF RESPONSE: Staff recommends the following revision:

An individual measure of performance within the Department's Community Affairs Contract System for measuring performance and results of Subrecipients of funds.

COMMENT SUMMARY (2, 3, 4, 5, 6): Regarding (b)(51) Poverty Income Guidelines, commenter suggested a revised sentence structure.

STAFF RESPONSE: Staff agrees and made clerical changes based on this comment.

COMMENT SUMMARY (2, 3, 4, 5, 6): Regarding (b)(61) State, commenter suggested a revised sentence structure.

STAFF RESPONSE: Staff agrees and recommended changes based on this comment.

COMMENT SUMMARY (2, 3, 4, 5, 6): Regarding (b)(71) Uniform Grant Management Standards, commenter suggested a revised sentence structure.

STAFF RESPONSE: As used in this context, “subrecipients” is used as a general term and should not be capitalized. Staff recommends no changes to the rule based on this comment.

#### **§5.19. - Income Eligibility: Excluded Income**

COMMENT SUMMARY (2, 3, 4, 5, 6): Regarding (a), commenter suggested that countable income should be a finite list, and that determination of income eligibility should not be based on an excluded list.

STAFF RESPONSE: Staff has yet to find a finite list of income inclusions. Since staff is unable to assemble a finite list of income inclusions based on federal guidance, staff recommends no changes to the rule based on this comment.

COMMENT SUMMARY (2, 3, 4, 5, 6): Regarding (a)(1), commenter suggested striking this item and keeping the list of included income because determination of income eligibility should not be based on an excluded list. Commenter suggests that the list of included income should mirror the 2015 LIHEAP State Plan to HHS as modified and approved by the TDHCA Board at its July 31, 2014 meeting.

STAFF RESPONSE: Staff has yet to find a finite list of income inclusions. Since staff is unable to assemble a finite list of income inclusions based on federal guidance, staff recommends no changes to the rule based on this comment.

COMMENT SUMMARY (1): Regarding (a)(2)(P), commenter suggested that since Social Security benefit award letters frequently reflect deductions for overpayment, clarification is needed as to whether these deductions should be considered or if only the Medicare premium deduction should be considered. STAFF RESPONSE: Staff wishes to clarify that the deduction for overpayment would be considered income. The Subrecipient would only consider the Medicare premium deduction as a deduction not counted as income. Staff will ensure that this clarification is provided to all affected Subrecipients. Staff recommends no changes to the rule based on this comment.

COMMENT SUMMARY (1): Regarding (a)(2)(T), commenter suggested that since the Department does not consider child support as included income, the Department should consider excluding any Social Security benefit paid to a parent on behalf of a child from included income.

STAFF RESPONSE: “Regular payments from Social Security benefits paid to a parent on behalf of a child” is not listed as an excluded income source by the Department of Energy Weatherization Assistance Program, nor is it included in the Department of Housing and Urban Development’s Federally Mandated Exclusions from Income list. To maintain consistency within TDHCA programs, staff recommends no changes to this requirement.

COMMENT SUMMARY (1): Regarding (a)(2)(DD), (EE) and (FF), commenter suggested that persons receiving income under programs such as the Workforce Investment Act, the Older Americans Act, and the Child Care Development Block Grant Act are often unaware of the income’s original source. The commenter seeks clarification on the Department’s expectations for verification of these types of income in complying with this rule.

STAFF RESPONSE: Staff wishes to clarify that unless the Subrecipient can verify that income is from a source that should be excluded according to this rule, the income should be considered as income from an included source. Staff will ensure that this clarification is provided to all affected Subrecipients. Staff recommends no changes to the rule based on this comment.

COMMENT SUMMARY (1): Regarding (b)(1), commenter suggested that the proposed eligibility determination appears to remove the reference to “30 days prior to the date of application” as the basis for determining eligibility. Commenter seeks clarification on whether “current circumstances” as cited in the proposed rule change will still be based on the prior 30 days income.

STAFF RESPONSE: See staff response below.

COMMENT SUMMARY (7): Regarding (b), commenter seeks clarification on how “current circumstances” is defined and requests that the Department provide a more detailed definition as it relates to household income. Commenter suggests that without a clear interpretation, different organizations may treat households differently in the eligibility determination process.

STAFF RESPONSE: See staff response below.

COMMENT SUMMARY (2, 3, 4, 5, 6): Regarding (b), commenter suggested that the proposed method of calculating income for the purpose of determining eligibility be removed, and that the Department simply require Subrecipients to annualize household income based on verifiable documentation from the past 30 days. Commenter stated that the proposed method of calculation applies to a regular full-time employee. Many clients don’t fit this category; rather they are part-time or receive irregular weekly wages based on unpredictable hours worked. To project, estimate, or anticipate income is subjective.

The current method of calculation is an effective, accurate, consistent and non-subjective method of determining income.

STAFF RESPONSE: Based on comments received, staff proposes the following revision to the rule:

(b) The requirements for determining whether an applicant Household is eligible for assistance require the Subrecipient to ~~project or estimate the annual income that the Household expects to receive. The following is an acceptable method for calculating the annual income anticipated for the coming year:~~ annualize the Household income based on verifiable documentation of income.

(1) ~~Generally the Subrecipient must use current circumstances to anticipate income.~~ The Subrecipient must calculate projected annual income by annualizing current income. Income that may not last for a full 12 months (e.g., unemployment compensation) should be calculated assuming current circumstances will last a full 12 months.

~~(2) If information is available on changes expected to occur during the year, use that information to determine the total anticipated income from all known sources during the year. For example, if a verification source reports that a union contract calls for a 2% pay increase midway through the year, the Subrecipient may add the total income for the months before, and the total for the months after the increase.~~

(2) Subrecipient must collect verifiable documentation of Household income received in the thirty (30) days prior to the date of application.

(3) Once all sources of income are known, Subrecipient must convert reported income to an annual figure. Convert periodic wages to annual income by multiplying:

(A) Hourly wages by the number of hours worked per year (2,080 hours for full-time employment with a 40-hour week and no overtime);

(B) Weekly wages by 52;

(C) Bi-weekly wages (paid every other week) by 26;

(D) Semi-monthly wages (paid twice each month) by 24; and

(E) Monthly wages by 12.

(c) Except for ESG, to annualize other than full-time income, multiply the wages by the actual number of hours or weeks the person is expected to work.

The Board adopted these amendments at the November 13, 2014, meeting of the Board.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the authority of Texas Government Code §2306.053, which authorizes the Department to adopt rules

*§5.2.Definitions.*

(a) To ensure a clear understanding of the terminology used in the context of the programs of the Community Affairs Division, a list of terms and definitions has been compiled as a reference.

(b) The words and terms in this chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise.

(1) Affiliate--If, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. The ways the Department may determine control include, but are not limited to:

(A) Interlocking management or ownership;

(B) Identity of interests among family members;

(C) Shared facilities and equipment;

(D) Common use of employees; or

(E) A business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.

(2) Award Date--Date on which the Department's Board commits funds to an awardee.

(3) Child--Household dependent not exceeding eighteen (18) years of age.

(4) Code of Federal Regulations (CFR)--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the Federal Register.

(5) Collaborative Application--An application from two or more organizations to provide services to the target population.

(6) Community Action Agencies (CAAs)--Local Private Nonprofit Organizations and Public Organizations that carry out the Community Action Program, which was established by the 1964 Economic Opportunity Act to fight poverty by empowering the poor in the United States.

(7) Community Action Plan--A plan required by the Community Services Block Grant (CSBG) Act which describes the local Eligible Entity service delivery system, how coordination will be developed to fill identified gaps in services, how funds will be coordinated with other public and private resources and how the local entity will use the funds to support innovative community and neighborhood based initiatives related to the grant.

(8) Community Affairs Division (CAD)--The Division at the Department that administers CEAP, CSBG, ESG, HHSP, Section 8 Housing Choice Voucher Program, and WAP.

(9) Community Services Block Grant (CSBG)--An HHS-funded program which provides funding for CAAs and other Eligible Entities that seek to address poverty at the community level.

(10) Comprehensive Energy Assistance Program (CEAP)--A LIHEAP-funded program to assist low-income Households, particularly those with the lowest incomes, that pay a high proportion of Household income for home energy, primarily in meeting their immediate home energy needs.

(11) Contract--The executed written Agreement between the Department and a Subrecipient performing an Activity related to a CAD program that describes performance requirements and responsibilities assigned by the document; for which the first day of the contract period is the point at which programs funds may be considered by a Subrecipient for expenditure unless otherwise directed in writing by the Department.

(12) CSBG Act--The CSBG Act is a law passed by Congress authorizing the Community Services Block Grant. The CSBG Act was amended by the Community Services Block Grant Amendments of 1994 and the Coats Human Services Reauthorization Act of 1998 under 42 U.S.C. §§9901, et seq. The CSBG Act authorized establishing a community services block grant program to make grants available through the program to states to ameliorate the causes of poverty in communities within the states.

(13) Declaration of Income Statement (DIS)--A Department-approved form for limited use and only when an applicant cannot obtain income documentation requiring the Subrecipient to document income and the circumstances preventing the client from obtaining documentation. The DIS is not complete unless notarized in accordance with §406.014 of the Texas Government Code.

(14) Department--The Texas Department of Housing and Community Affairs.

(15) Department of Energy (DOE)--Federal department that provides funding for the weatherization assistance program.

(16) Department of Health and Human Services (HHS)--Federal department that provides funding for CSBG and LIHEAP energy assistance and weatherization.

(17) Department of Housing and Urban Development (HUD)--Federal department that provides funding for ESG.

(18) Discretionary Funds--Those CSBG funds maintained by the Department, at its discretion, for CSBG allowable uses as authorized by §675C of the CSBG Act, and not designated for distribution on a statewide basis to CSBG Eligible Entities and not designated for state administrative purposes.

(19) DOE WAP Rules--10 CFR Part 440 describes the Weatherization Assistance for Low Income Persons as administered through the Department of Energy. 10 CFR Part 600 implements OMB requirements on behalf of DOE and establishes administrative requirements for grants and agreements.

(20) Dwelling Unit--A house, including a stationary mobile home, an apartment, a group of rooms, or a single room occupied as separate living quarters. This definition does not apply to the ESG or HHSP.

(21) Elderly Person--A person who is sixty (60) years of age or older, except for ESG.

(22) Electric Base-Load Measure--Weatherization measures which address the energy efficiency and energy usage of lighting and appliances.

(23) Eligible Entity--Those local organizations in existence and designated by the federal and state government to administer programs created under the Federal Economic Opportunity Act of 1964. This includes community action agencies, limited-purpose agencies, and units of local government. The CSBG Act defines an eligible entity as an organization that was an eligible entity on the day before the enactment of the Coats Human Services Reauthorization Act of 1998 (October 27, 1998), or is designated by the Governor to serve a given area of the state and that has a tripartite board or other mechanism specified by the state for local governance.

(24) Emergency--Defined by the LIHEAP Act of 1981 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981, 42 U.S.C. §8622):

(A) natural disaster;

(B) a significant home energy supply shortage or disruption;

(C) significant increase in the cost of home energy, as determined by the Secretary;

(D) a significant increase in home energy disconnections reported by a utility, a state regulatory agency, or another agency with necessary data;

(E) a significant increase in participation in a public benefit program such as the food stamp program carried out under the Food Stamp Act of 1977 (7 U.S.C. §§2011, et seq.), the national program to provide supplemental security income carried out under Title XVI of the Social Security Act (42 U.S.C. §§1381, et seq.) or the state temporary assistance for needy families program carried out under Part A of Title IV of the Social Security Act (42 U.S.C. §§601, et seq.), as determined by the head of the appropriate federal agency;

(F) a significant increase in unemployment, layoffs, or the number of Households with an individual applying for unemployment benefits, as determined by the Secretary of Labor; or

(G) an event meeting such criteria as the Secretary, at the discretion of the Secretary, may determine to be appropriate.

(H) This definition does not apply to ESG or HHSP.

(25) Emergency Solutions Grants (ESG)--A HUD-funded program which provides funds for services necessary to help persons that are at risk of homelessness or homeless quickly regain stability in permanent housing.

- (26) Energy Audit--The energy audit software and procedures used to determine the cost effectiveness of weatherization measures to be installed in a Dwelling Unit.
- (27) Energy Repairs--Weatherization-related repairs necessary to protect or complete regular weatherization energy efficiency measures.
- (28) Equipment--Tangible non-expendable personal property including exempt property, charged directly to the award, having a useful life of more than one year, and an acquisition cost of \$5,000 or more per unit.
- (29) Families with Young Children--A family that includes a Child age five (5) or younger.
- (30) High Energy Burden--Households with energy burden which exceeds 11% of annual gross income. Determined by dividing a Household's annual home energy costs by the Household's annual gross income.
- (31) High Energy Consumption--Household energy expenditures exceeding the median of low-income home energy expenditures, by way of example, at the time of this rulemaking, that amount is \$1,000, but is subject to change.
- (32) Homeless or Homeless Individual--An individual as defined by 42 U.S.C. §§11371 - 11378 and 24 CFR §576.2.
- (33) Homeless Housing and Services Program (HHSP)--A state funded program established under §2306.2585 of the Texas Government Code with the purpose of providing funds to local programs to prevent and eliminate homelessness in municipalities with a population of 285,500 or more.
- (34) Household--Any individual or group of individuals who are living together as one economic unit. For energy programs, these persons customarily purchase residential energy in common or make undesignated payments for energy.
- (35) Inverse Ratio of Population Density Factor--The number of square miles of a county divided by the number of poverty Households of that county.
- (36) Life Threatening Crisis--A life threatening crisis exists when at least one person in the applicant household could lose their life without the Subrecipient's utility assistance because there is a shut-off notice or a delivered fuel source is below a ten (10) day supply (by client report) and any member of the Household is dependent upon equipment that is prescribed by a medical professional, operated on electricity or gas and is necessary to sustain the person's life. Examples of life-sustaining equipment include but are not limited to kidney dialysis machines, oxygen concentrators, cardiac monitors, and in some cases heating and air conditioning when ambient temperature control is prescribed by a medical professional. Documentation must not include information regarding the applicant's medical condition but may include certification that such a device is required in the home to sustain life.
- (37) Local Unit of Government--City, county, council of governments, and housing authorities.



- (38) Low Income--Income in relation to family size and that governs eligibility for a program:
- (A) For DOE WAP, at or below 200% of the DOE Income guidelines;
  - (B) For CEAP, CSBG, and LIHEAP WAP at or below 125% of the HHS Poverty Income guidelines;
  - (C) For ESG, 30% of the Area Median Income (AMI) as defined by HUD's Section 8 Income Limits for persons receiving prevention assistance; and
  - (D) For HHSP, 30% of the AMI as defined by HUD's Section 8 Income Limits for all clients assisted.
- (39) Low Income Home Energy Assistance Program (LIHEAP)--An HHS-funded program which serves low income Households who seek assistance for their home energy bills and/or weatherization services.
- (40) Migrant Farm Worker--An individual or family that is employed in agricultural labor or related industry and is required to be absent overnight from their permanent place of residence.
- (41) Modified Cost Reimbursement--A contract sanction whereby reimbursement of costs incurred by the Subrecipient is made only after the Department has reviewed and approved backup documentation provided by the Subrecipient to support such costs.
- (42) Multifamily Dwelling Unit--A structure containing more than one Dwelling Unit. This definition does not apply to ESG or HHSP.
- (43) National Performance Indicator--An individual measure of performance within the Department's Community Affairs Contract System for measuring performance and results of Subrecipients of funds.
- (44) Needs Assessment--An assessment of community needs in the areas to be served with CSBG funds.
- (45) Office of Management and Budget (OMB)--Office within the Executive Office of the President of the United States that oversees the performance of federal agencies and administers the federal budget.
- (46) OMB Circulars--Instructions and information issued by OMB to Federal agencies that set forth principles and standards for determining costs for federal awards and establish consistency in the management of grants for federal funds. Uniform cost principles and administrative requirements for local governments and for nonprofit organizations, as well as audit standards for governmental organizations and other organizations expending federal funds are set forth in 2 CFR Part 200, unless different provisions are required by statute or approved by OMB.
- (47) Outreach--The method that attempts to identify clients who are in need of services, alerts these clients to service provisions and benefits, and helps them use the services that are available. Outreach is utilized to locate, contact and engage potential clients.
- (48) Performance Statement--A document which identifies the services to be provided by a Subrecipient.
- (49) Persons with Disabilities--Any individual who is:

- (A) a handicapped individual as defined in §7(9) of the Rehabilitation Act of 1973;
- (B) under a disability as defined in §1614(a)(3)(A) or §223(d)(1) of the Social Security Act or in §102(7) of the Developmental Disabilities Services and Facilities Construction Act; or
- (C) receiving benefits under 38 U.S.C. Chapter 11 or 15.
- (50) Population Density--The number of persons residing within a given geographic area of the state.
- (51) Poverty Income Guidelines--The official poverty income guidelines as issued by HHS annually.
- (52) Private Nonprofit Organization--An organization described in §501(c) of the Internal Revenue Code (the "Code") of 1986 and which is exempt from taxation under subtitle A of the Code, has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance. For ESG, this does not include a governmental organization such as a public housing authority or a housing finance agency.
- (53) Public Organization--A unit of government, as established by the Legislature of the State of Texas. Includes, but may not be limited to, cities, counties, and councils of governments.
- (54) Referral--The process of providing information to a client Household about an agency, program, or professional person that can provide the service(s) needed by the client.
- (55) Rental Unit--A Dwelling Unit occupied by a person who pays rent for the use of the Dwelling Unit. This definition does not apply to ESG or HHSP.
- (56) Renter--A person who pays rent for the use of the Dwelling Unit. This definition does not apply to ESG or HHSP.
- (57) Seasonal Farm Worker--An individual or family that is employed in seasonal or temporary agricultural labor or related industry and is not required to be absent overnight from their permanent place of residence. In addition, at least 20% of the Household annualized income must be derived from the agricultural labor or related industry.
- (58) Shelter--Defined by the Department as a Dwelling Unit or units whose principal purpose is to house on a temporary basis individuals who may or may not be related to one another and who are not living in nursing homes, prisons, or similar institutional care facilities. This definition does not apply to ESG or HHSP.
- (59) Single Audit--As defined in the Single Audit Act of 1984 (as amended) or UGMS, a series of audits that cover departments, agencies, and other organizational units which expended or otherwise administered federal or state awards during such fiscal year provided that each such audit shall encompass the financial statements and schedule of expenditures of federal or state awards for each such department, agency, and organizational unit.

(60) Single Family Dwelling Unit--A structure containing no more than one Dwelling Unit. This definition does not apply to ESG or HHSP.

(61) State--The State of Texas or the Department, as indicated by context.

(62) Subcontractor--A person or an organization with whom the Subrecipient contracts with to provide services.

(63) Subgrant--An award of financial assistance in the form of money, or property in lieu of money, made under a grant by a Subrecipient to an eligible Subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases.

(64) Subgrantee--The legal entity to which a subgrant is awarded and which is accountable to the Subrecipient for the use of the funds provided.

(65) Subrecipient--Generally, an organization with whom the Department contracts and provides CSBG, CEAP, ESG, HHSP, DOE WAP, or LIHEAP funds. (Refer to Subchapters B, D - G, J, and K of this chapter for program specific definitions.)

(66) Supplies--All personal property excluding equipment, intangible property, and debt instruments, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement (subject inventions), as defined in 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements." A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-federal entity for financial statement purposes or \$5,000, regardless of the length of its useful life.

(67) System for Award Management (SAM)--Combined federal database that includes the Excluded Parties List System (EPLS).

(68) Systematic Alien Verification for Entitlements (SAVE)--Automated intergovernmental database that allows authorized users to verify the immigration status of applicants.

(69) Texas Administrative Code (TAC)--A compilation of all state agency rules in Texas.

(70) Treatment as a State or Local Agency--For purposes of 5 U.S.C. Chapter 15, any entity that assumes responsibility for planning, developing, and coordinating activities under the CSBG Act and receives assistance under CSBG Act shall be deemed to be a state or local agency.

(71) Uniform Grant Management Standards (UGMS)--Established to promote the efficient use of public funds by providing awarding agencies and grantees a standardized set of financial management procedures and definitions, 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. In addition, Chapter 2105, Texas

Government Code, subjects all subrecipients of federal block grants to the Uniform Grant and Contract Management Standards.

(72) Unit of General Local Government--A unit of government which has, among other responsibilities, the authority to assess and collect local taxes and to provide general governmental services.

(73) United States Code (U.S.C.)--A consolidation and codification by subject matter of the general and permanent laws of the United States.

(74) Vendor Agreement--An agreement between the Subrecipient and energy vendors that contains assurance as to fair billing practices, delivery procedures, and pricing for business transactions involving ESG and LIHEAP beneficiaries.

(75) Weatherization Assistance Program (WAP)--DOE and LIHEAP funded program designed to reduce the energy cost burden of low income households through the installation of energy efficient weatherization materials and education in energy use.

(76) Weatherization Assistance Program Policy Advisory Council (WAP PAC)--The WAP PAC was established by the Department in accordance with 10 CFR §440.17 to provide advisory services in regards to the WAP program.

(77) Weatherization Material--The material listed in Appendix A of 10 CFR Part 440.

(78) Weatherization Project--A project conducted to reduce heating and cooling demand of Dwelling Units that are energy inefficient.

#### *§5.19. Income Eligibility.*

(a) For HHS and DOE funded programs, eligibility for program assistance is determined under the Poverty Income Guidelines and calculated as described herein. Income means cash receipts earned and/or received by the applicant before taxes during applicable tax year(s) but not the Excluded Income listed in paragraph (2) of this subsection. Gross income is to be used, not net income.

(1) If an income source is not excluded below, it must be included when determining income eligibility.

(2) Excluded Income:

(A) Capital gains;

(B) Any assets drawn down as withdrawals from a bank;

(C) Balance of funds in a checking or savings account;

(D) Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002 (Pub. L. 107-110, 42 U.S.C. 604(h)(4));

- (E) The sale of property, a house, or a car;
- (F) One-time payments from a welfare agency to a family or person who is in temporary financial difficulty;
- (G) Tax refunds, Earned Income Tax Credit refunds;
- (H) Jury duty compensation;
- (I) Gifts, loans, and lump-sum inheritances;
- (J) One-time insurance payments, or compensation for injury;
- (K) Non-cash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits;
- (L) Reimbursements (for mileage, gas, lodging, meals, etc.);
- (M) Food or housing received in lieu of wages;
- (N) The value of food and fuel produced and consumed on farms;
- (O) The imputed value of rent from owner-occupied non-farm or farm housing;
- (P) Federal non-cash benefit programs as Medicare, Medicaid, SNAP, WIC, and school lunches (Medicare deduction from Social Security Administration benefits should not be counted as income);
- (Q) Housing assistance and combat zone pay to the military;
- (R) Veterans (VA) Disability Payments;
- (S) College scholarships, Pell and other grant sources, assistantships, fellowships and work study, VA Education Benefits (GI Bill), Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);
- (T) Child support payments (amount paid by payor may not be deducted from income);
- (U) Income of Household members under eighteen (18) years of age;
- (V) Stipends from senior companion programs, such as Retired Senior Volunteer Program and Foster Grandparents Program;
- (W) AmeriCorps Program payments, allowances, earnings, and in-kind aid;
- (X) Depreciation for farm or business assets;
- (Y) Reverse mortgages;

(Z) Payments for care of Foster Children;

(AA) Payments or allowances made under the Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));

(BB) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602(c));

(CC) Major disaster and emergency assistance received by individuals and families under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (93, as amended) and comparable disaster assistance provided by States, local governments, and disaster assistance organizations (42 U.S.C. 5155(d));

(DD) Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931(a)(2));

(EE) Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 U.S.C. 3056(g));

(FF) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858(q));

(GG) Certain payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));

(HH) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459(e));

(II) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (94, §6);

(JJ) The first \$2,000 of per capita shares received from judgment funds awarded by the National Indian Gaming Commission or the U.S. Claims Court, the interests of individual Indians in trust or restricted lands, and the first \$2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408). This exclusion does not include proceeds of gaming operations regulated by the Commission;

(KK) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund (101) or any other fund established pursuant to the settlement in *In Re Agent Orange Liability Litigation, M.D.L. No. 381 (E.D.N.Y.)*;

(LL) Payments received under the Maine Indian Claims Settlement Act of 1980 (96, 25 U.S.C. 1728);

(MM) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (95);

(NN) Any allowance paid under the provisions of 38 U.S.C. 1833(c) to children of Vietnam veterans born with spina bifida (38 U.S.C. 1802-05), children of women Vietnam veterans born with certain birth defects (38 U.S.C. 1811-16), and children of certain Korean service veterans born with spina bifida (38 U.S.C. 1821);

(OO) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b));

(PP) Payments from any deferred U.S. Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts (42 U.S.C. §1437a(b)(4));

(QQ) A lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the case entitled *Elouise Cobell et al. v. Ken Salazar et al.*, 816 F.Supp.2d 10 (Oct. 5, 2011 D.D.C.), for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010 (Pub. L. 111-291);

(RR) Per capita payments made from the proceeds of Indian Tribal Trust Cases as described in PIH Notice 2013-30 "Exclusion from Income of Payments under Recent Tribal Trust Settlements" (25 U.S.C. 117b(a)); and

(SS) [~~S~~] Any other income required to be excluded by the federal or state funding program.

(b) The requirements for determining whether an applicant Household is eligible for assistance require the Subrecipient to annualize the Household income based on verifiable documentation of income.

(1) The Subrecipient must calculate projected annual income by annualizing current income. Income that may not last for a full 12 months (e.g., unemployment compensation) should be calculated assuming current circumstances will last a full 12 months.

(2) Subrecipient must collect verifiable documentation of Household income received in the thirty (30) days prior to the date of application.

(3) Once all sources of income are known, Subrecipients must convert reported income to an annual figure. Convert periodic wages to annual income by multiplying:

(A) Hourly wages by the number of hours worked per year (2,080 hours for full-time employment with a 40-hour week and no overtime);

(B) Weekly wages by 52;

(C) Bi-weekly wages (paid every other week) by 26;

(D) Semi-monthly wages (paid twice each month) by 24; and

(E) Monthly wages by 12.

(c) Except for ESG, to annualize other than full-time income, multiply the wages by the actual number of hours or weeks the person is expected to work.

(d) For HHSP, Subrecipients may select either the method described in (a) - (c) of this section or the method described in (e) of this section, but once selected the method must be used consistently throughout the contract period.

(e) For ESG, Subrecipients must use the income determination method outlined in 24 CFR 5.609, must use the list of income included in HUD Handbook 4350, and must exclude from income those items listed in HUD's Updated List of Federally Mandated Exclusions from Income.

(f) If proof of income is unobtainable, the applicant must complete and sign a Declaration of Income Statement (DIS). In order to use the DIS form, each Subrecipient shall develop and implement a written policy and procedure on the use of the DIS form. In developing the policy and procedure, Subrecipients shall limit the use of the DIS form to cases where there are serious extenuating circumstances that justify the use of the form. Such circumstances might include crisis situations such as applicants that are affected by natural disaster which prevents the applicant from obtaining income documentation, applicants that flee a home due to physical abuse, or applicants who are unable to locate income documentation of a recently deceased spouse. To ensure limited use, the Department will review the written policy and its use, as well as client-provided descriptions of the circumstances requiring use of the form, during on-site monitoring visits.

(g) The DIS must be notarized. Attainment of notary public commission is an allowable activity as an administrative cost.

(h) If a federal or state requirement provides an updated definition of income or method for calculating income, the Department will provide written notice to Subrecipients about the implementation date for the new requirements.





**Austin/Travis County Health and Human Services Department**



**OFFICE OF THE DIRECTOR**  
**P.O. Box 1088**  
**Austin, Texas 78767**  
**(512) 972-5010 Fax (512) 972-5016**

October 17, 2014

Annette Cornier  
Rule Comments  
Texas Department of Housing  
& Community Affairs  
P.O. Box 13941  
Austin, Texas 78711-3941

Dear Ms. Cornier:

The Austin/Travis County Health and Human Services Department respectfully submits the attached comments to the proposed amendments of the Texas Administrative Code, General Provisions, 10 TAC §§ 5.2 and §5.19.

Should you have any questions or need any further information regarding this matter, please do not hesitate to contact Maria Allen, HHS Manager at (512) 972-5086. Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Carlos Rivera".

Carlos Rivera  
Director

cc: Stephanie Hayden, Asst. Division Director, Community Services  
Kymberley Maddox, Chief Administrative Officer  
Maria Allen, HHS Manager, Neighborhood Services Unit  
File

Austin/Travis County Health and Human Services Department

Public Comment on Proposed Rule Changes 10 TAC §§ 5.2 and §5.19

**5.2 Definitions**

**13) Declaration of Income Statement – “The DIS is not complete unless notarized in accordance with Chapter 406.014 of the Texas Government Code.”**

**Comment:** According to the Texas Secretary of State’s office, a current, US government issued ID with a photo and signature must be presented to a notary public in order for a document (DIS) to be notarized. This requirement has created a barrier for many persons seeking CSBG funded or supported services, whose ID does not meet the requirements for notarization of the DIS. Please consider excluding CSBG from the requirement that a DIS be notarized.

**5.19 Income Eligibility**

**(2) Excluded Income:**

**P) Federal non-cash benefits programs as Medicare, Medicaid, SNAP, WIC and school lunches (Medicare deduction from Social Security benefits should not be counted as income).**

**Comment:** Social Security benefit award statements frequently reflect deductions for overpayments. Please clarify if the only deduction not counted as income would be the Medicare premium.

**T) Child Support Payments**

**Comment:** While child support payments are excluded income, currently any Social Security benefit paid to a parent or guardian of a child is considered included income. Both benefits help parents support their children. Please consider excluding Social Security benefits paid to a parent or guardian on behalf of a child to increase consistency in income eligibility determination.

**DD) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act**

**EE) Payments received from programs funded under title V of the Older Americans Act**

**FF) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care Development Block Grant Act**

**Comment:** Persons receiving income under these programs are often unaware of its original source. Please clarify THDCA’s expectations for verification of these types of income in complying with this rule.

**(d) 1. Generally, the Subrecipient must use current circumstances to anticipate income. The Subrecipient calculates projected annual income by annualizing current income.**

**Comment:** Currently, Rule 5.20 indicates that Subrecipients are to base annualized eligibility determinations on Household income from the 30 days prior to the date of application. The eligibility determination proposed appears to remove the reference to the 30 days prior to the date of application as the basis for determining eligibility. Please clarify whether “current circumstances” cited in the proposed rule change will still be based on the prior 30 days income, or provide additional clarification on how Subrecipients are to apply this rule.

# Texas Association of Community Action Agencies, Inc.

---

2512 IH 35 South, Suite 100  
Austin, TX 78704-5772

Phone: (512) 462-2555  
(800) 992-9767  
Fax: (512) 462-2004

www.tacaa.org  
tacaa@tacaa.org

Date: November 3, 2014

To: Annette Cornier  
Rule Comments  
Texas Department of Housing and Community Affairs  
cadrulecomments@tdhca.state.tx.us

From: Stella Rodriguez, Executive Director  
Texas Association of Community Action Agencies

Re: Proposed Amendments – Chapter 5, Community Affairs Programs

Members of the Texas Association of Community Action Agencies (TACAA) reviewed the proposed amendments to Chapter 5, Community Affairs Programs, Subchapter A, General Provisions, Subchapter B, Community Services Block Grant, Subchapter D, Comprehensive Energy Assistance Program and Subchapter E, Weatherization Assistance Program General published by the Texas Department of Housing and Community Affairs (TDHCA) in the October 3, 2014 issue of the *Texas Register*.

Major concerns were expressed regarding some of the proposed amendments, including determining income eligibility, calculation of income, and household crisis payments, which may warrant further discussion.

We respectfully submit the following edits and recommendations.

## **Chapter 5, Subchapter A, General Provisions**

### **§5.2.Definitions.**

(a) To ensure a clear understanding of the terminology used in the context of the [Programs of the Community Affairs Programs Division](#), a list of terms and definitions has been compiled as a reference.

(b) The words and terms in this chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise.

(2) Award Date--Date on which the Department's Board commits funds to an awardee.

**Comment: Please clarify because this is not consistent with §5.2(b)(11), which references “first day of the contract period” for which expenditures may be considered by a Subrecipient.**

(6) [(5)] Community Action Agencies (CAAs)--Local [Private Nonprofit Organizations and Public Organizations](#) [private and public nonprofit organizations] that carry out the Community [Services Block Grant Action](#) Program, which was established by the 1964 Economic Opportunity Act to fight poverty by empowering the poor in the United States. [Each CAA must have a board consisting of one-third elected public officials, not fewer than one-third representatives of low-income individuals and families, chosen in accordance with democratic selection procedures, and the remainder are members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community.]

(9) [(8)] Community Services Block Grant (CSBG)--~~An HHS-funded program [A grant] which provides [U.S. federal] funding for CAAs and other Eligible Entities that seek to address poverty at the community level. [Like other block grants, CSBG funds are allocated to the states and other jurisdictions through a formula.]~~

(11) Contract--The executed written Agreement between the Department and a Subrecipient performing an ~~A~~ activity related to a CAD program that describes performance requirements and responsibilities assigned by the document; for which the first day of the contract period is the point at which programs funds may be considered by a Subrecipient for expenditure unless otherwise directed in writing by the Department.

Comment: (11) above is not consistent with §5.2(b)(2) above, see previous comment.

(18) [(13)] Discretionary Funds--Those CSBG funds maintained [~~in reserve~~] by the Department [~~a state~~], at its discretion, for CSBG allowable ~~uses~~ activities as authorized by §~~675C42~~ U.S.C. 9907(b)(1) of the CSBG Act, ~~and not designated for distribution on a statewide basis to CSBG Eligible Entities~~ and not designated [~~held in reserve~~] for state administrative purposes.

Recommendation: Remove "...and not designated for distribution on a statewide basis to CSBG Eligible Entities." because the CSBG Act does not prohibit a CSBG eligible entity from conducting statewide activities.

(23) [(19)] Eligible Entity--Those local organizations in existence and designated by the federal ~~and state~~ government to administer programs created under the Federal Economic Opportunity Act of 1964. This includes community action agencies, limited-purpose agencies, and units of local government. The CSBG Act defines an eligible entity as an organization that was an eligible entity on the day before the enactment of the Coats Human Services Reauthorization Act of 1998 (October 27, 1998), or is designated by the Governor to serve a given area of the state and that has a tripartite board or other mechanism specified by the state for local governance.

(29) [(24)] Families with Young Children--A family that includes a Child [~~child~~] age five (5) or younger, which means a child up until the 6<sup>th</sup> birthday.

Rationale: The added text is for clarification and consist definition for all Subrecipients. A five year old child is five up until the 6<sup>th</sup> birthday.

(30) [(25)] High Energy Burden--Households with energy burden which exceeds 11% of annual gross income, ~~which is--D~~determined by dividing a Household's annual home energy costs by the Household's annual gross income.

(38) [(32)] Low Income--Income in relation to family size and that governs eligibility for a program:

(A) For DOE WAP, at or below 200% of the DOE Income guidelines;

(B) For CEAP and LIHEAP WAP at or below 150% of HHS Poverty Income guidelines;

Rationale: The increase is in line with allowable federal regulations and allows Subrecipients to serve clients up to the higher threshold. This recommendation has been expressed by the TACAA Board at which Department leadership staff has been present; it was suggested that the official recommendation be made at the time of rulemaking.

(BC) For ~~CEAP, CSBG, and LIHEAP WAP~~ at or below 125% of the HHS Poverty Income guidelines;

~~(39) [(33)]~~ Low Income Home Energy Assistance Program (LIHEAP)--~~A~~ HHS-funded program which serves ~~[A federally funded block grant program that is implemented to serve]~~ low income Households who seek assistance for their home energy bills and/or weatherization services.

~~(43) [(37)]~~ National Performance Indicator--An individual measure of performance within the Department's **CSBG** reporting system for measuring performance and results of Subrecipients of funds.

~~(51) [(45)]~~ Poverty Income Guidelines--The official poverty income guidelines as issued by the **U.S. Department of Health and Human Services (HHS)** annually.

**Rationale:** edit per new §5.2(16).

~~(61) [(56)]~~ State--The State of Texas or **Department** ~~the Texas Department of Housing and Community Affairs.~~

**Rationale:** edit per new §5.2(b)(14).

(71) Uniform Grant Management Standards (UGMS)--Established to promote the efficient use of public funds by providing awarding agencies and grantees a standardized set of financial management procedures and definitions, 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. In addition, Chapter 2105, Texas Government Code, subjects all **s**Subrecipients of federal block grants to the Uniform Grant and Contract Management Standards.

### **§5.19.[Client] Income Eligibility [Guidelines].**

(a) For HHS and DOE funded programs, eligibility for program assistance is determined under the Poverty Income Guidelines and calculated as described herein. Income means cash receipts earned and/or received by the applicant before taxes during applicable tax year(s) **but not the Excluded Income listed in paragraph (2) of this subsection.** Gross income is to be used, not net income. [Except for ESG and HHSP, the Department has defined eligibility for program assistance under the Poverty Income Guidelines.]

**Recommendation:** Omit "Excluded Income."

**Rationale:** Countable income should be a finite list. Determination of income eligibility should not be based on an excluded list.

~~(1) If an income source is not excluded below, it must be included when determining income eligibility.~~

**Recommendation:** Strike new (1) because determination of income eligibility should not be based on an excluded list, rather defined countable income.

~~(b) For all programs except ESG, Subrecipients will use the list of included and excluded income to determine eligibility for all programs, as described in paragraphs (1) and (2) of this subsection. Income means Cash Receipts earned and/or received by the applicant before taxes during applicable tax year(s) but not the Excluded Income listed in paragraph (2) of this subsection. Gross Income is to be used, not Net Income.]~~

~~[(1) Included Income:]~~

~~[(A) Temporary Assistance for Needy Families (TANF);]~~

~~[(B) Money, wages and salaries before any deductions;]~~

~~[(C) Net receipts from non-farm or farm self-employment (receipts from a person's own business or from an owned or rented farm after deductions for business or farm expenses);]~~

~~[(D) Regular payments from social security, including Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI);]~~

~~[(E) Railroad retirement;]~~

~~[(F) Unemployment compensation;]~~

~~[(G) Strike benefits from union funds;]~~

~~[(H) Worker's compensation;]~~

~~[(I) Training stipends;]~~

~~[(J) Alimony;]~~

~~[(K) Military family allotments;]~~

~~[(L) Private pensions;]~~

~~[(M) Government employee pensions (including military retirement pay);]~~

~~[(N) Regular insurance or annuity payments; and]~~

~~[(O) Dividends, interest, net rental income, net royalties, periodic receipts from estates or trusts; and net gambling or lottery winnings.]~~

Recommendation: Do not remove the list of countable income for determining eligibility in the current §5.19(b)(1), which should mirror the 2015 LIHEAP State Plan to HHS as modified and approved by the TDHCA Board at its July 31, 2014 meeting.

Rationale: Included income should be a finite list. Documentation of included income will be captured and maintained in client files rather than having to document from an exhaustive list of excluded income, which is not proof of countable income.

~~(a)(2) Excluded Income~~

Remove the "Excluded Income" list, which becomes unnecessary information if the countable income is clearly stated.

~~(b) The requirements for determining whether an applicant Household is eligible for assistance require the Subrecipient to project or estimate the annual income that annualize the Household income based on verifiable documentation from the past thirty (30) days expects to receive. The following is an acceptable method for calculating the annual income anticipated for the coming year:~~

(1) Generally the Subrecipient must use current circumstances to anticipate income. The Subrecipient calculates projected annual income by annualizing current income. Income that may not last for a full 12 months (e.g., unemployment compensation) should be calculated assuming current circumstances will last a full 12 months.

(2) If information is available on changes expected to occur during the year, use that information to determine the total anticipated income from all known sources during the year. For example, if a verification source reports that a union contract calls for a 2% pay increase midway through the year, the Subrecipient may add the total income for the months before, and the total for the months after the increase.

(3) Once all sources of income are known, Subrecipients must convert reported income to an annual figure. Convert periodic wages to annual income by multiplying:

(A) Hourly wages by the number of hours worked per year (2,080 hours for full-time employment with a 40-hour week and no overtime);

(B) Weekly wages by 52;

(C) Bi-weekly wages (paid every other week) by 26;

(D) Semi-monthly wages (paid twice each month) by 24; and

(E) Monthly wages by 12.

Recommendation: Remove the proposed method of calculating income for the purpose of determining eligibility as referenced in §5.19(b) (1), (2) and (3). Simply require Subrecipients to annualize household income based on verifiable documentation from the past thirty (30) days.

Rationale: The proposed method of calculation applies to a regular full-time employee. Many of our clients don't fit this category; rather, they are part-time or receive irregular weekly wages based on unpredictable hours worked. To project, estimate or anticipate income is subjective. The current method of calculation is an effective, accurate, consistent and non-subjective method of determining income.

## **SUBCHAPTER B. COMMUNITY SERVICES BLOCK GRANT (CSBG)**

### **§5.207.Subrecipient Performance.**

(d) In keeping with the regulations issued under Title II, §676(b)(3)(C), §676(5),(6),(9) State Application and Plan, the Department requires CSBG Eligible Entities, and other CSBG organizations where applicable, to coordinate CSBG funds and form partnerships with other public and private resources and coordinate and establish linkages between governmental and other social service programs to assure the effective delivery of services and avoid duplication of services.

Recommendation: Replace with codified reference, e.g. 42 U.S.C. §9908\_\_\_\_.

(e) In keeping with the regulations issued under Title II, §676(b)(4), CSBG Eligible Entities shall provide, on an emergency basis, for the provision of such supplies and services, nutritious foods, and related services, as may be necessary to counteract the conditions of starvation and malnutrition. The nutritional needs may be met through a referral source that has resources available to meet the immediate needs.

Recommendation: Replace with codified reference, e.g. 42 U.S.C. §\_\_\_\_\_



(f) In keeping with the regulations issued under [Title II, §676\(b\)\(5\)](#), CSBG Eligible Entities, shall coordinate the provision of employment and training activities through local workforce investment systems under the Workforce Investment Act of 1998.

Recommendation: Replace with codified reference, e.g. 42 U.S.C. §\_\_\_\_\_

(g) In keeping with the regulations issued under [Title II, §678G\(b\)\(1-2\)](#), CSBG Eligible Entities shall inform custodial parents in single-parent families that participate in programs, activities, or services about the resources available through the Texas Attorney General's Office with respect to the collection of child support payments and refer eligible parents to the Texas Attorney General's Office of Child Support Services Division.

Recommendation: Replace with codified reference, e.g. 42 U.S.C. §\_\_\_\_\_

(i) Case Management.

(1) In keeping with the regulations issued under [Title II, §676\(b\)](#) State Application and Plan, the Department requires CSBG Eligible Entities, and other CSBG Subrecipients where applicable, to incorporate integrated case management systems in the administration of their CSBG program ([Title II, §676\(b\)](#)). Incorporating case management in the service delivery system and providing assistance that has a long-term impact on the client, such as enabling the client to move from poverty to self-sufficiency, to maintain stable families, and to revitalize the community, supports the requirements of Title II, [§676\(b\)](#). An integrated case management system improves the overall provision of assistance and improves each Subrecipient's ability to transition persons from poverty to self-sufficiency. Case management can be provided on a short-term basis to meet immediate needs, or for Eligible Entities it can be provided on a long-term basis to persons working to transition out of poverty and achieve self-sufficiency.

Recommendation: Replace with codified reference, e.g. 42 U.S.C. §\_\_\_\_\_.

#### **§5.210.CSBG Needs Assessment and Community Action Plan.**

(a) In accordance with ~~the CSBG Act and~~ [§676](#) of the CSBG Act, the Department is required to secure a Community Action Plan on an annual basis from each CSBG Eligible Entity. The Community Action Plan shall be submitted to the Department on or before a date specified by the Department in the Eligible Entity contract ~~[October 1 of each year]~~.

Recommendation: Replace with codified reference, e.g. 42 U.S.C. §\_\_\_\_\_

(e) Subrecipients receiving [stateCSBG](#) discretionary funds under [§5.203\(b\)](#) of this subchapter (relating to Distribution of CSBG Funds) are not required to submit a Community Action Plan. All CSBG Subrecipients must develop a performance statement which identifies the services, programs, and activities to be administered by the organization.

#### **§5.213.Board Structure.**

(a) Eligible Entities that are Private Nonprofit Organizations ~~[Private nonprofit entities,]~~ shall administer the CSBG program through a tripartite board that fully participates in the development, planning, implementation, and evaluation of the program to serve low-income communities. Some of the members of the board shall be selected by the Private Nonprofit Organizations ~~[private nonprofit~~

entity] and others through a democratic process; the board shall be composed so as to assure that the requirements of §676B(a)(2) of the CSBG Act are followed and are composed as:

Recommendation: Replace with codified reference, e.g. 42 U.S.C. §\_\_\_\_\_

- (b) For public organizations to be considered to be an Eligible Entity [~~eligible entity~~] for purposes of the CSBG Act, §676B(b), the entity shall administer the CSBG grant through tripartite boards that fully participate in the development, planning, implementation and evaluation of programs that serve low-income communities or act as an advisory board. [~~as:~~]

Recommendation: Replace with codified reference, e.g. 42 U.S.C. §\_\_\_\_\_

(g) [~~(d)~~] Selection. Pursuant to §676B of the CSBG Act, Eligible Entities that are Private Nonprofit Organizations [~~Private nonprofit entities~~] and Public Organizations [~~public organizations~~] have the responsibility for selection and composition of the board.

Recommendation: Replace with codified reference, e.g. 42 U.S.C.

## **SUBCHAPTER D. COMPREHENSIVE ENERGY ASSISTANCE PROGRAM**

### **§5.423. Household Crisis Component.**

- (c) Crisis assistance payments cannot exceed the minimum amount needed to resolve the crisis; i.e. when a shut-off notice requires a certain amount to be paid to avoid disconnection and the same notice indicates that there are balances due other than the required amount, only the amount required to avoid disconnection may be paid as crisis assistance. Crisis assistance payments that are less than the amount needed to resolve the crisis may only be made when ~~other funds are available to cover the Household's remaining crisis need~~ a utility vendor assures the crisis has been resolved and disconnection is avoided.

Rationale: Subrecipients commit funds when there is an assurance of resolving a crisis.

- (d) Crisis assistance for one Household cannot exceed the maximum allowable benefit level in one program year. If a Household's crisis assistance needs exceed that maximum allowable benefit, Subrecipient may pay up to the Household crisis assistance limit only if the remaining amount of Household need can be paid from other funds. ~~If the Household's crisis requires more than the Household limit to resolve and no other funds are available, the crisis exceeds the scope of this program.~~ The assistance must result in resolution of the crisis.

Recommendation: Remove the stricken text and add the new last sentence.

Rationale: It is implied that if a Subrecipient cannot pay the entire bill the client is denied; it's all or nothing. There are many cases in which a customer has an opportunity to make arrangements with their utility vendor to settle amounts owed which are not payable by the Subrecipient. The new sentence is from the current §5.423(c), which is what Subrecipients strive to accomplish in serving their clients.

## **SUBCHAPTER E. WEATHERIZATION ASSISTANCE PROGRAM GENERAL**

### **§5.528.Health and Safety.**

(a) Health and Safety expenditures may not exceed ~~20~~30% of total unit expenditures (Materials, Labor, Program Support, and Health and Safety) at the end of the contract period.

Rationale: Continued increases in the cost of materials and other requirements such as ASHRAE warrants an increase of the allowable percentage from 20% to 30%.

**GENERAL COMMENT:** Search and replace federal rule references with codified version.



## COMMUNITY ACTION COMMITTEE OF VICTORIA, TEXAS

STREET ADDRESS: 4007 HALSEY ST., VICTORIA, TX 77901 MAILING ADDRESS: P.O. BOX 3607, VICTORIA TX 77903

November 3, 2014

Sent via: [cadrulecomments@tdhca.state.tx.us](mailto:cadrulecomments@tdhca.state.tx.us)

Annette Cornier  
TDHCA  
Rule Comments  
Austin, Texas

Community Action Committee of Victoria, Texas (CACVT) supports comments filed by the Texas Association of Community Action Agencies (TACAA) regarding proposed amendments to 10 TAC, Chapter 5, Community Affairs Programs as published in the Texas Register on October 3, 3014.

Sincerely yours,

Vicki Smith  
Executive Director

BIG BEND COMMUNITY ACTION COMMITTEE, INC.  
P.O. BOX 265, 1412 W. Berlin St.  
MARFA, TX. 79843-0265  
Ph. 432-729-4908 Fax 432-729-3435

November 3, 2015

RE: Proposed Amendments-Chapter 5, Community Affairs Programs

Big Bend Community Action Committee, Inc. supports comments filed by TACAA regarding proposed amendments to 10 TAC, Chapter 5, Community Affairs Programs as published in the Texas Register on October 3, 2014.

Respectfully,

Emma Vasquez  
Executive Director



## GREATER EAST TEXAS COMMUNITY ACTION PROGRAM

P.O. BOX 631938

NACOGDOCHES, TX. 75963

PHONE:(936) 564-2491

FAX:(936)564-6212

FAX:(936) 564-0302

ADMINISTRATIVE

PROGRAM

---

Date: November 3, 2014

To: Annette Cornier  
Rule Comments  
Texas Dept. Housing & Community Affairs  
[cadrulecomments@tdhca.state.tx.us](mailto:cadrulecomments@tdhca.state.tx.us)

From: Karen Swenson, Executive Director  
Greater East Texas Community Action Program

Re: Proposed Amendments – Chapt. 5, Community Affairs Programs

Greater East Texas Community Action Program has reviewed the proposed Amendments to Chapter 5, Community Affairs Programs, Subchapter A. General Provisions, Subchapter B, Community Services Block Grant, Subchapter D, Comprehensive Energy Assistance program and Subchapter E, Weatherization Assistance Program General published by the Texas Dept. of Housing and Community Affairs (TDHCA) in the October 3, 2014 issue of the Texas Register.

Greater East Texas Community Action Program (GETCAP) has major concerns with several of these amendments including income eligibility, income calculation, and crisis payments.

GETCAP also reviewed the recommendations provided by the Texas Association of Community Action Agencies (TACAA). We strongly support these recommendations on behalf of the service provider network.

GETCAP encourages income eligibility based on what is countable rather than what is excluded. This change will be confusing and more complicated.

GETCAP also continues to support 150% of federal poverty or less which is more in line with federal guidelines. Complex federal guidelines should not be further complicated on the state level.

These comments are respectfully submitted for consideration.

---

**From:** Carole Belver [cbelver@communityaction.com]  
**Sent:** Monday, November 03, 2014 2:56 PM  
**To:** cadrulecomments@tdhca.state.tx.us  
**Subject:** comments to 10 TAC Chapter 5

**Community Action, Inc. of Central Texas supports the comments filed by Texas Association of Community Action Agencies regarding proposed amendments to 10 TAC, Chapter 5, Community Affairs Programs as published in the *Texas Register* on October 3, 2014.**

Thank you,

Carole Belver, M.Ed.

Executive Director

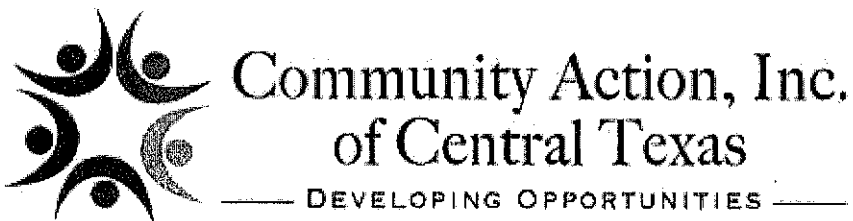
Community Action, Inc. of Central Texas

P.O. Box 748

San Marcos, TX 78667-0748

512-392-1161, ext 328

[cbelver@communityaction.com](mailto:cbelver@communityaction.com)



---

Please connect with us on facebook

---

**From:** Dennis Chapman [Dennis.Chapman@traviscountytexas.gov]  
**Sent:** Monday, November 03, 2014 4:27 PM  
**To:** cadrulecomments@tdhca.state.tx.us  
**Subject:** comment 10 TAC §5.19 (b) (1)

Please accept the following comment as it applies to 10 TAC §5.19 (b) (1). Thank you for your consideration.

(1) Generally the Subrecipient must use current circumstances to anticipate income. The Subrecipient calculates projected annual income by annualizing current income. Income that may not last for a full 12 months (e.g., unemployment compensation) should be calculated assuming current circumstances will last a full 12 months.

· How is “current circumstances” defined?

· Will the Department be providing a more detailed definition of “current circumstances” as it relates to household income?

· Will Subrecipients be able to annualize income from a single paycheck for people that get paid weekly, bi-weekly?

---

· Without more direction I can envision that households receiving the same income in different parts of the state being eligible in one place and not in another by virtue of interpretation of “current circumstances.”

Dennis R. Chapman, LCSW

Social Services Program Administrator  
Travis Community Center in Manor

600 West Carrie Manor Street



Manor, Texas 78653  
512.854.1531  
512.854.1559f  
[dennis.chapman@traviscountytexas.gov](mailto:dennis.chapman@traviscountytexas.gov)

There is no formula for success except perhaps an unconditional acceptance of life and what it brings.

Arthur Rubenstein



*P* Please consider the environment before printing this e-mail

This email is intended for the designated recipient(s) only, and may be confidential, non-public, proprietary, protected by the attorney/client or other privilege. Unauthorized reading, distribution, copying or other use of this communication is prohibited and may be unlawful. Receipt by anyone other than the intended recipient(s) should not be deemed a waiver of any privilege or protection. If you are not the intended recipient or if you believe that you have received this email in error, please notify the sender immediately and delete all copies from your computer system without reading, saving, or using it in any manner. Although it has been checked for viruses and other malicious software ("malware"), we do not warrant, represent or guarantee in any way that this communication is free of malware or potentially damaging defects. All liability for any actual or alleged loss, damage, or injury arising out of or resulting in any way from the receipt, opening or use of this email is expressly disclaimed.

1g

**BOARD ACTION REQUEST**  
**COMMUNITY AFFAIRS DIVISION**  
**NOVEMBER 13, 2014**

Presentation, Discussion, and Possible Action on an order adopting the repeal of 10 TAC Chapter 5, Subchapter A, §5.16 concerning Monitoring and Single Audit Requirement and §5.20 concerning Determining Income Eligibility, and directing their publication in the *Texas Register*.

**RECOMMENDED ACTION**

**WHEREAS**, pursuant to Texas Government Code, §§2306.053 and 2306.092, the Department is provided the authority to adopt rules governing the administration of the Department and its Community Affairs programs;

**WHEREAS**, the purpose of the repeal is to consolidate requirements and to avoid redundancy; and

**WHEREAS**, the proposed repeal was published in the *Texas Register* on October 3, 2014, for public comment;

**NOW, therefore, it is hereby**

**RESOLVED**, that the final order adopting the repeal of 10 TAC Chapter 5, Subchapter A, §§5.16 and 5.20 is hereby ordered and approved, together with the preamble presented to this meeting, for publication in the *Texas Register* and

**FURTHER RESOLVED**, that the Executive Director and his designees be and each them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the adopted repeal, 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.

**BACKGROUND**

The proposed repeal was approved for publication on September 4, 2014, by the Board, and was published in the October 3, 2014, issue of the *Texas Register* to allow for public comment. The public comment period closed on November 3, 2014. No comments were received.

**Attachment A: Preamble and Repealed 10 TAC Chapter 5, Subchapter A, §§5.16 and 5.20**

The Texas Department of Housing and Community Affairs (the "Department") adopts repeal of §5.16, concerning Monitoring and Single Audit Requirement and §5.20, concerning Determining Income Eligibility, without changes to the proposed text as published in the October 3, 2014, issue of the *Texas Register* (39 TexReg 7849) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the requirements of 10 TAC §5.16 concerning Monitoring and Single Audit Requirement are included in 10 TAC §1.3 concerning Delinquent Audits and Related Issues and 10 TAC §5.2101 concerning Compliance Monitoring and is no longer required as a separate section. The requirements of §5.20 concerning Determining Income Eligibility are incorporated into 10 TAC §5.19.

The Department accepted public comments between October 3, 2014, and November 3, 2014. Comments regarding the repeal were accepted in writing and by fax. No comments were received concerning the repeal.

The Board approved the final order adopting the repeal on November 13, 2014.

STATUTORY AUTHORITY. The repeal is adopted pursuant to the authority of Texas Government Code, §2306.053 which authorizes the Department to adopt rules.

1h

**BOARD ACTION REQUEST**  
**COMMUNITY AFFAIRS DIVISION**  
**NOVEMBER 13, 2014**

Presentation, Discussion, and Possible Action on an order adopting amendments to 10 TAC Chapter 5, Subchapter B, §5.204 concerning Use of Funds; §5.207 concerning Subrecipient Performance; §5.210 concerning CSBG Needs Assessment and Community Action Plan; and §5.213 concerning Board Structure, and directing their publication in the *Texas Register*.

**RECOMMENDED ACTION**

**WHEREAS**, pursuant to Texas Government Code, §§2306.053 and 2306.092, the Department is provided the authority to adopt rules governing the administration of the Department and its Community Affairs programs;

**WHEREAS**, the amendments to §§5.204, 5.207, 5.210 and 5.213 remove references to certain OMB circulars, update requirements for Subrecipient performance by indicating which rules apply to Eligible Entities and which to other CSBG Subrecipients, including federal and state requirements for Subrecipient activities, and further explain state requirements for client case management; delete a portion of §5.210 which will be moved to §5.207; clarify requirements for submission of the two plans; and clarify requirements for adequate representation on boards of directors; and

**WHEREAS**, the proposed amendments were published in the *Texas Register* on October 3, 2014, for public comment;

**NOW, therefore, it is hereby**

**RESOLVED**, that the final order adopting the amendments to §§5.204, 5.207, 5.210 and 5.213 is hereby ordered and approved, together with the preamble presented to this meeting, for publication in the *Texas Register*; and

**FURTHER RESOLVED**, that the Executive Director and his designees be and each them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the adopted amendments, 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.

**BACKGROUND**

The proposed amendments were approved for publication on September 4, 2014, by the Board, and were published in the October 3, 2014, issue of the *Texas Register* to allow for public comment. The public comment period closed on November 3, 2014. Comments were received from five (5) commenters.

**Attachment A: Preamble and Amended 10 TAC Chapter 5, Subchapter A, §§5.204, 5.207, 5.210 and 5.213**

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 5, Subchapter A, §§5.204, 5.207, 5.210 and 5.213, without changes to the proposed text as published in the October 3, 2014, issue of the *Texas Register* (39 TexReg 7849) and will not be republished.

REASONED JUSTIFICATION. The Department finds that language in the amended sections lacked clarity and required greater definition. Accordingly, the amendments remove reference to certain OMB circulars; update requirements for Subrecipient performance by indicating which rules apply to Eligible Entities and which to other CSBG Subrecipients, including federal and state requirements for Subrecipient activities; further explain state requirements for client case management; delete a portion of §5.210 which will be moved to §5.207; clarify requirements for submission of the two plans; and clarify requirements for adequate representation on boards of directors

**SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.**

The Department received comments to the proposed amendments. The Department's response to all comments received is set out below. The comments and responses include both administrative clarifications and corrections to the amendments recommended by staff and substantive comments on the amendments and the corresponding Departmental responses. Comments and responses are presented in the order they appear in the rules. Comments were accepted from October 3, 2014, through November 3, 2014, with comments received from:

- (1) Stella Rodriguez, Executive Director, Texas Association of Community Action Agencies (TACAA)
- (2) Vicki Smith, Executive Director, Community Action Committee of Victoria, Texas, in support of comments filed by TACAA
- (3) Emma Vasquez, Executive Director, Big Bend Community Action Committee, Inc., in support of comments filed by TACAA
- (4) Karen Swenson, Executive Director, Greater East Texas Community Action Program, in support of comments filed by TACAA
- (5) Carole Belver, Executive Director, Community Action, Inc. of Central Texas, in support of comments filed by TACAA

**§5.207. Subrecipient Performance; §5.210. CSBG Needs Assessment and Community Action Plan; §5.213. Board Structure;**

COMMENT SUMMARY (1, 2, 3, 4, 5): Regarding several sections, commenter suggested replacing the federal rule references with the codified rule reference.

STAFF RESPONSE: To be consistent with federal oversight agency citations, the Department will keep its current citation practice for the CSBG program. Staff recommends no changes based on this comment.

The Board adopted these amendments at the November 13, 2014, meeting of the Board.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the authority of Texas Government Code §2306.053, which authorizes the Department to adopt rules



# Texas Association of Community Action Agencies, Inc.

---

2512 IH 35 South, Suite 100  
Austin, TX 78704-5772

Phone: (512) 462-2555  
(800) 992-9767  
Fax: (512) 462-2004

www.tacaa.org  
tacaa@tacaa.org

Date: November 3, 2014

To: Annette Cornier  
Rule Comments  
Texas Department of Housing and Community Affairs  
cadrulecomments@tdhca.state.tx.us

From: Stella Rodriguez, Executive Director  
Texas Association of Community Action Agencies

Re: Proposed Amendments – Chapter 5, Community Affairs Programs

Members of the Texas Association of Community Action Agencies (TACAA) reviewed the proposed amendments to Chapter 5, Community Affairs Programs, Subchapter A, General Provisions, Subchapter B, Community Services Block Grant, Subchapter D, Comprehensive Energy Assistance Program and Subchapter E, Weatherization Assistance Program General published by the Texas Department of Housing and Community Affairs (TDHCA) in the October 3, 2014 issue of the *Texas Register*.

Major concerns were expressed regarding some of the proposed amendments, including determining income eligibility, calculation of income, and household crisis payments, which may warrant further discussion.

We respectfully submit the following edits and recommendations.

## **Chapter 5, Subchapter A, General Provisions**

### **§5.2.Definitions.**

(a) To ensure a clear understanding of the terminology used in the context of the [Programs of the Community Affairs Programs Division](#), a list of terms and definitions has been compiled as a reference.

(b) The words and terms in this chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise.

(2) Award Date--Date on which the Department's Board commits funds to an awardee.

**Comment: Please clarify because this is not consistent with §5.2(b)(11), which references “first day of the contract period” for which expenditures may be considered by a Subrecipient.**

(6) [(5)] Community Action Agencies (CAAs)--Local [Private Nonprofit Organizations and Public Organizations](#) [private and public nonprofit organizations] that carry out the Community [Services Block Grant Action](#) Program, which was established by the 1964 Economic Opportunity Act to fight poverty by empowering the poor in the United States. [Each CAA must have a board consisting of one-third elected public officials, not fewer than one-third representatives of low-income individuals and families, chosen in accordance with democratic selection procedures, and the remainder are members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community.]

(9) [(8)] Community Services Block Grant (CSBG)--~~An HHS-funded program [A grant] which provides [U.S. federal] funding for CAAs and other Eligible Entities that seek to address poverty at the community level. [Like other block grants, CSBG funds are allocated to the states and other jurisdictions through a formula.]~~

(11) Contract--The executed written Agreement between the Department and a Subrecipient performing an ~~A~~ activity related to a CAD program that describes performance requirements and responsibilities assigned by the document; for which the first day of the contract period is the point at which programs funds may be considered by a Subrecipient for expenditure unless otherwise directed in writing by the Department.

Comment: (11) above is not consistent with §5.2(b)(2) above, see previous comment.

(18) [(13)] Discretionary Funds--Those CSBG funds maintained [~~in reserve~~] by the Department [~~a state~~], at its discretion, for CSBG allowable ~~uses~~ activities as authorized by ~~§675C42 U.S.C. 9907(b)(1)~~ of the CSBG Act, ~~and not designated for distribution on a statewide basis to CSBG Eligible Entities~~ and not designated [~~held in reserve~~] for state administrative purposes.

Recommendation: Remove "...and not designated for distribution on a statewide basis to CSBG Eligible Entities." because the CSBG Act does not prohibit a CSBG eligible entity from conducting statewide activities.

(23) [(19)] Eligible Entity--Those local organizations in existence and designated by the federal ~~and state~~ government to administer programs created under the Federal Economic Opportunity Act of 1964. This includes community action agencies, limited-purpose agencies, and units of local government. The CSBG Act defines an eligible entity as an organization that was an eligible entity on the day before the enactment of the Coats Human Services Reauthorization Act of 1998 (October 27, 1998), or is designated by the Governor to serve a given area of the state and that has a tripartite board or other mechanism specified by the state for local governance.

(29) [(24)] Families with Young Children--A family that includes a Child [~~child~~] age five (5) or younger, which means a child up until the 6<sup>th</sup> birthday.

Rationale: The added text is for clarification and consist definition for all Subrecipients. A five year old child is five up until the 6<sup>th</sup> birthday.

(30) [(25)] High Energy Burden--Households with energy burden which exceeds 11% of annual gross income, ~~which is--D~~determined by dividing a Household's annual home energy costs by the Household's annual gross income.

(38) [(32)] Low Income--Income in relation to family size and that governs eligibility for a program:

(A) For DOE WAP, at or below 200% of the DOE Income guidelines;

(B) For CEAP and LIHEAP WAP at or below 150% of HHS Poverty Income guidelines;

Rationale: The increase is in line with allowable federal regulations and allows Subrecipients to serve clients up to the higher threshold. This recommendation has been expressed by the TACAA Board at which Department leadership staff has been present; it was suggested that the official recommendation be made at the time of rulemaking.

(BC) For ~~CEAP, CSBG, and LIHEAP WAP~~ at or below 125% of the HHS Poverty Income guidelines;

~~(39) [(33)] Low Income Home Energy Assistance Program (LIHEAP)--A HHS-funded program which serves [A federally funded block grant program that is implemented to serve] low income Households who seek assistance for their home energy bills and/or weatherization services.~~

~~(43) [(37)] National Performance Indicator--An individual measure of performance within the Department's CSBG reporting system for measuring performance and results of Subrecipients of funds.~~

~~(51) [(45)] Poverty Income Guidelines--The official poverty income guidelines as issued by the U.S. Department of Health and Human Services (HHS) annually.~~

Rationale: edit per new §5.2(16).

~~(61) [(56)] State--The State of Texas or Department the Texas Department of Housing and Community Affairs.~~

Rationale: edit per new §5.2(b)(14).

~~(71) Uniform Grant Management Standards (UGMS)--Established to promote the efficient use of public funds by providing awarding agencies and grantees a standardized set of financial management procedures and definitions, 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. In addition, Chapter 2105, Texas Government Code, subjects all sSubrecipients of federal block grants to the Uniform Grant and Contract Management Standards.~~

#### **§5.19.[Client] Income Eligibility [Guidelines].**

~~(a) For HHS and DOE funded programs, eligibility for program assistance is determined under the Poverty Income Guidelines and calculated as described herein. Income means cash receipts earned and/or received by the applicant before taxes during applicable tax year(s) but not the Excluded Income listed in paragraph (2) of this subsection. Gross income is to be used, not net income. [Except for ESG and HHSP, the Department has defined eligibility for program assistance under the Poverty Income Guidelines.]~~

**Recommendation:** Omit "Excluded Income."

**Rationale:** Countable income should be a finite list. Determination of income eligibility should not be based on an excluded list.

~~(1) If an income source is not excluded below, it must be included when determining income eligibility.~~

**Recommendation:** Strike new (1) because determination of income eligibility should not be based on an excluded list, rather defined countable income.

~~(b) For all programs except ESG, Subrecipients will use the list of included and excluded income to determine eligibility for all programs, as described in paragraphs (1) and (2) of this subsection. Income means Cash Receipts earned and/or received by the applicant before taxes during applicable tax year(s) but not the Excluded Income listed in paragraph (2) of this subsection. Gross Income is to be used, not Net Income.]~~

~~[(1) Included Income:]~~

~~[(A) Temporary Assistance for Needy Families (TANF);]~~

~~[(B) Money, wages and salaries before any deductions;]~~

~~[(C) Net receipts from non-farm or farm self-employment (receipts from a person's own business or from an owned or rented farm after deductions for business or farm expenses);]~~

~~[(D) Regular payments from social security, including Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI);]~~

~~[(E) Railroad retirement;]~~

~~[(F) Unemployment compensation;]~~

~~[(G) Strike benefits from union funds;]~~

~~[(H) Worker's compensation;]~~

~~[(I) Training stipends;]~~

~~[(J) Alimony;]~~

~~[(K) Military family allotments;]~~

~~[(L) Private pensions;]~~

~~[(M) Government employee pensions (including military retirement pay);]~~

~~[(N) Regular insurance or annuity payments; and]~~

~~[(O) Dividends, interest, net rental income, net royalties, periodic receipts from estates or trusts; and net gambling or lottery winnings.]~~

Recommendation: Do not remove the list of countable income for determining eligibility in the current §5.19(b)(1), which should mirror the 2015 LIHEAP State Plan to HHS as modified and approved by the TDHCA Board at its July 31, 2014 meeting.

Rationale: Included income should be a finite list. Documentation of included income will be captured and maintained in client files rather than having to document from an exhaustive list of excluded income, which is not proof of countable income.

~~(a)(2) Excluded Income~~

Remove the "Excluded Income" list, which becomes unnecessary information if the countable income is clearly stated.

~~(b) The requirements for determining whether an applicant Household is eligible for assistance require the Subrecipient to project or estimate the annual income that annualize the Household income based on verifiable documentation from the past thirty (30) days expects to receive. The following is an acceptable method for calculating the annual income anticipated for the coming year:~~

(1) Generally the Subrecipient must use current circumstances to anticipate income. The Subrecipient calculates projected annual income by annualizing current income. Income that may not last for a full 12 months (e.g., unemployment compensation) should be calculated assuming current circumstances will last a full 12 months.

(2) If information is available on changes expected to occur during the year, use that information to determine the total anticipated income from all known sources during the year. For example, if a verification source reports that a union contract calls for a 2% pay increase midway through the year, the Subrecipient may add the total income for the months before, and the total for the months after the increase.

(3) Once all sources of income are known, Subrecipients must convert reported income to an annual figure. Convert periodic wages to annual income by multiplying:

(A) Hourly wages by the number of hours worked per year (2,080 hours for full-time employment with a 40-hour week and no overtime);

(B) Weekly wages by 52;

(C) Bi-weekly wages (paid every other week) by 26;

(D) Semi-monthly wages (paid twice each month) by 24; and

(E) Monthly wages by 12.

Recommendation: Remove the proposed method of calculating income for the purpose of determining eligibility as referenced in §5.19(b) (1), (2) and (3). Simply require Subrecipients to annualize household income based on verifiable documentation from the past thirty (30) days.

Rationale: The proposed method of calculation applies to a regular full-time employee. Many of our clients don't fit this category; rather, they are part-time or receive irregular weekly wages based on unpredictable hours worked. To project, estimate or anticipate income is subjective. The current method of calculation is an effective, accurate, consistent and non-subjective method of determining income.

## **SUBCHAPTER B. COMMUNITY SERVICES BLOCK GRANT (CSBG)**

### **§5.207.Subrecipient Performance.**

(d) In keeping with the regulations issued under Title II, §676(b)(3)(C), §676(5),(6),(9) State Application and Plan, the Department requires CSBG Eligible Entities, and other CSBG organizations where applicable, to coordinate CSBG funds and form partnerships with other public and private resources and coordinate and establish linkages between governmental and other social service programs to assure the effective delivery of services and avoid duplication of services.

Recommendation: Replace with codified reference, e.g. 42 U.S.C. §9908\_\_\_\_.

(e) In keeping with the regulations issued under Title II, §676(b)(4), CSBG Eligible Entities shall provide, on an emergency basis, for the provision of such supplies and services, nutritious foods, and related services, as may be necessary to counteract the conditions of starvation and malnutrition. The nutritional needs may be met through a referral source that has resources available to meet the immediate needs.

Recommendation: Replace with codified reference, e.g. 42 U.S.C. §\_\_\_\_\_

(f) In keeping with the regulations issued under [Title II, §676\(b\)\(5\)](#), CSBG Eligible Entities, shall coordinate the provision of employment and training activities through local workforce investment systems under the Workforce Investment Act of 1998.

Recommendation: Replace with codified reference, e.g. 42 U.S.C. §\_\_\_\_\_

(g) In keeping with the regulations issued under [Title II, §678G\(b\)\(1-2\)](#), CSBG Eligible Entities shall inform custodial parents in single-parent families that participate in programs, activities, or services about the resources available through the Texas Attorney General's Office with respect to the collection of child support payments and refer eligible parents to the Texas Attorney General's Office of Child Support Services Division.

Recommendation: Replace with codified reference, e.g. 42 U.S.C. §\_\_\_\_\_

(i) Case Management.

(1) In keeping with the regulations issued under [Title II, §676\(b\)](#) State Application and Plan, the Department requires CSBG Eligible Entities, and other CSBG Subrecipients where applicable, to incorporate integrated case management systems in the administration of their CSBG program ([Title II, §676\(b\)](#)). Incorporating case management in the service delivery system and providing assistance that has a long-term impact on the client, such as enabling the client to move from poverty to self-sufficiency, to maintain stable families, and to revitalize the community, supports the requirements of Title II, [§676\(b\)](#). An integrated case management system improves the overall provision of assistance and improves each Subrecipient's ability to transition persons from poverty to self-sufficiency. Case management can be provided on a short-term basis to meet immediate needs, or for Eligible Entities it can be provided on a long-term basis to persons working to transition out of poverty and achieve self-sufficiency.

Recommendation: Replace with codified reference, e.g. 42 U.S.C. §\_\_\_\_\_.

#### **§5.210.CSBG Needs Assessment and Community Action Plan.**

(a) In accordance with ~~the CSBG Act and~~ [§676](#) of the CSBG Act, the Department is required to secure a Community Action Plan on an annual basis from each CSBG Eligible Entity. The Community Action Plan shall be submitted to the Department on or before a date specified by the Department in the Eligible Entity contract ~~[October 1 of each year]~~.

Recommendation: Replace with codified reference, e.g. 42 U.S.C. §\_\_\_\_\_

(e) Subrecipients receiving [stateCSBG](#) discretionary funds under [§5.203\(b\)](#) of this subchapter (relating to Distribution of CSBG Funds) are not required to submit a Community Action Plan. All CSBG Subrecipients must develop a performance statement which identifies the services, programs, and activities to be administered by the organization.

#### **§5.213.Board Structure.**

(a) Eligible Entities that are Private Nonprofit Organizations ~~[Private nonprofit entities,]~~ shall administer the CSBG program through a tripartite board that fully participates in the development, planning, implementation, and evaluation of the program to serve low-income communities. Some of the members of the board shall be selected by the Private Nonprofit Organizations ~~[private nonprofit~~

entity] and others through a democratic process; the board shall be composed so as to assure that the requirements of §676B(a)(2) of the CSBG Act are followed and are composed as:

Recommendation: Replace with codified reference, e.g. 42 U.S.C. §\_\_\_\_\_

- (b) For public organizations to be considered to be an Eligible Entity [~~eligible entity~~] for purposes of the CSBG Act, §676B(b), the entity shall administer the CSBG grant through tripartite boards that fully participate in the development, planning, implementation and evaluation of programs that serve low-income communities or act as an advisory board. [~~as:~~]

Recommendation: Replace with codified reference, e.g. 42 U.S.C. §\_\_\_\_\_

(g) [~~d~~] Selection. Pursuant to §676B of the CSBG Act, Eligible Entities that are Private Nonprofit Organizations [~~Private nonprofit entities~~] and Public Organizations [~~public organizations~~] have the responsibility for selection and composition of the board.

Recommendation: Replace with codified reference, e.g. 42 U.S.C.

## **SUBCHAPTER D. COMPREHENSIVE ENERGY ASSISTANCE PROGRAM**

### **§5.423. Household Crisis Component.**

- (c) Crisis assistance payments cannot exceed the minimum amount needed to resolve the crisis; i.e. when a shut-off notice requires a certain amount to be paid to avoid disconnection and the same notice indicates that there are balances due other than the required amount, only the amount required to avoid disconnection may be paid as crisis assistance. Crisis assistance payments that are less than the amount needed to resolve the crisis may only be made when ~~other funds are available to cover the Household's remaining crisis need~~ a utility vendor assures the crisis has been resolved and disconnection is avoided.

Rationale: Subrecipients commit funds when there is an assurance of resolving a crisis.

- (d) Crisis assistance for one Household cannot exceed the maximum allowable benefit level in one program year. If a Household's crisis assistance needs exceed that maximum allowable benefit, Subrecipient may pay up to the Household crisis assistance limit only if the remaining amount of Household need can be paid from other funds. ~~If the Household's crisis requires more than the Household limit to resolve and no other funds are available, the crisis exceeds the scope of this program.~~ The assistance must result in resolution of the crisis.

Recommendation: Remove the stricken text and add the new last sentence.

Rationale: It is implied that if a Subrecipient cannot pay the entire bill the client is denied; it's all or nothing. There are many cases in which a customer has an opportunity to make arrangements with their utility vendor to settle amounts owed which are not payable by the Subrecipient. The new sentence is from the current §5.423(c), which is what Subrecipients strive to accomplish in serving their clients.

## **SUBCHAPTER E. WEATHERIZATION ASSISTANCE PROGRAM GENERAL**

### **§5.528.Health and Safety.**

(a) Health and Safety expenditures may not exceed ~~20~~30% of total unit expenditures (Materials, Labor, Program Support, and Health and Safety) at the end of the contract period.

Rationale: Continued increases in the cost of materials and other requirements such as ASHRAE warrants an increase of the allowable percentage from 20% to 30%.

**GENERAL COMMENT:** Search and replace federal rule references with codified version.





## COMMUNITY ACTION COMMITTEE OF VICTORIA, TEXAS

STREET ADDRESS: 4007 HALSEY ST., VICTORIA, TX 77901 MAILING ADDRESS: P.O. BOX 3607, VICTORIA TX 77903

November 3, 2014

Sent via: [cadrulecomments@tdhca.state.tx.us](mailto:cadrulecomments@tdhca.state.tx.us)

Annette Cornier  
TDHCA  
Rule Comments  
Austin, Texas

Community Action Committee of Victoria, Texas (CACVT) supports comments filed by the Texas Association of Community Action Agencies (TACAA) regarding proposed amendments to 10 TAC, Chapter 5, Community Affairs Programs as published in the Texas Register on October 3, 3014.

Sincerely yours,

Vicki Smith  
Executive Director

BIG BEND COMMUNITY ACTION COMMITTEE, INC.  
P.O. BOX 265, 1412 W. Berlin St.  
MARFA, TX. 79843-0265  
Ph. 432-729-4908 Fax 432-729-3435

November 3, 2015

RE: Proposed Amendments-Chapter 5, Community Affairs Programs

Big Bend Community Action Committee, Inc. supports comments filed by TACAA regarding proposed amendments to 10 TAC, Chapter 5, Community Affairs Programs as published in the Texas Register on October 3, 2014.

Respectfully,

Emma Vasquez  
Executive Director



## GREATER EAST TEXAS COMMUNITY ACTION PROGRAM

P.O. BOX 631938

NACOGDOCHES, TX. 75963

PHONE:(936) 564-2491

FAX:(936)564-6212

FAX:(936) 564-0302

ADMINISTRATIVE

PROGRAM

---

Date: November 3, 2014

To: Annette Cornier  
Rule Comments  
Texas Dept. Housing & Community Affairs  
[cadrulecomments@tdhca.state.tx.us](mailto:cadrulecomments@tdhca.state.tx.us)

From: Karen Swenson, Executive Director  
Greater East Texas Community Action Program

Re: Proposed Amendments – Chapt. 5, Community Affairs Programs

Greater East Texas Community Action Program has reviewed the proposed Amendments to Chapter 5, Community Affairs Programs, Subchapter A. General Provisions, Subchapter B, Community Services Block Grant, Subchapter D, Comprehensive Energy Assistance program and Subchapter E, Weatherization Assistance Program General published by the Texas Dept. of Housing and Community Affairs (TDHCA) in the October 3, 2014 issue of the Texas Register.

Greater East Texas Community Action Program (GETCAP) has major concerns with several of these amendments including income eligibility, income calculation, and crisis payments.

GETCAP also reviewed the recommendations provided by the Texas Association of Community Action Agencies (TACAA). We strongly support these recommendations on behalf of the service provider network.

GETCAP encourages income eligibility based on what is countable rather than what is excluded. This change will be confusing and more complicated.

GETCAP also continues to support 150% of federal poverty or less which is more in line with federal guidelines. Complex federal guidelines should not be further complicated on the state level.

These comments are respectfully submitted for consideration.

---

**From:** Carole Belver [cbelver@communityaction.com]  
**Sent:** Monday, November 03, 2014 2:56 PM  
**To:** cadrulecomments@tdhca.state.tx.us  
**Subject:** comments to 10 TAC Chapter 5

**Community Action, Inc. of Central Texas supports the comments filed by Texas Association of Community Action Agencies regarding proposed amendments to 10 TAC, Chapter 5, Community Affairs Programs as published in the *Texas Register* on October 3, 2014.**

Thank you,

Carole Belver, M.Ed.

Executive Director

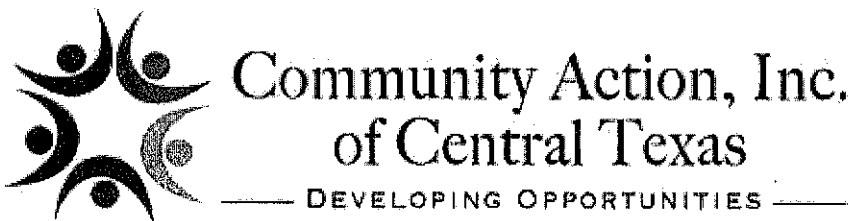
Community Action, Inc. of Central Texas

P.O. Box 748

San Marcos, TX 78667-0748

512-392-1161, ext 328

[cbelver@communityaction.com](mailto:cbelver@communityaction.com)



---

Please connect with us on facebook

**1i**

**BOARD ACTION REQUEST**  
**COMMUNITY AFFAIRS DIVISION**  
**NOVEMBER 13, 2014**

Presentation, Discussion, and Possible Action on an order adopting amendments to 10 TAC Chapter 5, Subchapter D, §5.423 concerning the Household Crisis Component, and directing its publication in the *Texas Register*.

**RECOMMENDED ACTION**

**WHEREAS**, pursuant to Texas Government Code, §§2306.053 and 2306.092, the Department is provided the authority to adopt rules governing the administration of the Department and its Community Affairs programs;

**WHEREAS**, the amendments to 10 TAC Chapter 5, §5.423 provide clear guidance for payments under the Household Crisis component, and clarify requirements for purchase of portable heating and cooling units to change from an appliance size-based requirement to a requirement that addresses the work that must be completed to install the appliance; and

**WHEREAS**, the proposed amendments were published in the *Texas Register* on October 3, 2014, for public comment;

**NOW, therefore, it is hereby**

**RESOLVED**, that the final order adopting the amendments to 10 TAC §5.423 is hereby ordered and approved, together with the preamble presented to this meeting, for publication in the *Texas Register*; and

**FURTHER RESOLVED**, that the Executive Director and his designees be and each them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the adopted amendments, 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.

**BACKGROUND**

The proposed amendments were approved for publication on September 4, 2014, by the Board, and were published in the October 3, 2014, issue of the *Texas Register* to allow for public comment. The public comment period closed on November 3, 2014. Comments were received from five (5) commenters.

## **Attachment A: Preamble and Amended 10 TAC Chapter 5, Subchapter A, §5.423**

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 5, Subchapter D, §5.423, with changes to the proposed text as published in the October 3, 2014, issue of the *Texas Register* (39 TexReg 7855).

**REASONED JUSTIFICATION.** The amendments clearly describe the requirements for payments under the Household Crisis component of the program, and appropriately address the full scope of heating and cooling appliance replacement. Accordingly, the amendments clarify the payment requirements by specifying minimum and maximum requirements for payments under the Household Crisis component, and update the requirements for heating and cooling appliance replacements by changing from an appliance size-based requirement to a requirement that addresses the work that must be completed to install the appliance.

### **SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.**

The Department received comments to the proposed amendments. The Department's response to all comments received is set out below. The comments and responses include both administrative clarifications and corrections to the amendments recommended by staff and substantive comments on the amendments and the corresponding Departmental responses. Comments and responses are presented in the order they appear in the rules. Comments were accepted from October 3, 2014, through November 3, 2014, with comments received from:

- (1) Stella Rodriguez, Executive Director, Texas Association of Community Action Agencies (TACAA)
- (2) Vicki Smith, Executive Director, Community Action Committee of Victoria, Texas, in support of comments filed by TACAA
- (3) Emma Vasquez, Executive Director, Big Bend Community Action Committee, Inc., in support of comments filed by TACAA
- (4) Karen Swenson, Executive Director, Greater East Texas Community Action Program, in support of comments filed by TACAA
- (5) Carole Belver, Executive Director, Community Action, Inc. of Central Texas, in support of comments filed by TACAA

### **§5.423 Household Crisis Component**

**COMMENT SUMMARY (1, 2, 3, 4, 5):** Regarding (c), commenter suggested language basing crisis payment on vendor acknowledgement that the crisis has been avoided.

**STAFF RESPONSE:** Staff has made changes based on this comment. The proposed language was changed to allow for other circumstances where a crisis may have been resolved.

**COMMENT SUMMARY (1, 2, 3, 4, 5):** Regarding (d), commenter suggested revised language under the rationale that it is implied that if a Subrecipient cannot pay the entire bill the client is denied.

**STAFF RESPONSE:** To clarify that this rule only applies to the Household Crisis component of the program, staff has changed the terminology from "the crisis exceeds the scope of this program" to "the crisis exceeds the scope of this component". The Subrecipient has the option of assisting the Household through the Utility Assistance component of the program. The client would receive services, but would not be counted under the Household Crisis component.

The Board adopted the amendments at the November 13, 2014, meeting of the Board.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the authority of Texas Government Code §2306.053, which authorizes the Department to adopt rules

*§5.423. Household Crisis Component.*

- (a) A bona fide Household crisis exists when extraordinary events or situations resulting from extreme weather conditions and/or fuel supply shortages or a terrorist attack have depleted or will deplete Household financial resources and/or have created problems in meeting basic Household expenses, particularly bills for energy so as to constitute a threat to the well-being of the Household, particularly the Elderly, the Disabled, or a Family with Young Children.
- (b) A utility disconnection notice may constitute a Household crisis. Assistance provided to Households based on a utility disconnection notice is limited to two (2) payments per year. Weather criterion is not required to provide assistance due to a disconnection notice. The notice of disconnection must have been provided to the Subrecipient within the effective contract term and the notice of disconnection must not be dated more than sixty (60) days from receipt at the Subrecipient.
- (c) Crisis assistance payments cannot exceed the minimum amount needed to resolve the crisis; e.g. when a shut-off notice requires a certain amount to be paid to avoid disconnection and the same notice indicates that there are balances due other than the required amount, only the amount required to avoid disconnection may be paid as crisis assistance. Crisis assistance payments that are less than the amount needed to resolve the crisis may only be made when other funds or options are available to resolve the Household's remaining crisis need.
- (d) Crisis assistance for one Household cannot exceed the maximum allowable benefit level in one program year. If a Household's crisis assistance needs exceed that maximum allowable benefit, Subrecipient may pay up to the Household crisis assistance limit only if the remaining amount of Household need can be paid from other funds. If the Household's crisis requires more than the Household limit to resolve and no other funds are available, the crisis exceeds the scope of this component.
- (e) Payments may not exceed Household's actual utility bill.
- (f) Where necessary to prevent undue hardships from a qualified crisis, Subrecipients may directly issue vouchers to provide:
  - (1) Temporary shelter not to exceed the annual Household expenditure limit for the duration of the contract period in the limited instances that supply of power to the dwelling is disrupted--causing temporary evacuation;
  - (2) Emergency deliveries of fuel up to 250 gallons per crisis per Household, at the prevailing price. This benefit may include coverage for tank pressure testing;



(3) Service and repair of existing heating and cooling units not to exceed \$2,500 during the contract period when Subrecipient has met local weather crisis criteria. If any component of the central system cannot be repaired using parts, the Subrecipient can replace the component in order to repair the central system. Documentation of service/repair and related warranty must be included in the client file;

(4) Portable air conditioning/evaporative coolers and heating units (portable electric heaters are allowable only as a last resort) may be purchased for households that include at least one member that is Elderly, Disabled, or a Family with Young Children, when Subrecipient has met local weather crisis criteria;

(5) Purchase of more than two portable heating/cooling units per Household requires prior written approval from the Department;

(6) Purchase of portable heating/cooling units which require performance of electrical work for proper installation requires prior written approval from the Department;

(7) Replacement of central systems and combustion heating units is not an approved use of crisis funds; and

(8) Portable heating/cooling units must be Energy Star® and compliant with the 2009 International Residential Code (IRC). In cases where the type of unit is not rated by Energy Star®, or if Energy Star® units are not available due to supply shortages, Subrecipient may purchase the highest rated unit available.

(g) Crisis funds, whether for emergency fuel deliveries, repair of existing heating and cooling units, purchase of portable heating/cooling units, or temporary shelter, shall be considered part of the total maximum Household allowable assistance.

(h) When natural disasters result in energy supply shortages or other energy-related emergencies, LIHEAP will allow home energy related expenditures for:

(1) Costs to temporarily shelter or house individuals in hotels, apartments or other living situations in which homes have been destroyed or damaged, i.e., placing people in settings to preserve health and safety and to move them away from the crisis situation;

(2) Costs for transportation (such as cars, shuttles, buses) to move individuals away from the crisis area to shelters, when health and safety is endangered by loss of access to heating or cooling;

(3) Utility reconnection costs;

(4) Blankets, as tangible benefits to keep individuals warm;

(5) Crisis payments for utilities and utility deposits; and

(6) Purchase of fans, air conditioners and generators. The number, type, size and cost of these items may not exceed the minimum needed to resolve the crisis.

(i) Time Limits for Assistance--Subrecipients shall ensure that for clients who have already lost service or are in immediate danger of losing service, some form of assistance to resolve the crisis shall be provided within a 48-hour time limit (18 hours in life-threatening situations). The time limit commences upon completion of the application process. The application process is considered to be complete when an agency representative accepts an application and completes the eligibility process.

(j) Subrecipients must maintain written documentation in client files showing crises resolved within appropriate timeframes. Subrecipients must maintain documentation in client files showing that a utility bill used as evidence of a crisis was received by the Subrecipient during the effective contract term. The Department may disallow improperly documented expenditures.

# Texas Association of Community Action Agencies, Inc.

---

2512 IH 35 South, Suite 100  
Austin, TX 78704-5772

Phone: (512) 462-2555  
(800) 992-9767  
Fax: (512) 462-2004

www.tacaa.org  
tacaa@tacaa.org

Date: November 3, 2014

To: Annette Cornier  
Rule Comments  
Texas Department of Housing and Community Affairs  
cadrulecomments@tdhca.state.tx.us

From: Stella Rodriguez, Executive Director  
Texas Association of Community Action Agencies

Re: Proposed Amendments – Chapter 5, Community Affairs Programs

Members of the Texas Association of Community Action Agencies (TACAA) reviewed the proposed amendments to Chapter 5, Community Affairs Programs, Subchapter A, General Provisions, Subchapter B, Community Services Block Grant, Subchapter D, Comprehensive Energy Assistance Program and Subchapter E, Weatherization Assistance Program General published by the Texas Department of Housing and Community Affairs (TDHCA) in the October 3, 2014 issue of the *Texas Register*.

Major concerns were expressed regarding some of the proposed amendments, including determining income eligibility, calculation of income, and household crisis payments, which may warrant further discussion.

We respectfully submit the following edits and recommendations.

## **Chapter 5, Subchapter A, General Provisions**

### **§5.2.Definitions.**

(a) To ensure a clear understanding of the terminology used in the context of the Programs of the Community Affairs Programs Division, a list of terms and definitions has been compiled as a reference.

(b) The words and terms in this chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise.

(2) Award Date--Date on which the Department's Board commits funds to an awardee.

**Comment: Please clarify because this is not consistent with §5.2(b)(11), which references "first day of the contract period" for which expenditures may be considered by a Subrecipient.**

(6) [(5)] Community Action Agencies (CAAs)--Local Private Nonprofit Organizations and Public Organizations [private and public nonprofit organizations] that carry out the Community Services Block Grant Action Program, which was established by the 1964 Economic Opportunity Act to fight poverty by empowering the poor in the United States. [Each CAA must have a board consisting of one-third elected public officials, not fewer than one-third representatives of low-income individuals and families, chosen in accordance with democratic selection procedures, and the remainder are members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community.]

(9) [(8)] Community Services Block Grant (CSBG)--~~A~~ HHS-funded program [A grant] which provides [U.S. federal] funding for CAAs and other Eligible Entities that seek to address poverty at the community level. [Like other block grants, CSBG funds are allocated to the states and other jurisdictions through a formula.]

(11) Contract--The executed written Agreement between the Department and a Subrecipient performing an ~~A~~ activity related to a CAD program that describes performance requirements and responsibilities assigned by the document; for which the first day of the contract period is the point at which programs funds may be considered by a Subrecipient for expenditure unless otherwise directed in writing by the Department.

Comment: (11) above is not consistent with §5.2(b)(2) above, see previous comment.

(18) [(13)] Discretionary Funds--Those CSBG funds maintained [~~in reserve~~] by the Department [~~a state~~], at its discretion, for CSBG allowable ~~uses~~ activities as authorized by §~~675C42~~ U.S.C. 9907(b)(1) of the CSBG Act, ~~and not designated for distribution on a statewide basis to CSBG Eligible Entities~~ and not designated [~~held in reserve~~] for state administrative purposes.

Recommendation: Remove "...and not designated for distribution on a statewide basis to CSBG Eligible Entities." because the CSBG Act does not prohibit a CSBG eligible entity from conducting statewide activities.

(23) [(19)] Eligible Entity--Those local organizations in existence and designated by the federal ~~and state~~ government to administer programs created under the Federal Economic Opportunity Act of 1964. This includes community action agencies, limited-purpose agencies, and units of local government. The CSBG Act defines an eligible entity as an organization that was an eligible entity on the day before the enactment of the Coats Human Services Reauthorization Act of 1998 (October 27, 1998), or is designated by the Governor to serve a given area of the state and that has a tripartite board or other mechanism specified by the state for local governance.

(29) [(24)] Families with Young Children--A family that includes a Child [~~child~~] age five (5) or younger, which means a child up until the 6<sup>th</sup> birthday.

Rationale: The added text is for clarification and consist definition for all Subrecipients. A five year old child is five up until the 6<sup>th</sup> birthday.

(30) [(25)] High Energy Burden--Households with energy burden which exceeds 11% of annual gross income, ~~which is--D~~determined by dividing a Household's annual home energy costs by the Household's annual gross income.

(38) [(32)] Low Income--Income in relation to family size and that governs eligibility for a program:

(A) For DOE WAP, at or below 200% of the DOE Income guidelines;

(B) For CEAP and LIHEAP WAP at or below 150% of HHS Poverty Income guidelines;

Rationale: The increase is in line with allowable federal regulations and allows Subrecipients to serve clients up to the higher threshold. This recommendation has been expressed by the TACAA Board at which Department leadership staff has been present; it was suggested that the official recommendation be made at the time of rulemaking.

(BC) For ~~CEAP, CSBG, and LIHEAP WAP~~ at or below 125% of the HHS Poverty Income guidelines;

~~(39) [(33)]~~ Low Income Home Energy Assistance Program (LIHEAP)--~~A~~ HHS-funded program which serves ~~[A federally funded block grant program that is implemented to serve]~~ low income Households who seek assistance for their home energy bills and/or weatherization services.

~~(43) [(37)]~~ National Performance Indicator--An individual measure of performance within the Department's **CSBG** reporting system for measuring performance and results of Subrecipients of funds.

~~(51) [(45)]~~ Poverty Income Guidelines--The official poverty income guidelines as issued by the **U.S. Department of Health and Human Services (HHS)** annually.

**Rationale:** edit per new §5.2(16).

~~(61) [(56)]~~ State--The State of Texas or **Department** ~~the Texas Department of Housing and Community Affairs.~~

**Rationale:** edit per new §5.2(b)(14).

(71) Uniform Grant Management Standards (UGMS)--Established to promote the efficient use of public funds by providing awarding agencies and grantees a standardized set of financial management procedures and definitions, 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. In addition, Chapter 2105, Texas Government Code, subjects all sSubrecipients of federal block grants to the Uniform Grant and Contract Management Standards.

### **§5.19.[Client] Income Eligibility [Guidelines].**

(a) For HHS and DOE funded programs, eligibility for program assistance is determined under the Poverty Income Guidelines and calculated as described herein. Income means cash receipts earned and/or received by the applicant before taxes during applicable tax year(s) but not the Excluded Income listed in paragraph (2) of this subsection. Gross income is to be used, not net income. [Except for ESG and HHSP, the Department has defined eligibility for program assistance under the Poverty Income Guidelines.]

**Recommendation:** Omit "Excluded Income."

**Rationale:** Countable income should be a finite list. Determination of income eligibility should not be based on an excluded list.

~~(1) If an income source is not excluded below, it must be included when determining income eligibility.~~

**Recommendation:** Strike new (1) because determination of income eligibility should not be based on an excluded list, rather defined countable income.

~~[(b) For all programs except ESG, Subrecipients will use the list of included and excluded income to determine eligibility for all programs, as described in paragraphs (1) and (2) of this subsection. Income means Cash Receipts earned and/or received by the applicant before taxes during applicable tax year(s) but not the Excluded Income listed in paragraph (2) of this subsection. Gross Income is to be used, not Net Income.]~~

~~[(1) Included Income:]~~

~~[(A) Temporary Assistance for Needy Families (TANF);]~~

~~[(B) Money, wages and salaries before any deductions;]~~

~~[(C) Net receipts from non-farm or farm self-employment (receipts from a person's own business or from an owned or rented farm after deductions for business or farm expenses);]~~

~~[(D) Regular payments from social security, including Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI);]~~

~~[(E) Railroad retirement;]~~

~~[(F) Unemployment compensation;]~~

~~[(G) Strike benefits from union funds;]~~

~~[(H) Worker's compensation;]~~

~~[(I) Training stipends;]~~

~~[(J) Alimony;]~~

~~[(K) Military family allotments;]~~

~~[(L) Private pensions;]~~

~~[(M) Government employee pensions (including military retirement pay);]~~

~~[(N) Regular insurance or annuity payments; and]~~

~~[(O) Dividends, interest, net rental income, net royalties, periodic receipts from estates or trusts; and net gambling or lottery winnings.]~~

Recommendation: Do not remove the list of countable income for determining eligibility in the current §5.19(b)(1), which should mirror the 2015 LIHEAP State Plan to HHS as modified and approved by the TDHCA Board at its July 31, 2014 meeting.

Rationale: Included income should be a finite list. Documentation of included income will be captured and maintained in client files rather than having to document from an exhaustive list of excluded income, which is not proof of countable income.

~~(a)(2) Excluded Income~~

Remove the "Excluded Income" list, which becomes unnecessary information if the countable income is clearly stated.

~~(b) The requirements for determining whether an applicant Household is eligible for assistance require the Subrecipient to project or estimate the annual income that annualize the Household income based on verifiable documentation from the past thirty (30) days expects to receive. The following is an acceptable method for calculating the annual income anticipated for the coming year:~~

(1) Generally the Subrecipient must use current circumstances to anticipate income. The Subrecipient calculates projected annual income by annualizing current income. Income that may not last for a full 12 months (e.g., unemployment compensation) should be calculated assuming current circumstances will last a full 12 months.

(2) If information is available on changes expected to occur during the year, use that information to determine the total anticipated income from all known sources during the year. For example, if a verification source reports that a union contract calls for a 2% pay increase midway through the year, the Subrecipient may add the total income for the months before, and the total for the months after the increase.

(3) Once all sources of income are known, Subrecipients must convert reported income to an annual figure. Convert periodic wages to annual income by multiplying:

(A) Hourly wages by the number of hours worked per year (2,080 hours for full-time employment with a 40-hour week and no overtime);

(B) Weekly wages by 52;

(C) Bi-weekly wages (paid every other week) by 26;

(D) Semi-monthly wages (paid twice each month) by 24; and

(E) Monthly wages by 12.

Recommendation: Remove the proposed method of calculating income for the purpose of determining eligibility as referenced in §5.19(b) (1), (2) and (3). Simply require Subrecipients to annualize household income based on verifiable documentation from the past thirty (30) days.

Rationale: The proposed method of calculation applies to a regular full-time employee. Many of our clients don't fit this category; rather, they are part-time or receive irregular weekly wages based on unpredictable hours worked. To project, estimate or anticipate income is subjective. The current method of calculation is an effective, accurate, consistent and non-subjective method of determining income.

## **SUBCHAPTER B. COMMUNITY SERVICES BLOCK GRANT (CSBG)**

### **§5.207.Subrecipient Performance.**

(d) In keeping with the regulations issued under Title II, §676(b)(3)(C), §676(5),(6),(9) State Application and Plan, the Department requires CSBG Eligible Entities, and other CSBG organizations where applicable, to coordinate CSBG funds and form partnerships with other public and private resources and coordinate and establish linkages between governmental and other social service programs to assure the effective delivery of services and avoid duplication of services.

Recommendation: Replace with codified reference, e.g. 42 U.S.C. §9908\_\_\_\_.

(e) In keeping with the regulations issued under Title II, §676(b)(4), CSBG Eligible Entities shall provide, on an emergency basis, for the provision of such supplies and services, nutritious foods, and related services, as may be necessary to counteract the conditions of starvation and malnutrition. The nutritional needs may be met through a referral source that has resources available to meet the immediate needs.

Recommendation: Replace with codified reference, e.g. 42 U.S.C. §\_\_\_\_\_

(f) In keeping with the regulations issued under [Title II, §676\(b\)\(5\)](#), CSBG Eligible Entities, shall coordinate the provision of employment and training activities through local workforce investment systems under the Workforce Investment Act of 1998.

Recommendation: Replace with codified reference, e.g. 42 U.S.C. §\_\_\_\_\_

(g) In keeping with the regulations issued under [Title II, §678G\(b\)\(1-2\)](#), CSBG Eligible Entities shall inform custodial parents in single-parent families that participate in programs, activities, or services about the resources available through the Texas Attorney General's Office with respect to the collection of child support payments and refer eligible parents to the Texas Attorney General's Office of Child Support Services Division.

Recommendation: Replace with codified reference, e.g. 42 U.S.C. §\_\_\_\_\_

(i) Case Management.

(1) In keeping with the regulations issued under [Title II, §676\(b\)](#) State Application and Plan, the Department requires CSBG Eligible Entities, and other CSBG Subrecipients where applicable, to incorporate integrated case management systems in the administration of their CSBG program ([Title II, §676\(b\)](#)). Incorporating case management in the service delivery system and providing assistance that has a long-term impact on the client, such as enabling the client to move from poverty to self-sufficiency, to maintain stable families, and to revitalize the community, supports the requirements of Title II, [§676\(b\)](#). An integrated case management system improves the overall provision of assistance and improves each Subrecipient's ability to transition persons from poverty to self-sufficiency. Case management can be provided on a short-term basis to meet immediate needs, or for Eligible Entities it can be provided on a long-term basis to persons working to transition out of poverty and achieve self-sufficiency.

Recommendation: Replace with codified reference, e.g. 42 U.S.C. §\_\_\_\_\_.

#### **§5.210.CSBG Needs Assessment and Community Action Plan.**

(a) In accordance with ~~[the CSBG Act and]~~ [§676](#) of the CSBG Act, the Department is required to secure a Community Action Plan on an annual basis from each CSBG Eligible Entity. The Community Action Plan shall be submitted to the Department on or before a date specified by the Department in the Eligible Entity contract ~~[October 1 of each year]~~.

Recommendation: Replace with codified reference, e.g. 42 U.S.C. §\_\_\_\_\_

(e) Subrecipients receiving [stateCSBG](#) discretionary funds under [§5.203\(b\)](#) of this subchapter (relating to Distribution of CSBG Funds) are not required to submit a Community Action Plan. All CSBG Subrecipients must develop a performance statement which identifies the services, programs, and activities to be administered by the organization.

#### **§5.213.Board Structure.**

(a) Eligible Entities that are Private Nonprofit Organizations ~~[Private nonprofit entities,]~~ shall administer the CSBG program through a tripartite board that fully participates in the development, planning, implementation, and evaluation of the program to serve low-income communities. Some of the members of the board shall be selected by the Private Nonprofit Organizations ~~[private nonprofit~~



entity] and others through a democratic process; the board shall be composed so as to assure that the requirements of §676B(a)(2) of the CSBG Act are followed and are composed as:

Recommendation: Replace with codified reference, e.g. 42 U.S.C. §\_\_\_\_\_

- (b) For public organizations to be considered to be an Eligible Entity [~~eligible entity~~] for purposes of the CSBG Act, §676B(b), the entity shall administer the CSBG grant through tripartite boards that fully participate in the development, planning, implementation and evaluation of programs that serve low-income communities or act as an advisory board. [~~as:~~]

Recommendation: Replace with codified reference, e.g. 42 U.S.C. §\_\_\_\_\_

(g) [~~d~~] Selection. Pursuant to §676B of the CSBG Act, Eligible Entities that are Private Nonprofit Organizations [~~Private nonprofit entities~~] and Public Organizations [~~public organizations~~] have the responsibility for selection and composition of the board.

Recommendation: Replace with codified reference, e.g. 42 U.S.C.

## **SUBCHAPTER D. COMPREHENSIVE ENERGY ASSISTANCE PROGRAM**

### **§5.423. Household Crisis Component.**

- (c) Crisis assistance payments cannot exceed the minimum amount needed to resolve the crisis; i.e. when a shut-off notice requires a certain amount to be paid to avoid disconnection and the same notice indicates that there are balances due other than the required amount, only the amount required to avoid disconnection may be paid as crisis assistance. Crisis assistance payments that are less than the amount needed to resolve the crisis may only be made when ~~other funds are available to cover the Household's remaining crisis need~~ a utility vendor assures the crisis has been resolved and disconnection is avoided.

Rationale: Subrecipients commit funds when there is an assurance of resolving a crisis.

- (d) Crisis assistance for one Household cannot exceed the maximum allowable benefit level in one program year. If a Household's crisis assistance needs exceed that maximum allowable benefit, Subrecipient may pay up to the Household crisis assistance limit only if the remaining amount of Household need can be paid from other funds. ~~If the Household's crisis requires more than the Household limit to resolve and no other funds are available, the crisis exceeds the scope of this program.~~ The assistance must result in resolution of the crisis.

Recommendation: Remove the stricken text and add the new last sentence.

Rationale: It is implied that if a Subrecipient cannot pay the entire bill the client is denied; it's all or nothing. There are many cases in which a customer has an opportunity to make arrangements with their utility vendor to settle amounts owed which are not payable by the Subrecipient. The new sentence is from the current §5.423(c), which is what Subrecipients strive to accomplish in serving their clients.

## **SUBCHAPTER E. WEATHERIZATION ASSISTANCE PROGRAM GENERAL**

### **§5.528.Health and Safety.**

(a) Health and Safety expenditures may not exceed ~~20~~30% of total unit expenditures (Materials, Labor, Program Support, and Health and Safety) at the end of the contract period.

Rationale: Continued increases in the cost of materials and other requirements such as ASHRAE warrants an increase of the allowable percentage from 20% to 30%.

**GENERAL COMMENT:** Search and replace federal rule references with codified version.



## COMMUNITY ACTION COMMITTEE OF VICTORIA, TEXAS

STREET ADDRESS: 4007 HALSEY ST., VICTORIA, TX 77901 MAILING ADDRESS: P.O. BOX 3607, VICTORIA TX 77903

November 3, 2014

Sent via: [cadrulecomments@tdhca.state.tx.us](mailto:cadrulecomments@tdhca.state.tx.us)

Annette Cornier  
TDHCA  
Rule Comments  
Austin, Texas

Community Action Committee of Victoria, Texas (CACVT) supports comments filed by the Texas Association of Community Action Agencies (TACAA) regarding proposed amendments to 10 TAC, Chapter 5, Community Affairs Programs as published in the Texas Register on October 3, 3014.

Sincerely yours,

Vicki Smith  
Executive Director

BIG BEND COMMUNITY ACTION COMMITTEE, INC.  
P.O. BOX 265, 1412 W. Berlin St.  
MARFA, TX. 79843-0265  
Ph. 432-729-4908 Fax 432-729-3435

November 3, 2015

RE: Proposed Amendments-Chapter 5, Community Affairs Programs

Big Bend Community Action Committee, Inc. supports comments filed by TACAA regarding proposed amendments to 10 TAC, Chapter 5, Community Affairs Programs as published in the Texas Register on October 3, 2014.

Respectfully,

Emma Vasquez  
Executive Director



## GREATER EAST TEXAS COMMUNITY ACTION PROGRAM

P.O. BOX 631938

NACOGDOCHES, TX. 75963

PHONE:(936) 564-2491

FAX:(936)564-6212

FAX:(936) 564-0302

ADMINISTRATIVE

PROGRAM

---

Date: November 3, 2014

To: Annette Cornier  
Rule Comments  
Texas Dept. Housing & Community Affairs  
[cadrulecomments@tdhca.state.tx.us](mailto:cadrulecomments@tdhca.state.tx.us)

From: Karen Swenson, Executive Director  
Greater East Texas Community Action Program

Re: Proposed Amendments – Chapt. 5, Community Affairs Programs

Greater East Texas Community Action Program has reviewed the proposed Amendments to Chapter 5, Community Affairs Programs, Subchapter A. General Provisions, Subchapter B, Community Services Block Grant, Subchapter D, Comprehensive Energy Assistance program and Subchapter E, Weatherization Assistance Program General published by the Texas Dept. of Housing and Community Affairs (TDHCA) in the October 3, 2014 issue of the Texas Register.

Greater East Texas Community Action Program (GETCAP) has major concerns with several of these amendments including income eligibility, income calculation, and crisis payments.

GETCAP also reviewed the recommendations provided by the Texas Association of Community Action Agencies (TACAA). We strongly support these recommendations on behalf of the service provider network.

GETCAP encourages income eligibility based on what is countable rather than what is excluded. This change will be confusing and more complicated.

GETCAP also continues to support 150% of federal poverty or less which is more in line with federal guidelines. Complex federal guidelines should not be further complicated on the state level.

These comments are respectfully submitted for consideration.

---

**From:** Carole Belver [cbelver@communityaction.com]  
**Sent:** Monday, November 03, 2014 2:56 PM  
**To:** cadrulecomments@tdhca.state.tx.us  
**Subject:** comments to 10 TAC Chapter 5

**Community Action, Inc. of Central Texas supports the comments filed by Texas Association of Community Action Agencies regarding proposed amendments to 10 TAC, Chapter 5, Community Affairs Programs as published in the *Texas Register* on October 3, 2014.**

Thank you,

Carole Belver, M.Ed.

Executive Director

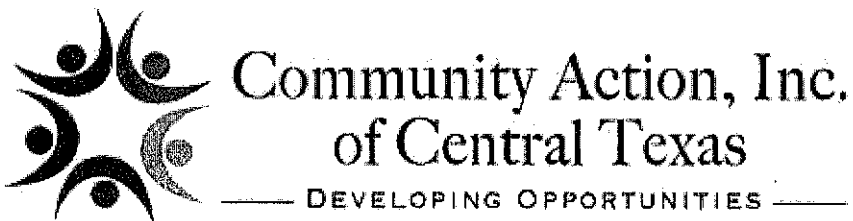
Community Action, Inc. of Central Texas

P.O. Box 748

San Marcos, TX 78667-0748

512-392-1161, ext 328

[cbelver@communityaction.com](mailto:cbelver@communityaction.com)



---

Please connect with us on facebook

1j

**BOARD ACTION REQUEST**  
**COMMUNITY AFFAIRS DIVISION**  
**NOVEMBER 13, 2014**

Presentation, Discussion, and Possible Action on an order adopting amendments to 10 TAC Chapter 5, Subchapter E, §5.502 concerning Purpose and Goals and §5.528 concerning Health and Safety, and directing their publication in the *Texas Register*.

**RECOMMENDED ACTION**

**WHEREAS**, pursuant to Texas Government Code, §§2306.053 and 2306.092, the Department is provided the authority to adopt rules governing the administration of the Department and its Community Affairs programs;

**WHEREAS**, the amendments to 10 TAC Chapter 5, §5.502 clarify requirements for administration of the program, adding text stating that an organization that administers the Weatherization Assistance Program (“WAP”) must administer both the Department of Energy WAP and the Low Income Home Energy Assistance Program WAP. Amendments to §5.528 clarify that allowable health and safety funds are limited to 20% of total unit expenditures and not based on 20% of the program budget; and

**WHEREAS**, the proposed amendments were published in the *Texas Register* on October 3, 2014, for public comment;

**NOW, therefore, it is hereby**

**RESOLVED**, that the final order adopting the amendments to 10 TAC §5.502 and §5.528 is hereby ordered and approved, together with the preamble presented to this meeting, for publication in the *Texas Register*; and

**FURTHER RESOLVED**, that the Executive Director and his designees be and each them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the adopted amendments, 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.

**BACKGROUND**

The proposed amendments were approved for publication on September 4, 2014, by the Board, and were published in the October 3, 2014, issue of the *Texas Register* to allow for public comment. The public comment period closed on November 3, 2014. Comments were received from five (5) commenters.



## **Attachment A: Preamble and Amended 10 TAC Chapter 5, Subchapter E, §§5.502 and 5.528**

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 5, Subchapter E, §§5.502 and 5.528, without changes to the proposed text as published in the October 3, 2014, issue of the *Texas Register* (39 TexReg 7856) and will not be republished.

**REASONED JUSTIFICATION.** The Department finds that language in the amended section did not clearly state program requirements.

### **SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.**

The Department received comments to the proposed amendments. The Department's response to all comments received is set out below. The comments and responses include both administrative clarifications and corrections to the amendments recommended by staff and substantive comments on the amendments and the corresponding Departmental responses. Comments and responses are presented in the order they appear in the rules. Comments were accepted from October 3, 2014, through November 3, 2014, with comments received from:

- (1) Stella Rodriguez, Executive Director, Texas Association of Community Action Agencies (TACAA)
- (2) Vicki Smith, Executive Director, Community Action Committee of Victoria, Texas, in support of comments filed by TACAA
- (3) Emma Vasquez, Executive Director, Big Bend Community Action Committee, Inc., in support of comments filed by TACAA
- (4) Karen Swenson, Executive Director, Greater East Texas Community Action Program, in support of comments filed by TACAA
- (5) Carole Belver, Executive Director, Community Action, Inc. of Central Texas, in support of comments filed by TACAA

### **§5.528. Health and Safety**

**COMMENT SUMMARY (1, 2, 3, 4, 5):** Regarding (a), commenter suggested raising the Health and Safety expenditure limit to 30% of total unit expenditures, with the rationale that continued increases in the cost of materials and other requirements such as ASHRAE warrant an increase in the allowable percentage.

**STAFF RESPONSE:** The Health and Safety expenditure limit is set by the Department of Energy and cannot be raised by the Department. No change is recommended based on this comment.

The Board adopted these amendments at the November 13, 2014, meeting of the Board.

**STATUTORY AUTHORITY.** The amendments are adopted pursuant to the authority of Texas Government Code §2306.053, which authorizes the Department to adopt rules.

# Texas Association of Community Action Agencies, Inc.

---

2512 IH 35 South, Suite 100  
Austin, TX 78704-5772

Phone: (512) 462-2555  
(800) 992-9767  
Fax: (512) 462-2004

www.tacaa.org  
tacaa@tacaa.org

Date: November 3, 2014

To: Annette Cornier  
Rule Comments  
Texas Department of Housing and Community Affairs  
cadrulecomments@tdhca.state.tx.us

From: Stella Rodriguez, Executive Director  
Texas Association of Community Action Agencies

Re: Proposed Amendments – Chapter 5, Community Affairs Programs

Members of the Texas Association of Community Action Agencies (TACAA) reviewed the proposed amendments to Chapter 5, Community Affairs Programs, Subchapter A, General Provisions, Subchapter B, Community Services Block Grant, Subchapter D, Comprehensive Energy Assistance Program and Subchapter E, Weatherization Assistance Program General published by the Texas Department of Housing and Community Affairs (TDHCA) in the October 3, 2014 issue of the *Texas Register*.

Major concerns were expressed regarding some of the proposed amendments, including determining income eligibility, calculation of income, and household crisis payments, which may warrant further discussion.

We respectfully submit the following edits and recommendations.

## **Chapter 5, Subchapter A, General Provisions**

### **§5.2.Definitions.**

(a) To ensure a clear understanding of the terminology used in the context of the [Programs of the Community Affairs Programs Division](#), a list of terms and definitions has been compiled as a reference.

(b) The words and terms in this chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise.

(2) Award Date--Date on which the Department's Board commits funds to an awardee.

**Comment: Please clarify because this is not consistent with §5.2(b)(11), which references "first day of the contract period" for which expenditures may be considered by a Subrecipient.**

(6) [(5)] Community Action Agencies (CAAs)--Local [Private Nonprofit Organizations and Public Organizations](#) [private and public nonprofit organizations] that carry out the Community [Services Block Grant Action](#) Program, which was established by the 1964 Economic Opportunity Act to fight poverty by empowering the poor in the United States. [Each CAA must have a board consisting of one-third elected public officials, not fewer than one-third representatives of low-income individuals and families, chosen in accordance with democratic selection procedures, and the remainder are members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community.]

(9) [(8)] Community Services Block Grant (CSBG)--~~An HHS-funded program [A grant] which provides [U.S. federal] funding for CAAs and other Eligible Entities that seek to address poverty at the community level. [Like other block grants, CSBG funds are allocated to the states and other jurisdictions through a formula.]~~

(11) Contract--The executed written Agreement between the Department and a Subrecipient performing an ~~A~~ activity related to a CAD program that describes performance requirements and responsibilities assigned by the document; for which the first day of the contract period is the point at which programs funds may be considered by a Subrecipient for expenditure unless otherwise directed in writing by the Department.

Comment: (11) above is not consistent with §5.2(b)(2) above, see previous comment.

(18) [(13)] Discretionary Funds--Those CSBG funds maintained [~~in reserve~~] by the Department [~~a state~~], at its discretion, for CSBG allowable ~~uses~~ activities as authorized by §~~675C42~~ U.S.C. 9907(b)(1) of the CSBG Act, ~~and not designated for distribution on a statewide basis to CSBG Eligible Entities~~ and not designated [~~held in reserve~~] for state administrative purposes.

Recommendation: Remove "...and not designated for distribution on a statewide basis to CSBG Eligible Entities." because the CSBG Act does not prohibit a CSBG eligible entity from conducting statewide activities.

(23) [(19)] Eligible Entity--Those local organizations in existence and designated by the federal ~~and state~~ government to administer programs created under the Federal Economic Opportunity Act of 1964. This includes community action agencies, limited-purpose agencies, and units of local government. The CSBG Act defines an eligible entity as an organization that was an eligible entity on the day before the enactment of the Coats Human Services Reauthorization Act of 1998 (October 27, 1998), or is designated by the Governor to serve a given area of the state and that has a tripartite board or other mechanism specified by the state for local governance.

(29) [(24)] Families with Young Children--A family that includes a Child [~~child~~] age five (5) or younger, which means a child up until the 6<sup>th</sup> birthday.

Rationale: The added text is for clarification and consist definition for all Subrecipients. A five year old child is five up until the 6<sup>th</sup> birthday.

(30) [(25)] High Energy Burden--Households with energy burden which exceeds 11% of annual gross income, ~~which is--D~~determined by dividing a Household's annual home energy costs by the Household's annual gross income.

(38) [(32)] Low Income--Income in relation to family size and that governs eligibility for a program:

(A) For DOE WAP, at or below 200% of the DOE Income guidelines;

(B) For CEAP and LIHEAP WAP at or below 150% of HHS Poverty Income guidelines;

Rationale: The increase is in line with allowable federal regulations and allows Subrecipients to serve clients up to the higher threshold. This recommendation has been expressed by the TACAA Board at which Department leadership staff has been present; it was suggested that the official recommendation be made at the time of rulemaking.

(BC) For ~~CEAP, CSBG, and LIHEAP WAP~~ at or below 125% of the HHS Poverty Income guidelines;

~~(39) [(33)]~~ Low Income Home Energy Assistance Program (LIHEAP)--~~A~~ HHS-funded program which serves ~~[A federally funded block grant program that is implemented to serve]~~ low income Households who seek assistance for their home energy bills and/or weatherization services.

~~(43) [(37)]~~ National Performance Indicator--An individual measure of performance within the Department's **CSBG** reporting system for measuring performance and results of Subrecipients of funds.

~~(51) [(45)]~~ Poverty Income Guidelines--The official poverty income guidelines as issued by the U.S. Department of Health and Human Services (HHS) annually.

**Rationale:** edit per new §5.2(16).

~~(61) [(56)]~~ State--The State of Texas or **Department** ~~the Texas Department of Housing and Community Affairs.~~

**Rationale:** edit per new §5.2(b)(14).

(71) Uniform Grant Management Standards (UGMS)--Established to promote the efficient use of public funds by providing awarding agencies and grantees a standardized set of financial management procedures and definitions, 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. In addition, Chapter 2105, Texas Government Code, subjects all sSubrecipients of federal block grants to the Uniform Grant and Contract Management Standards.

### **§5.19.[Client] Income Eligibility [Guidelines].**

(a) For HHS and DOE funded programs, eligibility for program assistance is determined under the Poverty Income Guidelines and calculated as described herein. Income means cash receipts earned and/or received by the applicant before taxes during applicable tax year(s) but not the Excluded Income listed in paragraph (2) of this subsection. Gross income is to be used, not net income. [Except for ESG and HHSP, the Department has defined eligibility for program assistance under the Poverty Income Guidelines.]

**Recommendation:** Omit "Excluded Income."

**Rationale:** Countable income should be a finite list. Determination of income eligibility should not be based on an excluded list.

~~(1) If an income source is not excluded below, it must be included when determining income eligibility.~~

**Recommendation:** Strike new (1) because determination of income eligibility should not be based on an excluded list, rather defined countable income.

~~[(b) For all programs except ESG, Subrecipients will use the list of included and excluded income to determine eligibility for all programs, as described in paragraphs (1) and (2) of this subsection. Income means Cash Receipts earned and/or received by the applicant before taxes during applicable tax year(s) but not the Excluded Income listed in paragraph (2) of this subsection. Gross Income is to be used, not Net Income.]~~

~~[(1) Included Income:]~~

~~[(A) Temporary Assistance for Needy Families (TANF);]~~

~~[(B) Money, wages and salaries before any deductions;]~~

~~[(C) Net receipts from non-farm or farm self-employment (receipts from a person's own business or from an owned or rented farm after deductions for business or farm expenses);]~~

~~[(D) Regular payments from social security, including Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI);]~~

~~[(E) Railroad retirement;]~~

~~[(F) Unemployment compensation;]~~

~~[(G) Strike benefits from union funds;]~~

~~[(H) Worker's compensation;]~~

~~[(I) Training stipends;]~~

~~[(J) Alimony;]~~

~~[(K) Military family allotments;]~~

~~[(L) Private pensions;]~~

~~[(M) Government employee pensions (including military retirement pay);]~~

~~[(N) Regular insurance or annuity payments; and]~~

~~[(O) Dividends, interest, net rental income, net royalties, periodic receipts from estates or trusts; and net gambling or lottery winnings.]~~

Recommendation: Do not remove the list of countable income for determining eligibility in the current §5.19(b)(1), which should mirror the 2015 LIHEAP State Plan to HHS as modified and approved by the TDHCA Board at its July 31, 2014 meeting.

Rationale: Included income should be a finite list. Documentation of included income will be captured and maintained in client files rather than having to document from an exhaustive list of excluded income, which is not proof of countable income.

~~(a)(2) Excluded Income~~

Remove the "Excluded Income" list, which becomes unnecessary information if the countable income is clearly stated.

~~(b) The requirements for determining whether an applicant Household is eligible for assistance require the Subrecipient to project or estimate the annual income that annualize the Household income based on verifiable documentation from the past thirty (30) days expects to receive. The following is an acceptable method for calculating the annual income anticipated for the coming year:~~

(1) Generally the Subrecipient must use current circumstances to anticipate income. The Subrecipient calculates projected annual income by annualizing current income. Income that may not last for a full 12 months (e.g., unemployment compensation) should be calculated assuming current circumstances will last a full 12 months.

(2) If information is available on changes expected to occur during the year, use that information to determine the total anticipated income from all known sources during the year. For example, if a verification source reports that a union contract calls for a 2% pay increase midway through the year, the Subrecipient may add the total income for the months before, and the total for the months after the increase.

(3) Once all sources of income are known, Subrecipients must convert reported income to an annual figure. Convert periodic wages to annual income by multiplying:

(A) Hourly wages by the number of hours worked per year (2,080 hours for full-time employment with a 40-hour week and no overtime);

(B) Weekly wages by 52;

(C) Bi-weekly wages (paid every other week) by 26;

(D) Semi-monthly wages (paid twice each month) by 24; and

(E) Monthly wages by 12.

Recommendation: Remove the proposed method of calculating income for the purpose of determining eligibility as referenced in §5.19(b) (1), (2) and (3). Simply require Subrecipients to annualize household income based on verifiable documentation from the past thirty (30) days.

Rationale: The proposed method of calculation applies to a regular full-time employee. Many of our clients don't fit this category; rather, they are part-time or receive irregular weekly wages based on unpredictable hours worked. To project, estimate or anticipate income is subjective. The current method of calculation is an effective, accurate, consistent and non-subjective method of determining income.

## **SUBCHAPTER B. COMMUNITY SERVICES BLOCK GRANT (CSBG)**

### **§5.207.Subrecipient Performance.**

(d) In keeping with the regulations issued under Title II, §676(b)(3)(C), §676(5),(6),(9) State Application and Plan, the Department requires CSBG Eligible Entities, and other CSBG organizations where applicable, to coordinate CSBG funds and form partnerships with other public and private resources and coordinate and establish linkages between governmental and other social service programs to assure the effective delivery of services and avoid duplication of services.

Recommendation: Replace with codified reference, e.g. 42 U.S.C. §9908\_\_\_\_.

(e) In keeping with the regulations issued under Title II, §676(b)(4), CSBG Eligible Entities shall provide, on an emergency basis, for the provision of such supplies and services, nutritious foods, and related services, as may be necessary to counteract the conditions of starvation and malnutrition. The nutritional needs may be met through a referral source that has resources available to meet the immediate needs.

Recommendation: Replace with codified reference, e.g. 42 U.S.C. §\_\_\_\_\_

(f) In keeping with the regulations issued under [Title II, §676\(b\)\(5\)](#), CSBG Eligible Entities, shall coordinate the provision of employment and training activities through local workforce investment systems under the Workforce Investment Act of 1998.

Recommendation: Replace with codified reference, e.g. 42 U.S.C. §\_\_\_\_\_

(g) In keeping with the regulations issued under [Title II, §678G\(b\)\(1-2\)](#), CSBG Eligible Entities shall inform custodial parents in single-parent families that participate in programs, activities, or services about the resources available through the Texas Attorney General's Office with respect to the collection of child support payments and refer eligible parents to the Texas Attorney General's Office of Child Support Services Division.

Recommendation: Replace with codified reference, e.g. 42 U.S.C. §\_\_\_\_\_

(i) Case Management.

(1) In keeping with the regulations issued under [Title II, §676\(b\)](#) State Application and Plan, the Department requires CSBG Eligible Entities, and other CSBG Subrecipients where applicable, to incorporate integrated case management systems in the administration of their CSBG program ([Title II, §676\(b\)](#)). Incorporating case management in the service delivery system and providing assistance that has a long-term impact on the client, such as enabling the client to move from poverty to self-sufficiency, to maintain stable families, and to revitalize the community, supports the requirements of Title II, [§676\(b\)](#). An integrated case management system improves the overall provision of assistance and improves each Subrecipient's ability to transition persons from poverty to self-sufficiency. Case management can be provided on a short-term basis to meet immediate needs, or for Eligible Entities it can be provided on a long-term basis to persons working to transition out of poverty and achieve self-sufficiency.

Recommendation: Replace with codified reference, e.g. 42 U.S.C. §\_\_\_\_\_.

#### **§5.210.CSBG Needs Assessment and Community Action Plan.**

(a) In accordance with ~~[the CSBG Act and]~~ [§676](#) of the CSBG Act, the Department is required to secure a Community Action Plan on an annual basis from each CSBG Eligible Entity. The Community Action Plan shall be submitted to the Department on or before a date specified by the Department in the Eligible Entity contract ~~[October 1 of each year]~~.

Recommendation: Replace with codified reference, e.g. 42 U.S.C. §\_\_\_\_\_

(e) Subrecipients receiving [stateCSBG](#) discretionary funds under [§5.203\(b\)](#) of this subchapter (relating to Distribution of CSBG Funds) are not required to submit a Community Action Plan. All CSBG Subrecipients must develop a performance statement which identifies the services, programs, and activities to be administered by the organization.

#### **§5.213.Board Structure.**

(a) Eligible Entities that are Private Nonprofit Organizations ~~[Private nonprofit entities,]~~ shall administer the CSBG program through a tripartite board that fully participates in the development, planning, implementation, and evaluation of the program to serve low-income communities. Some of the members of the board shall be selected by the Private Nonprofit Organizations ~~[private nonprofit~~



entity] and others through a democratic process; the board shall be composed so as to assure that the requirements of §676B(a)(2) of the CSBG Act are followed and are composed as:

Recommendation: Replace with codified reference, e.g. 42 U.S.C. §\_\_\_\_\_

- (b) For public organizations to be considered to be an Eligible Entity [~~eligible entity~~] for purposes of the CSBG Act, §676B(b), the entity shall administer the CSBG grant through tripartite boards that fully participate in the development, planning, implementation and evaluation of programs that serve low-income communities or act as an advisory board. [~~as:~~]

Recommendation: Replace with codified reference, e.g. 42 U.S.C. §\_\_\_\_\_

(g) [~~d~~] Selection. Pursuant to §676B of the CSBG Act, Eligible Entities that are Private Nonprofit Organizations [~~Private nonprofit entities~~] and Public Organizations [~~public organizations~~] have the responsibility for selection and composition of the board.

Recommendation: Replace with codified reference, e.g. 42 U.S.C.

## **SUBCHAPTER D. COMPREHENSIVE ENERGY ASSISTANCE PROGRAM**

### **§5.423. Household Crisis Component.**

- (c) Crisis assistance payments cannot exceed the minimum amount needed to resolve the crisis; i.e. when a shut-off notice requires a certain amount to be paid to avoid disconnection and the same notice indicates that there are balances due other than the required amount, only the amount required to avoid disconnection may be paid as crisis assistance. Crisis assistance payments that are less than the amount needed to resolve the crisis may only be made when ~~other funds are available to cover the Household's remaining crisis need~~ a utility vendor assures the crisis has been resolved and disconnection is avoided.

Rationale: Subrecipients commit funds when there is an assurance of resolving a crisis.

- (d) Crisis assistance for one Household cannot exceed the maximum allowable benefit level in one program year. If a Household's crisis assistance needs exceed that maximum allowable benefit, Subrecipient may pay up to the Household crisis assistance limit only if the remaining amount of Household need can be paid from other funds. ~~If the Household's crisis requires more than the Household limit to resolve and no other funds are available, the crisis exceeds the scope of this program.~~ The assistance must result in resolution of the crisis.

Recommendation: Remove the stricken text and add the new last sentence.

Rationale: It is implied that if a Subrecipient cannot pay the entire bill the client is denied; it's all or nothing. There are many cases in which a customer has an opportunity to make arrangements with their utility vendor to settle amounts owed which are not payable by the Subrecipient. The new sentence is from the current §5.423(c), which is what Subrecipients strive to accomplish in serving their clients.



## **SUBCHAPTER E. WEATHERIZATION ASSISTANCE PROGRAM GENERAL**

### **§5.528.Health and Safety.**

(a) Health and Safety expenditures may not exceed ~~20~~30% of total unit expenditures (Materials, Labor, Program Support, and Health and Safety) at the end of the contract period.

Rationale: Continued increases in the cost of materials and other requirements such as ASHRAE warrants an increase of the allowable percentage from 20% to 30%.

**GENERAL COMMENT:** Search and replace federal rule references with codified version.



## COMMUNITY ACTION COMMITTEE OF VICTORIA, TEXAS

STREET ADDRESS: 4007 HALSEY ST., VICTORIA, TX 77901 MAILING ADDRESS: P.O. BOX 3607, VICTORIA TX 77903

November 3, 2014

Sent via: [cadrulecomments@tdhca.state.tx.us](mailto:cadrulecomments@tdhca.state.tx.us)

Annette Cornier  
TDHCA  
Rule Comments  
Austin, Texas

Community Action Committee of Victoria, Texas (CACVT) supports comments filed by the Texas Association of Community Action Agencies (TACAA) regarding proposed amendments to 10 TAC, Chapter 5, Community Affairs Programs as published in the Texas Register on October 3, 3014.

Sincerely yours,

Vicki Smith  
Executive Director

BIG BEND COMMUNITY ACTION COMMITTEE, INC.  
P.O. BOX 265, 1412 W. Berlin St.  
MARFA, TX. 79843-0265  
Ph. 432-729-4908 Fax 432-729-3435

November 3, 2015

RE: Proposed Amendments-Chapter 5, Community Affairs Programs

Big Bend Community Action Committee, Inc. supports comments filed by TACAA regarding proposed amendments to 10 TAC, Chapter 5, Community Affairs Programs as published in the Texas Register on October 3, 2014.

Respectfully,

Emma Vasquez  
Executive Director



## GREATER EAST TEXAS COMMUNITY ACTION PROGRAM

P.O. BOX 631938

NACOGDOCHES, TX. 75963

PHONE:(936) 564-2491

FAX:(936)564-6212

FAX:(936) 564-0302

ADMINISTRATIVE

PROGRAM

---

Date: November 3, 2014

To: Annette Cornier  
Rule Comments  
Texas Dept. Housing & Community Affairs  
[cadrulecomments@tdhca.state.tx.us](mailto:cadrulecomments@tdhca.state.tx.us)

From: Karen Swenson, Executive Director  
Greater East Texas Community Action Program

Re: Proposed Amendments – Chapt. 5, Community Affairs Programs

Greater East Texas Community Action Program has reviewed the proposed Amendments to Chapter 5, Community Affairs Programs, Subchapter A. General Provisions, Subchapter B, Community Services Block Grant, Subchapter D, Comprehensive Energy Assistance program and Subchapter E, Weatherization Assistance Program General published by the Texas Dept. of Housing and Community Affairs (TDHCA) in the October 3, 2014 issue of the Texas Register.

Greater East Texas Community Action Program (GETCAP) has major concerns with several of these amendments including income eligibility, income calculation, and crisis payments.

GETCAP also reviewed the recommendations provided by the Texas Association of Community Action Agencies (TACAA). We strongly support these recommendations on behalf of the service provider network.

GETCAP encourages income eligibility based on what is countable rather than what is excluded. This change will be confusing and more complicated.

GETCAP also continues to support 150% of federal poverty or less which is more in line with federal guidelines. Complex federal guidelines should not be further complicated on the state level.

These comments are respectfully submitted for consideration.

---

**From:** Carole Belver [cbelver@communityaction.com]  
**Sent:** Monday, November 03, 2014 2:56 PM  
**To:** cadrulecomments@tdhca.state.tx.us  
**Subject:** comments to 10 TAC Chapter 5

**Community Action, Inc. of Central Texas supports the comments filed by Texas Association of Community Action Agencies regarding proposed amendments to 10 TAC, Chapter 5, Community Affairs Programs as published in the *Texas Register* on October 3, 2014.**

Thank you,

Carole Belver, M.Ed.

Executive Director

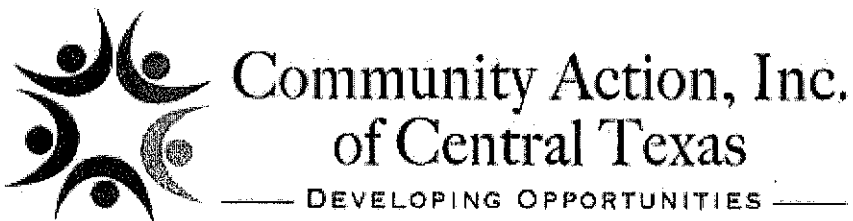
Community Action, Inc. of Central Texas

P.O. Box 748

San Marcos, TX 78667-0748

512-392-1161, ext 328

[cbelver@communityaction.com](mailto:cbelver@communityaction.com)



---

Please connect with us on facebook

1k

**BOARD ACTION REQUEST**  
**COMMUNITY AFFAIRS DIVISION**  
**NOVEMBER 13, 2014**

Presentation, Discussion, and Possible Action on proposed amendments to 10 TAC Chapter 5, Subchapter H, Housing Choice Voucher Program §5.801 concerning Project Access Initiative and directing its publication for public comment in the *Texas Register*.

**RECOMMENDED ACTION**

**WHEREAS**, pursuant to Texas Government Code §§2306.053 and .092, the Texas Department of Housing and Community Affairs (“the Department”) is provided the authority to adopt rules governing the administration of the Department and its Community Affairs programs and

**WHEREAS**, the proposed amendments to 10 TAC Chapter 5, §5.801 will clarify eligibility and waiting list requirements; and

**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 publication of the proposed amendments, in the form presented to this meeting, to be published in the *Texas Register* for public comment and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of subchapter specific preambles.

**BACKGROUND**

The proposed amendments to 10 TAC §5.801 change the time of eligibility for the Department of State Health Services Pilot Program from the time of voucher issuance to the time of placement on the waiting list; and add the option for receipt of other Department funding for rental assistance to maintain status on the Project Access Waiting List.

**Attachment A: Preamble and proposed amendment to 10 TAC Chapter 5, Subchapter H, §5.801**

The Texas Department of Housing and Community Affairs (the “Department”) proposes amendments to 10 TAC Chapter 5, Community Affairs Programs, Subchapter H, §5.801, Housing Choice Voucher Program. The purpose of the amendments is to clarify eligibility and waiting list requirements. The amendments will provide the Department the option of leveraging other available funds to cover the rental cost of Project Access voucher seekers during the short period they are placed on a waiting list. This will allow the Department to leverage available funds to maximize the number of households we can assist.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendment does not have any foreseeable implications related to new costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the amendment will be in effect, the public benefit anticipated as a result of amendment will be greater access to programs. There is no anticipated cost to persons required to comply with the amendments.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. Written comments to the rule may be submitted to the Texas Department of Housing and Community Affairs, Annette Cornier, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to [cadrulecomments@tdhca.state.tx.us](mailto:cadrulecomments@tdhca.state.tx.us) or by fax to (512) 475-3935. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. DECEMBER 29, 2014.

STATUTORY AUTHORITY. The amendments are proposed pursuant to Texas Government Code §2306.053, which generally authorizes the Department to adopt rules, and more specifically Texas Government Code §2306.092, which authorizes the Department to promulgate rules regarding its community affairs and community development programs.

The proposed amendments affect no other code, article, or statute.

*§5.801. Project Access Initiative*

(a) Purpose. Project Access is a program with a preference in the Department's Annual Public Housing Agency (“PHA”) Plan that utilizes federal Section 8 Housing Choice Vouchers administered by the Texas Department of Housing and Community Affairs (the "Department") to assist low-income persons



with disabilities in transitioning from institutions into the community by providing access to affordable housing.

(b) Definitions. Section 8--The U.S. Department of Housing and Urban Development(“HUD”) Section 8 Housing Choice Voucher Program administered by the Department.

(c) Regulations Governing Program. All Section 8 Program rules and regulations apply to the program.

(d) Program Design.

(1) At least 90 percent of Project Access Vouchers will be reserved for households with a household member who meets the eligibility criteria of subsection (e)(1) and (2) of this section.

(2) Unless no longer authorized as a set-aside by HUD, no more than 10 percent of Project Access Vouchers will be reserved for households with a household member eligible for a pilot program in partnership with the Department of State Health Services (“DSHS”) for Texas state psychiatric hospitals who meets the criteria of subsection (e)(1) and (3) of this section at the time of voucher issuance. If not permitted by HUD, the percentage in paragraph (1) of this subsection goes up to 100%.

(3) The total number of Project Access Vouchers will be determined each year in the Department's PHA Plan. The number of vouchers allocated to each sub-population listed in paragraphs (1) and (2) of this subsection will be determined by the Department.

(4) The Project Access households have a preference in the Department's Section 8 Program, as designated in the Department's Annual PHA Plan.

(e) Project Access Eligibility Criteria. A Project Access voucher household must meet all Section 8 eligibility criteria, and one member of the household must meet all of the eligibility criteria in paragraph (1) of this subsection and either paragraph (2) or (3) of this subsection:

(1) have a permanent disability as defined in §223 of the Social Security Code or be determined to have a physical, mental, or emotional disability that is expected to be of long-continued and indefinite duration that impedes one's ability to live independently; and

(2) meet one of the criteria in subparagraphs (A) or (B) of this paragraph:

(A) At-Risk Applicant. At-Risk applicants must be a previous resident of a nursing facility, Texas state psychiatric hospital, intermediate care facility, or board and care facility as defined by HUD and meet the criteria of clause (i) or (ii) of this subparagraph:

(i) A current recipient of Tenant-Based Rental Assistance (“TBRA”) from a HOME Investment Partnership Program and within six (6) months prior to expiration of that TBRA assistance; or

(ii) A household with a household member who meets the criteria of subsection (f) of this section, or clause (i) of this subparagraph and has lost their Tenant Based Rental Assistance from a HOME Investment Partnership Program due to lack of available funding from the Participating Jurisdiction.

(B) be a current resident of a nursing facility, Texas state psychiatric hospital, intermediate care facility, or board and care facility as defined by HUD at the time of voucher issuance, unless otherwise determined by HUD which may extend Project Access to all state regulated institutions; or

(3) be eligible for the DSHS pilot program for Texas state psychiatric hospitals at the time of ~~voucher issuance~~ placement on the waiting list.

(f) Maintaining Status on the Project Access Waiting List. A household on the Project Access waiting list may maintain their status on the waiting list and eligibility for a Project Access voucher if the household:

(1) applied for a Project Access Voucher and was placed on the waiting list prior to transition out of the institution; and

(2) received continuous Tenant Based Rental Assistance from a HOME Investment Partnership Program or other Department funding for rental assistance from the time of exit from the institution until the issuance of the Project Access voucher.

11

**BOARD ACTION REQUEST**  
**COMMUNITY AFFAIRS DIVISION**  
**NOVEMBER 13, 2014**

Presentation, Discussion, and Possible Action on an order adopting new 10 TAC Chapter 5, Subchapter K, §5.2013 concerning Environmental Clearance, and directing its publication in the *Texas Register*.

**RECOMMENDED ACTION**

**WHEREAS**, pursuant to Texas Government Code, §§2306.053 and 2306.092, the Department is provided the authority to adopt rules governing the administration of the Department and its Community Affairs programs;

**WHEREAS**, new 10 TAC Chapter 5, §5.2013 clarifies that awardees must complete the environmental review process prior to commencing associated activities and that the Department will not provide reimbursement for activities for which the Subrecipient did not complete the Department's environmental review process beforehand; and

**WHEREAS**, the proposed new section was published in the *Texas Register* on October 3, 2014, for public comment;

**NOW, therefore, it is hereby**

**RESOLVED**, that the final order adopting the new 10 TAC §5.2013 is hereby ordered and approved, together with the preamble presented to this meeting, for publication in the *Texas Register* and

**FURTHER RESOLVED**, that the Executive Director and his designees be and each them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the adopted section, 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.

**BACKGROUND**

The proposed new section was approved for publication on September 4, 2014, by the Board, and was published in the October 3, 2014, issue of the *Texas Register* to allow for public comment. The public comment period closed on November 3, 2014. No comments were received

**Attachment A: Preamble and New 10 TAC Chapter 5, Subchapter K, §5.2013**

The Texas Department of Housing and Community Affairs (the "Department") adopts 10 TAC Chapter 5, Subchapter K, §5.2013, without changes to the proposed text as published in the October 3, 2014, issue of the *Texas Register* (39 TexReg 7857) and will not be republished.

REASONED JUSTIFICATION. The Department finds that the amendments are needed to clearly describe the requirements for clearance of environmental review prior to expenditure of program funds.

**SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.**

Comments were accepted from October 3, 2014, through November 3, 2014. No comments were received.

The Board adopted these amendments at the November 13, 2014, meeting of the Board.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the authority of Texas Government Code §2306.053, which authorizes the Department to adopt rules.

1m

**BOARD ACTION REQUEST**  
**SINGLE FAMILY PROGRAMS**  
**NOVEMBER 13, 2014**

Presentation, Discussion, and Possible Action on proposed amendments to 10 TAC Chapter 20, Single Family Umbrella Rule, §20.4 and §20.15, and directing their publication for public comment in the *Texas Register*

**RECOMMENDED ACTION**

**WHEREAS**, the Department’s Governing Board approved organizational changes on April 12, 2012, of which a key component was a new Single Family business model that contemplated greater consistency and coordination among all Single Family Programs and provided a basis for improving efficiency;

**WHEREAS**, the Department’s Governing Board adopted amendments to the Single Family Programs Umbrella Rule on October 9, 2014, and

**WHEREAS**, staff has identified the need to amend the Rule to increase efficiency and consistency among the Department’s Single Family Programs;

**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 cause the proposed amendments to §20.4(c) and §20.15, in the form presented to this meeting to be published in the *Texas Register* for review and public comment, and in connection therewith, to make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing.

**BACKGROUND**

The Texas Department of Housing and Community Affairs (the “Department”) continues to implement a unified Single Family business model. This model is a key objective of the organizational changes that were approved by the Department’s Governing Board on April 12, 2012. This model is intended to promote consistency and improve efficiency and coordination among single family programs, thereby enabling persons served to access and obtain an array of single family products, assisting subrecipients in delivering those products more rapidly and smoothly, and supporting Department staff as it seeks to ensure full compliance, expeditious distribution of program resources, and more efficient operations. Programs included in this effort are the Department’s HOME Investments Partnership Program (“HOME”), Housing Trust Fund (“HTF”), Bond/First Time Homebuyer (“FTHB”), Taxable Mortgage Program (“TMP”), Neighborhood Stabilization Program (“NSP”) and the Office of Colonia Initiatives (“OCI”).

Key changes to the Single Family Programs Umbrella Rule have been driven by stakeholder input and the need to codify current Department monitoring and compliance processes in Rule. Advocates have asked the Department to allow rehabilitation of manufactured housing units with federal funds. Staff has consulted with several industry experts to determine the feasibility of expanding access to rehabilitation for families living in manufactured housing, and determined that there is sufficient need. Therefore, the proposed amendment will allow rehabilitation of manufactured housing through the Colonia Self-Help Center Program. Staff has determined that rehabilitation of manufactured housing with HOME or Neighborhood Stabilization Program funds is not feasible, as requirements to bring the entire unit into compliance with current code requirements are cost-prohibitive.

In order to ensure that stakeholder groups have ample opportunity to provide comment on the proposed amendments to the Single Family Umbrella Rule, the Department will publish the Amendments in the *Texas Register*, and accept Public Comment for not less than 30 days.

All Single Family programs must adhere to both the Single Family Umbrella Rules and the individual program rules applicable to specific single family programs. A brief overview of the amendments to the existing Single Family Umbrella Rule is provided below.

#### **§20.4 Eligible Single Family Activities**

The amendments add language allowing rehabilitation of Manufactured Housing Units through the Colonia Self-Help Center Program.

#### **§20.15 Compliance and Monitoring**

The amendments describe Compliance requirements currently applied to Single-Family contracts and activities through Department monitoring processes, and allow access for Single Family Subgrantees to the Compliance Committee



The Texas Department of Housing and Community Affairs (the “Department”) proposes amendments to 10 TAC Chapter 20, §20.4(c) concerning Rehabilitation of Manufactured Housing Units and §20.15 concerning Compliance and Monitoring. The purpose of the proposed amendment section(s) is improving efficiency and effectiveness of Single Family Programs. The proposed amendments will make the following changes to the Single Family Programs Umbrella Rule:

#### **§20.4 Eligible Single Family Activities**

The amendments add language allowing rehabilitation of Manufactured Housing Units through the Colonia Self-Help Center Program.

#### **§20.15 Compliance and Monitoring**

The amendments describe Compliance requirements currently applied to Single-Family contracts and activities through Department monitoring processes, and allow access for Single Family Subgrantees to the Compliance Committee

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amendments will be in effect, enforcing or administering the proposed amendments will not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the proposed amendments will be in effect, the public benefit anticipated as a result of the amendments will be expanded access to rehabilitation funds for low-income owners of Manufactured Housing Units, clarification of the Department’s Compliance and Monitoring processes, and contractor access to the Compliance Committee. There will not be any economic cost to any individuals required to comply with the proposed amendments.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Marni Holloway, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by fax to (512) 475-1672. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. December 29, 2014.

STATUTORY AUTHORITY. The amendments are proposed pursuant to §2306.053 of the Texas Government Code, which authorizes the Department to adopt rules. The proposed amendments affect no other code, article, or statute.

#### **20.4. Eligible Single Family Activities.**

(c) Rehabilitation of an MHU with federal funds is an ineligible activity, unless conducted through the Colonia Self-Help Center Program.

#### **20.15. Compliance and Monitoring-Deobligation.**

~~The compliance requirements and Deobligation remedies identified under other provisions of this Title apply to all single family Program activities.~~

(a) The Department will perform monitoring of Single Family Program Contracts and Activities in order to ensure that applicable requirements of the U. S. Department of Housing and Urban Development (HUD), applicable federal laws and regulations, and applicable state laws and rules have been met, and to provide Administrators with clear communication regarding the condition and operation of their Contracts and Activities so they understand clearly, with a documented record, how they are performing in meeting their obligations;

(1) The physical condition of assisted properties and Administrator's documented compliance with contractual and program requirements may be subject to monitoring.

(2) The Department may contract with an independent third party to monitor an Activity during its construction or rehabilitation for compliance with any conditions imposed by the Department in connection with the award of any Department funds, and appropriate state and federal laws.

(b) If an Administrator has Contracts for more than one Single Family program, or other programs through the Department or the State, the Department may, at its discretion, coordinate monitoring of those programs with monitoring of single family Contracts under this subchapter.

(c) Frequency of reviews, information collection. In general, Administrators will be scheduled for monitoring based on federal or state monitoring requirements, or a risk assessment. Factors to be included in the risk assessment include but are not limited to: the number of contracts administered by the Administrator, the amount of funds awarded and expended, the length of time since the last monitoring, findings identified during previous monitoring, issues identified through the submission or lack of submission of a single audit, complaints, and reports of fraud, waste and/or abuse. The risk assessment will also be used to determine which Administrators will have an onsite review and which may have a desk review.

(d) The Department will provide an Administrator with written notice of any upcoming onsite or desk monitoring review, and such notice will be given to the Administrator by email to the Administrator's chief executive officer at the email address most recently provided to the Department by the Administrator. In general, a thirty (30) day notice will be provided. However, if a credible complaint of fraud or other egregious noncompliance is received the Department reserves the right to conduct unannounced monitoring visits, or provide a shorter notice period. It is the responsibility of the Administrator to maintain current contact information with the Department for the organization, key staff members, and governing body.

(e) Upon request, Administrators must make available to the Department all books and records that the Department determines are reasonably relevant to the scope of the Department's review, along with access to assisted properties.

(f) Post Monitoring Procedures. After the review, a written monitoring report will be prepared for the Administrator describing the monitoring assessment and any corrective actions, if applicable. The monitoring report will be emailed to the Administrator. Issues of concern over which there is uncertainty or ambiguity may be discussed by the Department with the staff of cognizant agencies overseeing federal funding.

(g) Administrator Response. If there are any findings of noncompliance requiring corrective action, the Administrator will be provided a thirty (30) day corrective action period, which may be extended for good cause. In order to receive an extension, the Administrator must submit a written request to the Chief of Compliance within the corrective action period, stating the basis for good cause that the Administrator believes justifies the extension. In general, the Department will approve or deny the extension request within three (3) business days. Failure to timely respond to a corrective action notice and/or failure to correct all findings will be taken into consideration if the Administrator applies for additional funding and may result in suspension of the Contract, referral for administrative penalties, or other action under this Title.

(h) Monitoring Close Out. After the end of the corrective action period, a close out letter will be issued to the Administrator. If the Administrator supplies evidence establishing continual compliance that negates the finding of noncompliance, the issue of noncompliance will be rescinded. If the Administrator's response satisfies all findings and concerns noted in the monitoring letter, the issue of noncompliance will be noted as resolved. In some circumstances, the Administrator may be unable to secure documentation to resolve a finding. In those instances, if there are mitigating circumstances, the Department may note the finding is not resolved but may close the issue with no further action required. If the Administrator's response does not correct all findings noted, the close out letter will identify the documentation that must be submitted to correct the issue. Results of monitoring findings may be reported to the Executive Awards and Review Advisory Committee for consideration relating to previous participation.

(i) Options for Review. If, following the submission of corrective action documentation, Compliance staff continues to find the Administrator in noncompliance, the Administrator may request or initiate review of the matter using the following options, where applicable:

(1) If the issue is related to a program requirement or prohibition Administrators may contact an applicable federal program officer for guidance or request that the Department contact applicable federal program officer for guidance without identifying the Administrator.

(2) If the issue is related to application of a provision of the Contract or a requirement of the Texas Administrative Code, or the application of a provision of an OMB Circular, the Administrator may request review by the Department's Compliance Committee, as set out in subsection (1) of this section.

(3) Administrators may request Alternative Dispute Resolution (ADR). An Administrator may send a proposal to the Department's Dispute Resolution Coordinator to initiate ADR pursuant to §1.17 of this title.

(j) If Administrators do not respond to a monitoring letter or fail to provide acceptable evidence of timely compliance after notification of an issue, the matter will be reported to the Department's Enforcement Committee for consideration of administrative penalties, full or partial cost reimbursement, or suspension.

(k) Administrators must provide timely response to corrective action requirements imposed by other agencies. Administrator records may be reviewed during the course of monitoring or audit of the Department by HUD, the Office of the Inspector General, the State Auditor's Office or others. If a finding or concern is identified during the course of a monitoring or audit by another agency, the Administrator is required to provide timely action and response within the conditions imposed by that agency's notice.

#### (l) Compliance Committee.

(1) The Compliance Committee is a committee of three (3) to five (5) persons appointed by the Executive Director. The Compliance Committee is established to provide independent review of certain compliance issues as provided by this section. Staff from the Legal and the Compliance Divisions will not be appointed to the committee, but may be available as a resource to the Committee.

(2) Informal discussion with Compliance Monitoring staff. If the Administrator has questions or disagreements regarding any compliance issues, they should first try to resolve them by discussing them with the Compliance Monitoring staff, including, as needed, the Chief of Compliance.

(3) Informal discussion with the Compliance Committee. An Administrator may request an informal meeting with the Compliance Committee if the informal discussion with the Compliance Monitoring staff did not resolve the issue.

#### (4) Compliance Committee Process and Timeline:

(A) At any time, the Administrator may call or request an informal conference with the Compliance Monitoring staff and/or the Chief of Compliance.

(B) If a call or an informal conference with the Compliance Monitoring staff does not result in a resolution of the issue, the Administrator may, within thirty (30) days of the call or informal conference with Compliance Monitoring staff, request a meeting with the Compliance Committee.

(C) If timely requested in accordance with this section, the Compliance Committee will hold an informal conference with the Administrator. An Administrator should not offer evidence, documentation, or information to the Compliance Committee that was not presented to

Compliance Monitoring staff during the informal staff conference. If additional information is offered, the Compliance Committee may disallow the information or refer the matter back to Compliance Monitoring staff to allow review of the additional information prior to any consideration by the Compliance Committee.

(D) If a meeting with the Compliance Committee does not result in a resolution, matters related to a compliance requirement, other than those required by federal regulation, may be appealed in accordance with appeal rights described in Chapter 1 of this Title.

1n

**BOARD ACTION REQUEST**  
**HOUSING RESOURCE CENTER**  
**NOVEMBER 13, 2014**

Presentation, Discussion, and Possible Action on the 2015 Regional Allocation Formula Methodology.

**RECOMMENDED ACTION**

**WHEREAS**, Texas Government Code, §§2306.1115 and 2306.111(d) require that the Department use a Regional Allocation Formula to allocate its HOME funds, Housing Tax Credits, and Housing Trust Funds; and

**WHEREAS**, the proposed Regional Allocation Formula utilizes appropriate statistical data to measure affordable housing needs and available resources in the 13 State Service Regions the Department utilizes for planning purposes;

**NOW, therefore, it is hereby**

**RESOLVED**, that the 2015 Regional Allocation Formula Methodology for the HOME, Housing Tax Credit, and, as applicable, Housing Trust Fund programs, in the form presented at this meeting, is hereby approved.

**BACKGROUND**

The Regional Allocation Formula (“RAF”) utilizes appropriate statistical data to measure the affordable housing need and available resources in 13 State Service Regions, which is then used for planning purposes. The RAF also directs the allocation of funding to rural and urban areas within each region. The Board determines variables to be used in the RAF, per Texas Government Code, §2306.1115(a)(3), which states, “the department shall develop a formula that...includes other factors determined by the department to be relevant to the equitable distribution of housing funds.” The RAF is revised annually to reflect current data, respond to public comment, and better assess regional housing needs and available resources.

The HOME, Housing Tax Credit (“HTC”), and Housing Trust Fund (“HTF”) RAFs each use slightly different formulas because the programs have different eligible activities, households, and geographical service areas. Section 2306.111(c) of the Texas Government Code requires that 95% of HOME funding be set aside for non-participating jurisdictions (“non-PJs”). Therefore, the HOME RAF only uses need and available resource data for non-PJs.

The Draft 2015 RAF Methodology was made available for official public comment from August 15, 2014, through September 15, 2014. A public hearing was held on September 9, 2014.

The public comment and staff’s reasoned responses are found in Attachment A. As a result of public comment, two changes have been made to the HOME RAF. HOME single-family activities and multifamily activities are measured by different variables. Because HOME offers single-family rehabilitation, lack of kitchen and lack of plumbing will be added to the HOME single-family RAF to measure housing need. In addition, HOME multifamily activities and HOME single family activities

will have two separate RAFs with different variables and weights; both single family and multifamily RAFs are described in the methodology.

The Final RAF Methodology is found in Attachment B. Once approved, the final methodology will be published on the Department's website. It should be noted with this action that the Board is approving the methodology, not specific allocation amounts. However, the anticipated amounts this methodology would yield are also described in Attachment C. In Attachment C, the amount for the sample HOME single-family RAF is now \$5,400,000 and sample HOME multifamily RAF is now \$9,500,000, which is closer to the amounts that are subject to the RAF in HOME. The sample HTF RAF is now \$3,000,000 which is a closer representation to the amounts anticipated to be available.



Attachment A: Public Comments on the 2015 RAF Methodology

**Comment 1: The RAF should be an even distribution among all sub-regions (Luis Chavez, Fort Bend CORPS)**

Mr. Chavez would like to have an even disbursement of funds across all the regions in order to give Administrators time to reserve funds. An even disbursement will give Administrators or first-time administrators a chance to develop the HOME program in areas of the State that normally do not receive assistance and will result in a better distribution of funding. This even distribution should last 60 days, and then be collapsed into a pool of funds for the state as a whole, available to each region.

Staff response: Staff disagrees with the comment and no changes have been made as a result of this comment. The RAF legislation requires that distribution “includes as a factor the need for housing assistance and the available of housing resources” (Texas Government Code §2306.1115(a)(1)). An even distribution could not take into account need or availability of housing resources.

**Comment 2: The RAF’s urban/rural distribution is too limiting for the HOME Program (Luis Chavez, Fort Bend CORPS)**

Mr. Chavez comments that, when the RAF’s 13 regions are divided into 26 “rural” and “urban” sub-regions, the people eligible for assistance are also limited by whether their location is designation as “rural” or “urban”. Administrators should work to help homeowners and tenants regardless of if where they live is considered “rural” or “urban”.

Staff response: Staff disagrees with the comment and no changes have been made as a result of this comment. The RAF legislation requires distribution based on an “urban area or rural area” (Texas Government Code §2306.1115(a)(1)).

**Comment 3: The HOME RAF should be run with two different methods: one for single family and one for multifamily (Donna Johnson, Grantworks, Inc.; Judge Doug Page, Trinity County; Judge John Farmer, Crane County; Judge Lesa Arnold, Dickens County; Judge Terry Simpson, San Patricio County; and Judge Lynda Munkres, Morris County)**

Comment was that the HOME RAF should be run once for single-family activities and once for multifamily activities.

Staff response: Staff agrees with comment and changes have been made to the RAF as a result of this comment. The methodology has been adjusted to take into account single-family and multifamily activities. The need and availability factors are indicated as “single family” and “multifamily”. HOME now has one RAF for multifamily activities and one RAF for single-family activities.

**Comment 4: The HOME RAF should include “lack of kitchen and plumbing” as a factor of housing need (Tres Davis and Donna Johnson, Grantworks, Inc.; Judge Doug Page, Trinity County; Judge John Farmer, Crane County; Judge Lesa Arnold, Dickens County; Judge Terry Simpson, San Patricio County; and Judge Lynda Munkres, Morris County)**

Comment was that “lack of kitchen and plumbing” be added as a factor of housing need because this factor is an indicator for assessing quality of housing. They quote the American Community Survey Content Report, which states that, in regards to lack of plumbing, “Such data is also useful in programs involving public health, contaminated ground water, and seniors’ eligibility for housing repair and other services”. Similar statements were made about the lack of kitchens.

Staff response: Staff agrees with comment and changes have been made to the HOME RAF to incorporate lack of kitchen and lack of plumbing as factors of housing need.

**Comment 5: The HOME RAF should include “age of homeowner” as a factor of housing need (Tres Davis and Donna Johnson, Grantworks, Inc.; Judge Doug Page, Trinity County; Judge John Farmer, Crane County; Judge Lesa Arnold, Dickens County; Judge Terry Simpson, San Patricio County; and Judge Lynda Munkres, Morris County)**

Comment was that age of homeowner should be included as a factor in the HOME RAF because data shows that older householders have a greater rate of housing need than other population groups.

Staff response: Staff agrees that older households have a greater rate of housing need, but disagrees with the comment to include age of homeowner as a factor in the RAF. TDHCA is aware of the needs of older householders, as well as many other special needs identified by TDHCA in several documents, such as the State Low Income Housing Plan and Annual Report. Data on special needs populations varies in availability; for example, the number of people experiencing alcohol and substance use disorder is only available for the state as a whole and not by county. It is not appropriate to add age of homeowner without adding the other special needs populations. Because data does not exist for all the other special needs population, age of homeowner will not be added into the HOME RAF.

**Comment 6: The HOME RAF should include “ambulatory” as a factor of housing need (Tres Davis and Donna Johnson, Grantworks, Inc.; Judge Doug Page, Trinity County; Judge John Farmer, Crane County; Judge Lesa Arnold, Dickens County; Judge Terry Simpson, San Patricio County; and Judge Lynda Munkres, Morris County)**

Comment was that persons with ambulatory difficulties should be a factor of housing need.

Staff response: Staff disagrees with this comment and no changes have been made to the HOME RAF. TDHCA is aware of the needs of persons with ambulatory difficulties, which are included with the special needs category “persons with disabilities”. The staff response for comment 5 regarding special needs populations applies for the proposed factor of “persons with ambulatory difficulties”.

**Comment 7: The HOME RAF should include “persons below the state median income” as a factor of housing need (Tres Davis and Donna Johnson, Grantworks, Inc.; Judge Doug Page, Trinity County; Judge John Farmer, Crane County; Judge Lesa Arnold, Dickens County; Judge Terry Simpson, San Patricio County; and Judge Lynda Munkres, Morris County)**

Comment was that income should be a factor of housing need, since lower incomes result in higher rates of housing need.

Staff response: Staff disagrees with the comment and no changes have been made as a result of the comment. The HOME RAF current takes into account number of persons at 200% of poverty which correlates with area median income. The number of persons at 200% of poverty is an income indicator, which makes including the number of persons below the state median income redundant.

**Comment 8: The HOME RAF should include “age of home” as a factor of housing need (Tres Davis and Donna Johnson, Grantworks, Inc.; Judge Doug Page, Trinity County; Judge John Farmer, Crane County; Judge Lesa Arnold, Dickens County; Judge Terry Simpson, San Patricio County; and Judge Lynda Munkres, Morris County)**

Comment was that age of housing should be a factor of housing need since older housing often needs to be rehabilitated. The judges listed as authors of this comment suggested that housing built before 1964 should be included; Mr. Davis revised Grantworks’ comment to suggest that housing built before 1978 be included because of lead-based paint concerns.

Staff response: Staff disagrees with this comment and no changes have been made to the HOME RAF. While older homes are more likely to need rehabilitation, there is no industry-wide standard for the age of the homes that require rehabilitation. The difference in opinions of commenters of the age of homes of 1964 to 1978 shows the lack of agreement regarding the age of homes that need rehabilitation. There are too many other factors involved in rehabilitation that age does not reflect, such as quality of original housing built, weather patterns, care of home.

**Comment 9: The HOME RAF should include percentages instead of whole numbers of persons as factors (Tres Davis and Donna Johnson, Grantworks, Inc.; Judge Doug Page, Trinity County; Judge John Farmer, Crane County; Judge Lesa Arnold, Dickens County; Judge Terry Simpson, San Patricio County; and Judge Lynda Munkres, Morris County)**

Comment was to add percentages of the population as factors instead of whole numbers of persons.

Staff response: Staff disagrees with this comment and no changes have been made to the HOME RAF. Whole numbers are used as factors, which are then related to each other as percentages. Without whole numbers as factors, the second table in the RAF would take a percentage of a percent, which clouds the relationships between the factors.

Attachment B:

2015 REGIONAL ALLOCATION FORMULA METHODOLOGY

Legislative Requirement

Sections 2306.111 and 2306.1115 of the Texas Government Code require that TDHCA use a Regional Allocation Formula (“RAF”) for the HOME Investment Partnerships (“HOME”) Program, Housing Trust Fund (“HTF”) Program and Housing Tax Credit (“HTC”) Program. The RAF presented below analyzes housing need and availability in the State’s urban and rural areas and allocates funding accordingly.

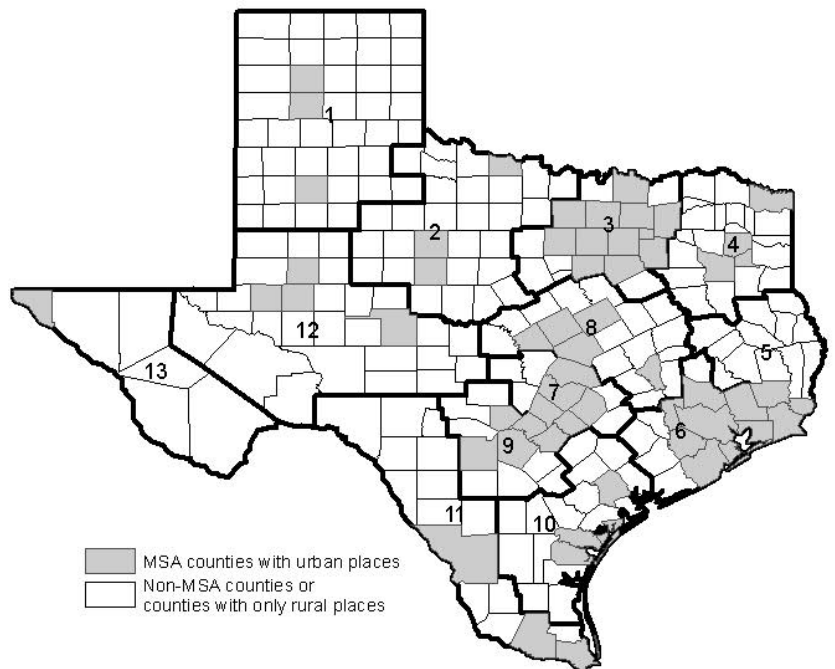
Texas Government Code §2306.1115 states:

(a) To allocate housing funds under Section 2306.111(d), the department shall develop a formula that:

- (1) includes as a factor the need for housing assistance and the availability of housing resources in an urban area or rural area;
- (2) provides for allocations that are consistent with applicable federal and state requirements and limitations; and
- (3) includes other factors determined by the department to be relevant to the equitable distribution of housing funds under Section 2306.111(d).

(b) The department shall use information contained in its annual state low income housing plan and other appropriate data to develop the formula under this section.

The methodology below outlines the need for housing assistance and the availability of housing assistance in urban and rural areas, in keeping with the statutory requirements.



## Methodology

### Affordable Housing Need

Affordable housing need will be measured by variables that relate to the types of assistance available through TDHCA programs.

HTC and HOME both offer assistance for reduced-rent apartments, which is a multifamily activity. HOME also offers Tenant-Based Rental Assistance, which is a single-family activity. Therefore, people in need of rental assistance should be included in the analysis. The column on the RAF table for renters with cost burden measures the number of people in Texas that pay over 30% of their income on rent. The column for renters experiencing overcrowding measures the number of units with more than one person per room, including the kitchen and bathroom. Both rent burden and overcrowding will be used as variables in the RAF.

HOME also offers homebuyer assistance and single-family development programs, which are single-family activities. For single-family development, typically the homes are built by nonprofits or units of local government and the homes are purchased by or leased to low-income homeowners. HTF offers the Bootstrap Loan Program for potential homeowners who use sweat equity, along with low-interest loans, to build their homes. Qualified eligible households who are ready for homeownership are measured, broken out in different income levels. In addition, areas with high numbers of homeowners experiencing cost burden or overcrowding may signify a need for homebuyer assistance. Therefore, factors of income, homeowner cost burden, and homeowner overcrowding are incorporated in the RAF.

HOME offers homeowner rehabilitation assistance, which is a single-family activity. Data regarding units lacking kitchen facilities and plumbing were found to be a complete dataset for use to measure rehabilitation need for single family housing. The data for lack of kitchen facilities and lack of plumbing facilities did not differentiate between owners and renters. Therefore, both owner and renter data will be included. Age of housing stock was considered, but there is no data to substantiate the correlation between a specific unit age and need for rehabilitation. Therefore, numbers of units with substandard conditions and numbers of units built since 1964 or 1978 could not be included in the RAF.

Income is the primary measurement of eligibility for housing assistance through TDHCA. HTC serves households who earn 0-60% Area Median Family Income ("AMFI"). HOME and HTF serve households who earn 0-80% AMFI. While eligibility for housing assistance is measured by AMFI, the AMFI datasets showing how many households are in each AMFI category are available only every other year, while the measurement of people in poverty is measured yearly. In order to use the most up-to-date data, the measurement of people in poverty will be used. The percentage of people at 200% poverty is strongly linked with the percentage of people earning 0-80% AMFI. People at or below 200% of the poverty level will qualify for a majority of housing assistance offered through TDHCA's HOME, HTC and HTF programs.

Because of the differences between the factors for the HOME for single family activities and HOME multifamily activities, HOME will have two RAFs formulated through this methodology: one for single family Activities and one for multifamily activities.

The extent of Texans needing affordable housing is measured using five variables:

1. Cost burden (renters for HTC and HOME; owners for HOME and HTF)
2. Overcrowding (renters for HTC and HOME; owners for HOME and HTF);
3. Lack of Kitchen (owners and renters for HOME);
4. Lack of Plumbing (owners and renters for HOME); and
5. People at or below 200% of the poverty rate.

#### Housing Availability

The extent of additional affordable housing needed to address Texan's needs is determined by:

1. Vacant units (rental units for HOME and HTC; homes for sale for HOME and HTF)

Affordable housing availability will be measured by variables that relate directly to housing resources. In order to take into account both market-rate and subsidized units, vacancies will be used. High numbers of vacancies indicate the market has an adequate supply to oversupply of housing. Vacancies offer a direct measure of housing availability. Owner and rental vacancies are suitable to measure availability for both single and multifamily activities.

#### Urban and Rural Areas

In TDHCA's governing statute (updated per House Bill 429, 83 Regular Session), §2306.004 states:

28-a) "Rural area" means an area that is located:

(A) outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area; or

(B) within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an urban area.

The Texas Government Code §2306.004(28-a)(B) is applied to "census-designated places" ("places") which correlates to cities, towns and other areas similar to incorporated cities and towns, as designated by the census. The requirement regarding population of 25,000 and the requirement regarding boundaries can be applied to places. The RAF is a macro view compared to one city, town, etc, so data is used from each county. County data is more complete than adding together all the cities, towns, etc. If

the RAF only added together the cities, towns, etc, then people who do not live in cities, towns, etc, and units that do not exist in cities, towns, etc, will be excluded. Limiting the data for the RAF to only cities, towns, etc, in each region substantially hinders its decision-making capabilities as an allocation tool. Using the data from counties instead of cities, towns, etc, to allocate for urban and rural areas allows for a more complete picture of the State's demographics. According to Texas Government Code §2306.1115(b), TDHCA must use appropriate data to develop the formula, and data from counties is the most appropriate data.

Using Metropolitan Statistical Area ("MSA") data, as provided by the U.S. Office of Management and Budget, the RAF allocation process accounts for the fact that even though a county may be part of an MSA, all of its places meet the definition of rural per §2306.004(28-a). If an MSA county has no places designated as urban, the need and availability of the whole county will be counted toward the rural allocation (i.e., the MSA county had no places over 25,000, nor any places touching a boundary of a place with 25,000). Therefore, the allocation process refers to "MSA counties with urban places" and "Non-MSA counties and counties with only rural places." The need and availability of "MSA counties with urban places" directs the allocation toward the urban places, and the need and availability of "Non-MSA counties and counties with only rural places" directs the allocation toward the rural places.

Note that the RAF does not state that all places in an MSA county with urban places are urban for designations of specific sites. The rural and urban designation for site-specific applications is made at the place-level.

An example of the variables used in the RAF is in Table 1 below. While HTC, HOME and HTF programs use different variables, only one example is used in this Methodology: the HTC Program. Note that sample numbers are used for clarity.

Table 1: Example of variables used, by Sub-region

Region (MSA Counties with urban places)	Column A: People at 200% Poverty	Column B: HH at 200% Poverty	Column C: Cost Burden, Renters	Column D: Overcrowded Renters	Column E: Vacancies, Rental
1	150,000	53,571	25,000	4,000	6,000
2	100,000	35,714	20,000	2,000	4,000
3	150,000	53,571	25,000	4,000	6,000
4	100,000	35,714	20,000	2,000	4,000
5	150,000	53,571	25,000	4,000	6,000
6	100,000	35,714	20,000	2,000	4,000
7	150,000	53,571	25,000	4,000	6,000
8	100,000	35,714	20,000	2,000	4,000
9	150,000	53,571	25,000	4,000	6,000
10	100,000	35,714	20,000	2,000	4,000
11	150,000	53,571	25,000	4,000	6,000
12	100,000	35,714	20,000	2,000	4,000

Region (MSA Counties with urban places)	Column A: People at 200% Poverty	Column B: HH at 200% Poverty	Column C: Cost Burden, Renters	Column D: Overcrowded Renters	Column E: Vacancies, Rental
13	150,000	53,571	25,000	4,000	6,000

Region (Non-MSA counties and counties with only rural places)	Column A: People at 200% Poverty	Column B: HH at 200% Poverty	Column C: Cost Burden, Renters	Column D: Overcrowded Renters	Column E: Vacancies, Rental
1	40,000	14,286	7,000	700	700
2	25,000	8,929	2,000	400	500
3	40,000	14,286	7,000	700	700
4	25,000	8,929	2,000	400	500
5	40,000	14,286	7,000	700	700
6	25,000	8,929	2,000	400	500
7	40,000	14,286	7,000	700	700
8	25,000	8,929	2,000	400	500
9	40,000	14,286	7,000	700	700
10	25,000	8,929	2,000	400	500
11	40,000	14,286	7,000	700	700
12	25,000	8,929	2,000	400	500
13	40,000	14,286	7,000	700	700

Regions	Column A: People at 200% Poverty	Column B: HH at 200% Poverty	Column C: Cost Burden, Renters	Column D: Overcrowded Renters	Column E: Vacancies, Rental
Total	2,080,000	742,857	356,000	47,300	73,900

## Weights

To allocate funds, the RAF will use each sub-region's ratios of the State's total. In order to account for the amount of population that the variables affect, all the variables that measure need will be added together<sup>1</sup> (i.e., compounded) before taking the percentage of each sub-region's need over the amount of the total need in the State.

Examples of how the weights work in the RAF are in Tables 2 through 4 on the following pages. Building off the usefulness of Table 1, which showed the HTC program, Tables 2 through 4 also are examples of

<sup>1</sup> Note that in order for people in poverty to be combined with households with cost burden and households with overcrowding, the number of people in poverty is divided by the average size of a household in Texas: 2.80 per the 2008-2012 American Community Survey 5-year estimates.



the HTC program RAF. Note that the column header letters will also build off the previous table, so if the letters are not in alphabetical order, the column header letter refers to a previous table.

Table 2 (below) shows only Region 1 in MSA counties and the total of all the regions, in order to simplify the example. Table 2 illustrates how the Compounded Need Variable is derived: Households at 200% of poverty, cost-burdened renters, and over-crowded renters are added together, thereby compounding the need. This compounding balances the relative importance of the variables; variables with very high or very small numbers are combined with the overall total of need, preventing these variables from having a disproportionate or arbitrary amount of weight for their size.

Table 2: Compounded Need Variables

Area	Column B: HH at 200% Poverty	Column C: Cost Burden, Renters	Column D: Overcrowded Renters	Column E: Compounded Need Variables
Region 1 (MSA Counties with urban places)	53,571	25,000	4,000	82,571
Total of all Regions	742,857	356,000	47,300	1,146,157

Note: Columns B, C and D are from Table 1.

In order to apply weights, percentages of need and availability variables must be taken from the state as a whole. These percentages illustrate the relative need of the sub-region. Table 3 (below) demonstrates how the percentages are derived.

Table 3: Percentages Taken

Area	Column E: Compounded Need Variables	Column F: Percent of State's Total Need	Column G: Unoccupied Units, Rental	Column H: Percent of State's Total Availability
Region 1 (MSA Counties with urban places)	82,571	7.2%	6,000	8.1%
Total of all Regions	1,146,157		73,900	

Note: Column E is from Table 2.

A successful allocation formula will provide more funding for high housing need and remove funding for an abundance of housing resources. In order to get the right relationship between housing and need, the housing availability variable will have negative weight. If the weights were equal, a RAF with four variables would have each variable would receive 50% of the weight. Because the availability variable should be negative, the need variables are weighted at 50% each and the availability variable is weighted at -50%, giving the appropriate relationship between funding and current availability of

resources. The compounded need variable will receive 150% weight (50% per variable). Table 4 shows the application of the weights based on a statewide availability of \$40,000,000. <sup>2</sup>

Note that for the HOME Single Family RAF, there are six variables (HOME has lack of kitchen and lack of plumbing as two separate variables because of HOME’s homeowner rehabilitation activity). Therefore, the need variables will each have 25% weight and the availability variable will have -25% weight, in order for all the variables to be weighted equally.

Table 4: Weight Application

Area	Column F: Percent of State's Total Need	Column I: Weight of Need Variables	Column J: Need Variable Allocation*	Column H: Percent of State's Total Availability	Column K: Weight of Availability Variable	Column L: Availability Variable Allocation~	Column M: Total Allocation <sup>+</sup>
Region 1 (MSA Counties with urban places)	7.2%	150.0%	\$ 4,322,519	8.1%	-50%	\$ (1,623,816)	\$ 2,698,703

Note: Column F and H taken from Table 3.

\*Column J is calculated as follows: Column F x Column I x statewide availability of funds.

~Column L is calculated as follows: Column H x Column K x statewide availability of funds.

<sup>+</sup>Column M is calculated as follows: Column J + Column L.

#### Exceptions to the RAF

According to Texas Government Code §2306.111(d-1), there are certain instances when the RAF would not apply to HOME, HTC, and HTF funds. For instance, specific set-asides will be subject to the RAF. This includes set-asides for contract-for-deed conversions and set-asides mandated by state or federal law, if these set-asides are less than 10 percent of the total allocation of funds or credits. Set-asides for funds allocated to serve persons with disabilities will not be subject to the RAF. The total amount available through the RAF will not include funds for at-risk development, with instances mentioned in this paragraph.

Also in §2306.111(d-1), specifically for HTC, 5% of HTC funds must be allocated to developments that receive federal assistance through USDA. Any developments that receive federal assistance through USDA and HTC for rehabilitation compete for funding separately under the “USDA Set-Aside.” This funding is taken from the total tax credit ceiling prior to applying the RAF to allocate funds between each sub-region.

Finally, pursuant to §2306.111(d-1) specifically for HTF, funds that do not exceed \$3 million for each programmed activity will be subject to the RAF.

<sup>2</sup> Although the Attachment B – Sample Allocation for the HTC Program is based on a statewide availability of \$50,000,000, the Methodology example is based on a statewide availability of \$40,000,000 to show a proportional adjustment when initial HTC allocations fall under \$500,000.

## HOME, HTC and HTF Data Differences

Even though the RAF applies to HOME, HTC and HTF, there are some differences between the programs that need to be addressed within the formulas. For example, HOME and HTF serve homeowners and those wanting to buy or build a home, while HOME and HTC serve renters. Therefore, renters' needs would be counted for HOME and HTC; homebuyer needs would be counted for HOME and HTF.

Because HOME and HTC fund rehabilitation, substandard housing units would ideally be included in the RAF. However, at this time, staff has not identified a data source that would provide an estimate of these units that is accurate at the regional level.

In addition, according to §2306.111(c)(1) and (2), 95 percent of the funds for HOME must be spent outside Participating Jurisdictions (PJs). PJs are areas that receive funding directly from HUD. The other 5 percent of State HOME funds must be spent on activities that serve people with disabilities in any area of the State; this portion of HOME is not subject to the RAF because it is set-aside for persons with disabilities (see Exceptions to the RAF above). Because 95 percent of funds cannot be spent within a PJ, the housing need and availability in those jurisdictions should not be counted in HOME's RAF.

The PJ designations are subject to change yearly depending on HUD's funding. According to HUD's 2014 allocation, thirty-three of the PJs are cities and eight of the PJs are counties. These PJs will be subtracted from the HOME version of the RAF.

## HTC \$500,000 Adjustment

Texas Government Code §2306.111(d-3) is a special requirement regarding funding and the RAF that applies only to HTC. This provision requires that TDHCA allocate at least 20 percent of credits to rural areas and that \$500,000 be available for each urban and rural sub-region, which number 26 in total. The overall state rural percentage of the total tax credit ceiling amount will be adjusted to a minimum of 20 percent only at the time of actual award, if needed. Usually, the 20 percent allocation to rural areas occurs naturally, but, if not, one more deal for rural areas will be awarded from the statewide collapse of the RAF to ensure the requirement is met.

For the HTC RAF, the regional amount of rural and urban funding is adjusted to a minimum of \$500,000, if needed. This is done as a final adjustment to the sub-regional allocation amounts available for award. The process proportionately takes funds from sub-regions with initial funding amounts in excess of \$500,000 and reallocates those funds to those sub-regions with initial funding amounts that are less than \$500,000. The process is complete when each sub-region has at least \$500,000.

Tables 5 through 6 below show the process of determining the amount to adjust from sub-regions with more than \$500,000. These tables build from the previous tables included in this methodology and, for ease of explanation, Region 1 and 2's "MSA counties with urban places" and Region 1 and 2's "Non-MSA counties and counties with no urban places" are included. Again, the column header letters build off previous tables, so if the letters are not in alphabetical order, the column letter refers to previous tables.

These four sub-regions are examined below because the most common movement for funds during the \$500,000 adjustment is from MSA counties to Non-MSA counties. The first step in the \$500,000 adjustment process is illustrated in Table 5: the amount over or under \$500,000 is determined for each sub-region.

Table 5: Sub-region amount over/under \$500,000

Area	Column M: Initial Sub-region amount	Column N: Amount needed to reach \$500,000	Column O: Amount over \$500,000 that can be reallocated
Region 1 (MSA Counties with urban places)	\$2,698,703	\$-	\$2,198,703
Region 1 (Non-MSA Counties or Counties with only rural places)	\$961,482	\$-	\$461,482
Region 2 (MSA Counties with urban places)	\$1,938,732	\$-	\$1,438,732
Region 2 (Non-MSA Counties or Counties with only rural places)	\$457,720	\$42,280	\$-

Note: Column M is from Table 4.

Note that Column O above is the amount in Column M (if the amount in Column M is over \$500,000) minus \$500,000; at least \$500,000 is maintained in each sub-region before the adjustment process. Next the amounts in Column N are totaled for the entire state and the amounts in Column O are totaled for the entire state. In this simplified example, the Column N's total would be \$42,280. The Column O total would be \$4,098,917.

The subsequent step in the adjustment process is to determine the percentage to be reallocated. Following the example in Table 5, if only Region 1 and 2 were used in the RAF, the percentages would be seen in Column P in Table 6 below. The proportion of the total amount to be reallocated is in Column Q. Finally, Column M is adjusted by Column Q to equal the final Sub-Amount in Column R.

Table 6: Proportional adjustment

Area	Column P: Proportion of amount available to be reallocated*	Column Q: Amount to be reallocated-	Column R: Final Sub-Amount for Compounded Need <sup>†</sup>
Region 1 (MSA Counties with urban places)	54%	\$ (22,679)	\$ 2,676,024
Region 1 (Non-MSA Counties or Counties with only rural places)	11%	\$ (4,760)	\$ 956,722
Region 2 (MSA Counties with urban places)	35%	\$ (14,840)	\$ 1,923,892
Region 2 (Non-MSA Counties or Counties with only rural places)	n/a	\$ 42,280	\$ 500,000

\*Column P is calculated as follows: if Column M is over \$500,000, then  $((\text{Column M} - \$500,000) / \$4,098,917)$

-Column Q is calculated as followed: if Column P is a percentage, then  $(\text{Column P} * \$42,280)$ ; if Column P is n/a, then Column Q equals Column N.

<sup>†</sup>Column R is calculated as follows: Column M + Column Q.

Attachment C: Sample allocations for the HTC, HOME and HTF programs

Texas Department of Housing and Community Affairs

SAMPLE 2015 HOME Allocation Formula Compounded Need, Table 1 - Raw Data (Single Family Activities)

Region (MSA Counties with urban places)	People at 200% Poverty without PJs	HH at 200% Poverty without PJs	Cost Burden, Owners without PJs	Cost Burden, Renters without PJs	Overcrowded Owners without PJs	Overcrowded Renters without PJs	Units Lacking Plumbing without PJs	Units Lacking Kitchen without PJs	Unoccupied Units, For Sale without PJs	Unoccupied Units, For Rent without PJs
1	31,348	11,196	3,450	3,369	678	407	809	1060	375	613
2	18,251	6,518	2,103	1,248	167	147	1957	2076	606	573
3	438,338	156,549	99,407	65,627	9,226	8,543	10354	18457	8,767	12,569
4	101,540	36,264	11,681	10,319	1,946	1,805	4120	5052	1,734	1,742
5	62,109	22,182	6,576	6,176	1,217	785	2573	3132	1,028	1,659
6	113,684	40,601	18,210	14,374	2,987	2,327	4712	5662	2,003	2,927
7	243,019	86,793	54,497	43,074	5,375	4,794	4437	7063	4,857	6,027
8	128,872	46,026	13,445	17,031	1,362	1,893	4063	8834	2,920	7,914
9	85,119	30,400	15,437	10,975	2,253	1,843	2716	3393	1,579	2,010
10	81,303	29,037	6,865	10,292	1,559	2,274	3948	5568	1,439	3,077
11	115,156	41,127	6,249	5,528	4,101	2,485	4462	3671	1,094	1,878
12	62,104	22,180	5,935	7,528	1,889	682	2270	2943	574	1,633
13	90,908	32,467	5,876	4,156	3,105	1,435	1584	1541	442	391

Region (non-MSA Counties and counties with only rural places)	People at 200% Poverty without PJs	HH at 200% Poverty without PJs	Cost Burden, Owners without PJs	Cost Burden, Renters without PJs	Overcrowded Owners without PJs	Overcrowded Renters without PJs	Units Lacking Plumbing without PJs	Units Lacking Kitchen without PJs	Unoccupied Units, For Sale without PJs	Unoccupied Units, Rental without PJs
1	130,702	46,679	7,373	9,497	2,938	2,489	6506	8666	1,260	2,451
2	103,793	37,069	7,959	9,286	1,348	1,319	11086	11383	1,956	2,263
3	92,672	33,097	9,310	11,472	1,524	1,702	3895	5975	1,893	1,767
4	256,545	91,623	22,585	22,885	4,921	3,153	17082	17800	3,886	4,699
5	163,106	58,252	11,869	15,439	3,028	2,132	8644	10539	2,679	3,343
6	67,532	24,119	5,113	9,192	1,333	705	4894	5498	895	2,030
7	39,675	14,170	5,608	3,967	620	652	2270	2604	1,081	1,114
8	110,413	39,433	9,857	9,154	2,113	1,289	9441	11345	2,352	2,675
9	74,073	26,455	9,314	7,056	1,930	1,567	3784	4273	1,506	1,204
10	100,168	35,774	5,706	8,123	2,304	2,048	6752	7343	1,434	2,258
11	157,736	56,334	7,376	8,634	4,018	2,875	7233	6902	1,092	2,167
12	66,500	23,750	3,396	4,627	1,357	1,167	6749	7069	1,118	862
13	11,008	3,931	705	804	218	232	1094	1101	320	237
Total	2,945,674	1,052,026	355,902	319,833	63,517	50,750	137,435	168,950	48,890	70,083

Texas Department of Housing and Community Affairs  
SAMPLE 2015 HOME Allocation Formula Compounded Need, Table 2- Single Family Activities

Estimated RAF

\$ 5,400,000.00

MSA Counties with urban places	Total of 200% poverty, rent burden, lack of kitchen, lack of plumbing, and overcrowding	Percentage of total need variables	Weight is 125%	Regional Vacancies	Percentage of Total Vacancies	Weight is -25%	Six Variable Sub-region amount	Four Variable amount (before public comment)
Region 1	20,969	1.0%	\$ 65,881	988	0.8%	\$ (11,211)	\$ 54,670	\$ 61,566
Region 2	14,216	0.7%	\$ 44,665	1,179	1.0%	\$ (13,378)	\$ 31,287	\$ 18,022
Region 3	368,163	17.1%	\$ 1,156,715	21,336	17.9%	\$ (242,102)	\$ 914,613	\$ 1,008,039
Region 4	71,187	3.3%	\$ 223,660	3,476	2.9%	\$ (39,443)	\$ 184,217	\$ 193,816
Region 5	42,641	2.0%	\$ 133,971	2,687	2.3%	\$ (30,490)	\$ 103,481	\$ 101,439
Region 6	88,873	4.1%	\$ 279,227	4,930	4.1%	\$ (55,941)	\$ 223,286	\$ 233,305
Region 7	206,033	9.6%	\$ 647,324	10,884	9.1%	\$ (123,502)	\$ 523,822	\$ 608,419
Region 8	92,654	4.3%	\$ 291,104	10,834	9.1%	\$ (122,935)	\$ 168,170	\$ 104,847
Region 9	67,017	3.1%	\$ 210,556	3,589	3.0%	\$ (40,725)	\$ 169,832	\$ 186,381
Region 10	59,543	2.8%	\$ 187,075	4,516	3.8%	\$ (51,244)	\$ 135,831	\$ 117,497
Region 11	67,623	3.1%	\$ 212,462	2,972	2.5%	\$ (33,724)	\$ 178,738	\$ 194,150
Region 12	43,427	2.0%	\$ 136,441	2,207	1.9%	\$ (25,043)	\$ 111,398	\$ 117,953
Region 13	50,164	2.3%	\$ 157,608	833	0.7%	\$ (9,452)	\$ 148,156	\$ 187,942
<b>Subtotal</b>							\$ 2,947,502	\$ 3,133,378
Non-MSA Counties and counties with only rural places								
Region 1	84,148	3.9%	\$ 264,382	3,711	3.1%	\$ (42,109)	\$ 222,272	\$ 219,093
Region 2	79,450	3.7%	\$ 249,620	4,219	3.5%	\$ (47,873)	\$ 201,747	\$ 154,817
Region 3	66,975	3.1%	\$ 210,426	3,660	3.1%	\$ (41,530)	\$ 168,896	\$ 168,049
Region 4	180,049	8.4%	\$ 565,688	8,585	7.2%	\$ (97,415)	\$ 468,273	\$ 443,518
Region 5	109,903	5.1%	\$ 345,300	6,022	5.1%	\$ (68,332)	\$ 276,967	\$ 262,261
Region 6	50,854	2.4%	\$ 159,774	2,925	2.5%	\$ (33,190)	\$ 126,584	\$ 111,542
Region 7	29,891	1.4%	\$ 93,912	2,195	1.8%	\$ (24,907)	\$ 69,005	\$ 60,193
Region 8	82,632	3.8%	\$ 259,618	5,027	4.2%	\$ (57,042)	\$ 202,576	\$ 157,874
Region 9	54,379	2.5%	\$ 170,850	2,710	2.3%	\$ (30,751)	\$ 140,099	\$ 142,190
Region 10	68,050	3.2%	\$ 213,804	3,692	3.1%	\$ (41,894)	\$ 171,910	\$ 153,472
Region 11	93,372	4.3%	\$ 293,362	3,259	2.7%	\$ (36,980)	\$ 256,382	\$ 274,472
Region 12	48,115	2.2%	\$ 151,170	1,980	1.7%	\$ (22,467)	\$ 128,703	\$ 105,881
Region 13	8,085	0.4%	\$ 25,403	557	0.5%	\$ (6,320)	\$ 19,083	\$ 13,261
							\$ 2,452,498	\$ 2,266,622
<b>Total</b>	<b>2,148,413</b>	<b>100%</b>		<b>118,973</b>	<b>100%</b>		<b>\$ 5,400,000</b>	<b>\$ 5,400,000</b>



Texas Department of Housing and Community Affairs

SAMPLE 2015 HOME Allocation Formula Compounded Need, Table 1 - Raw Data (Multifamily Activities)

Region (MSA Counties with urban places)	People at 200% Poverty without PJs	HH at 200% Poverty without PJs	Cost Burden, Renters without PJs	Overcrowded Renters without PJs	Unoccupied Units, For Rent without PJs
1	31,348	11,196	3,369	407	613
2	18,251	6,518	1,248	147	573
3	438,338	156,549	65,627	8,543	12,569
4	101,540	36,264	10,319	1,805	1,742
5	62,109	22,182	6,176	785	1,659
6	113,684	40,601	14,374	2,327	2,927
7	243,019	86,793	43,074	4,794	6,027
8	128,872	46,026	17,031	1,893	7,914
9	85,119	30,400	10,975	1,843	2,010
10	81,303	29,037	10,292	2,274	3,077
11	115,156	41,127	5,528	2,485	1,878
12	62,104	22,180	7,528	682	1,633
13	90,908	32,467	4,156	1,435	391

Region (non-MSA Counties and counties with only rural places)	People at 200% Poverty without PJs	HH at 200% Poverty without PJs	Cost Burden, Renters without PJs	Overcrowded Renters without PJs	Unoccupied Units, Rental without PJs
1	130,702	46,679	9,497	2,489	2,451
2	103,793	37,069	9,286	1,319	2,263
3	92,672	33,097	11,472	1,702	1,767
4	256,545	91,623	22,885	3,153	4,699
5	163,106	58,252	15,439	2,132	3,343
6	67,532	24,119	9,192	705	2,030
7	39,675	14,170	3,967	652	1,114
8	110,413	39,433	9,154	1,289	2,675
9	74,073	26,455	7,056	1,567	1,204
10	100,168	35,774	8,123	2,048	2,258
11	157,736	56,334	8,634	2,875	2,167
12	66,500	23,750	4,627	1,167	862
13	11,008	3,931	804	232	237
Total	2,945,674	1,052,026	319,833	50,750	70,083

Texas Department of Housing and Community Affairs  
SAMPLE 2015 HOME Allocation Formula Compounded Need, Table 1 - Multifamily Activities

Estimated RAF

\$ 9,500,000.00

MSA Counties with urban places	Total of 200% poverty, rent burden, and overcrowding	Proportion of Total Need Variables	150% Weight	Regional Unoccupied Units	Proportion of Total Unoccupied Units	-50.00%	Sub-region amount	Draft amount (before public comment)
Region 1	14,972	1.1%	\$ 149,969	613	0.9%	\$ (41,547)	\$ 108,422	\$ 108,310
Region 2	7,913	0.6%	\$ 79,265	573	0.8%	\$ (38,836)	\$ 40,429	\$ 31,706
Region 3	230,719	16.2%	\$ 2,311,070	12,569	17.9%	\$ (851,886)	\$ 1,459,184	\$ 1,773,401
Region 4	48,388	3.4%	\$ 484,696	1,742	2.5%	\$ (118,067)	\$ 366,629	\$ 340,973
Region 5	29,143	2.0%	\$ 291,918	1,659	2.4%	\$ (112,442)	\$ 179,476	\$ 178,458
Region 6	57,302	4.0%	\$ 573,987	2,927	4.2%	\$ (198,383)	\$ 375,605	\$ 410,444
Region 7	134,661	9.5%	\$ 1,348,868	6,027	8.6%	\$ (408,491)	\$ 940,377	\$ 1,070,367
Region 8	64,950	4.6%	\$ 650,589	7,914	11.3%	\$ (536,385)	\$ 114,203	\$ 184,453
Region 9	43,218	3.0%	\$ 432,903	2,010	2.9%	\$ (136,231)	\$ 296,671	\$ 327,893
Region 10	41,603	2.9%	\$ 416,727	3,077	4.4%	\$ (208,549)	\$ 208,178	\$ 206,708
Region 11	49,140	3.5%	\$ 492,227	1,878	2.7%	\$ (127,285)	\$ 364,942	\$ 341,561
Region 12	30,390	2.1%	\$ 304,411	1,633	2.3%	\$ (110,679)	\$ 193,731	\$ 207,510
Region 13	38,058	2.7%	\$ 381,221	391	0.6%	\$ (26,501)	\$ 354,720	\$ 330,639
<b>Subtotal</b>							\$ 5,002,567	\$ 5,512,424
<b>Non-MSA Counties and counties with only rural places</b>								
Region 1	58,665	4.1%	\$ 587,639	2,451	3.5%	\$ (166,121)	\$ 421,518	\$ 385,441
Region 2	47,674	3.4%	\$ 477,540	2,263	3.2%	\$ (153,379)	\$ 324,162	\$ 272,363
Region 3	46,271	3.3%	\$ 463,489	1,767	2.5%	\$ (119,762)	\$ 343,727	\$ 295,642
Region 4	117,661	8.3%	\$ 1,178,589	4,699	6.7%	\$ (318,483)	\$ 860,106	\$ 780,263
Region 5	75,823	5.3%	\$ 759,506	3,343	4.8%	\$ (226,578)	\$ 532,928	\$ 461,386
Region 6	34,016	2.4%	\$ 340,727	2,030	2.9%	\$ (137,587)	\$ 203,140	\$ 196,232
Region 7	18,789	1.3%	\$ 188,202	1,114	1.6%	\$ (75,503)	\$ 112,699	\$ 105,894
Region 8	49,876	3.5%	\$ 499,600	2,675	3.8%	\$ (181,303)	\$ 318,297	\$ 277,741
Region 9	35,078	2.5%	\$ 351,366	1,204	1.7%	\$ (81,603)	\$ 269,763	\$ 250,149
Region 10	45,945	3.2%	\$ 460,225	2,258	3.2%	\$ (153,040)	\$ 307,185	\$ 269,997
Region 11	67,843	4.8%	\$ 679,573	2,167	3.1%	\$ (146,872)	\$ 532,701	\$ 482,867
Region 12	29,544	2.1%	\$ 295,936	862	1.2%	\$ (58,424)	\$ 237,513	\$ 186,271
Region 13	4,967	0.3%	\$ 49,758	237	0.3%	\$ (16,063)	\$ 33,695	\$ 23,330
<b>Subtotal</b>							\$ 4,497,433	\$ 3,987,576
<b>Total</b>	1,422,609	100%		70,083	100%		\$ 9,500,000	\$ 9,500,000

Texas Department of Housing and Community Affairs  
SAMPLE 2015 Housing Tax Credit Regional Allocation Formula Template, Table 1

Region (MSA Counties with urban places)	People at 200% Poverty	HH at 200% Poverty	Cost Burden, Renters	Overcrowded Renters	Vacancies, Rental
1	200,874	71,741	36,002	3,482	6,358
2	99,129	35,403	16,429	1,285	4,338
3	2,171,941	775,693	401,950	65,529	101,565
4	171,722	61,329	24,683	3,414	4,240
5	142,055	50,734	18,735	1,812	4,407
6	2,080,634	743,084	349,785	68,893	104,129
7	540,176	192,920	131,313	16,131	17,735
8	328,905	117,466	61,184	5,500	19,483
9	750,022	267,865	118,488	16,683	26,943
10	202,003	72,144	33,177	5,439	6,553
11	867,380	309,779	62,968	24,341	10,542
12	135,593	48,426	18,818	2,010	3,541
13	407,173	145,419	44,786	8,919	6,845

Region (Non-MSA Counties and counties with only rural places)	People at 200% Poverty	HH at 200% Poverty	Cost Burden, Renters	Overcrowded Renters	Vacancies, Rental
1	130,702	46,679	9,497	2,489	2,451
2	103,793	37,069	9,286	1,319	2,263
3	92,672	33,097	11,472	1,702	1,767
4	257,079	91,814	22,981	3,174	4,699
5	163,106	58,252	15,439	2,132	3,343
6	67,532	24,119	9,192	705	2,030
7	39,675	14,170	3,967	652	1,114
8	110,413	39,433	9,154	1,289	2,675
9	74,073	26,455	7,056	1,567	1,204
10	100,168	35,774	8,123	2,048	2,258
11	157,736	56,334	8,634	2,875	2,167
12	66,500	23,750	4,627	1,167	862
13	11,008	3,931	804	232	237
Total	9,472,064	3,382,880	1,438,550	244,789	343,749

Texas Department of Housing and Community Affairs  
SAMPLE 2015 Housing Tax Credit Regional Allocation Formula Compounded need, Table 2

Estimated RAF      \$      50,000,000

Region (MSA Counties with urban places)	Total of 200% poverty, rent burden, and overcrowding	Percentage of total need variables	150% Weight	Regional Vacancies	Percentage of Total Vacancies	-50.00%	Initial Sub-region amount
1	111,225	2.2%	\$ 1,646,564	6,358	1.8%	\$ (462,401)	\$ 1,184,163
2	53,117	1.0%	\$ 786,344	4,338	1.3%	\$ (315,492)	\$ 470,852
3	1,243,172	24.5%	\$ 18,403,846	101,565	29.5%	\$ (7,386,567)	\$ 11,017,279
4	89,426	1.8%	\$ 1,323,861	4,240	1.2%	\$ (308,365)	\$ 1,015,497
5	71,281	1.4%	\$ 1,055,239	4,407	1.3%	\$ (320,510)	\$ 734,729
6	1,161,762	22.9%	\$ 17,198,648	104,129	30.3%	\$ (7,573,040)	\$ 9,625,608
7	340,364	6.7%	\$ 5,038,728	17,735	5.2%	\$ (1,289,822)	\$ 3,748,906
8	184,150	3.6%	\$ 2,726,147	19,483	5.7%	\$ (1,416,950)	\$ 1,309,197
9	403,036	8.0%	\$ 5,966,521	26,943	7.8%	\$ (1,959,497)	\$ 4,007,024
10	110,760	2.2%	\$ 1,639,683	6,553	1.9%	\$ (476,583)	\$ 1,163,100
11	397,088	7.8%	\$ 5,878,460	10,542	3.1%	\$ (766,693)	\$ 5,111,767
12	69,254	1.4%	\$ 1,025,233	3,541	1.0%	\$ (257,528)	\$ 767,705
13	199,124	3.9%	\$ 2,947,819	6,845	2.0%	\$ (497,820)	\$ 2,449,999

Region (Non-MSA Counties and counties with only rural places)	Total of 200% poverty, rent burden, and overcrowding	Percentage of total need variables	150% Weight	Regional Vacancies	Percentage of Total Vacancies	-50.00%	Sub-region amount
1	58,665	1.2%	\$ 868,477	2,451	0.7%	\$ (178,255)	\$ 690,222
2	47,674	0.9%	\$ 705,762	2,263	0.7%	\$ (164,582)	\$ 541,180
3	46,271	0.9%	\$ 684,995	1,767	0.5%	\$ (128,509)	\$ 556,486
4	117,969	2.3%	\$ 1,746,405	4,699	1.4%	\$ (341,746)	\$ 1,404,658
5	75,823	1.5%	\$ 1,122,481	3,343	1.0%	\$ (243,128)	\$ 879,353
6	34,016	0.7%	\$ 503,564	2,030	0.6%	\$ (147,637)	\$ 355,928
7	18,789	0.4%	\$ 278,146	1,114	0.3%	\$ (81,018)	\$ 197,128
8	49,876	1.0%	\$ 738,364	2,675	0.8%	\$ (194,546)	\$ 543,818
9	35,078	0.7%	\$ 519,287	1,204	0.4%	\$ (87,564)	\$ 431,723
10	45,945	0.9%	\$ 680,171	2,258	0.7%	\$ (164,219)	\$ 515,953
11	67,843	1.3%	\$ 1,004,348	2,167	0.6%	\$ (157,600)	\$ 846,747
12	29,544	0.6%	\$ 437,368	862	0.3%	\$ (62,691)	\$ 374,676
13	4,967	0.1%	\$ 73,538	237	0.1%	\$ (17,236)	\$ 56,301
Total	5,066,219	100%		343,749	100%		\$ 50,000,000

Texas Department of Housing and Community Affairs  
SAMPLE 2015 Housing Tax Credit Regional Allocation Formula Compounded need, Table 3

Region (MSA Counties with urban places)	Sample Initial Sub-region amount	Amount needed to reach \$500,000	Amount over \$500,000 that can be reallocated	Proportion of amount available to be reallocated	Amount to be reallocated	Final Sub-Amount for Compounded Need	Part of total award
1	\$ 1,184,163	\$ -	\$ 684,163	2%	\$ (19,986.17)	\$ 1,164,176	2.33%
2	\$ 470,852	\$ 29,148	\$ -	0%	\$ 29,147.80	\$ 500,000	1.00%
3	\$ 11,017,279	\$ -	\$ 10,517,279	28%	\$ (307,237.17)	\$ 10,710,042	21.42%
4	\$ 1,015,497	\$ -	\$ 515,497	1%	\$ (15,059.01)	\$ 1,000,438	2.00%
5	\$ 734,729	\$ -	\$ 234,729	1%	\$ (6,857.03)	\$ 727,872	1.46%
6	\$ 9,625,608	\$ -	\$ 9,125,608	24%	\$ (266,582.81)	\$ 9,359,025	18.72%
7	\$ 3,748,906	\$ -	\$ 3,248,906	9%	\$ (94,909.02)	\$ 3,653,997	7.31%
8	\$ 1,309,197	\$ -	\$ 809,197	2%	\$ (23,638.75)	\$ 1,285,558	2.57%
9	\$ 4,007,024	\$ -	\$ 3,507,024	9%	\$ (102,449.32)	\$ 3,904,575	7.81%
10	\$ 1,163,100	\$ -	\$ 663,100	2%	\$ (19,370.88)	\$ 1,143,729	2.29%
11	\$ 5,111,767	\$ -	\$ 4,611,767	12%	\$ (134,721.75)	\$ 4,977,046	9.95%
12	\$ 767,705	\$ -	\$ 267,705	1%	\$ (7,820.36)	\$ 759,885	1.52%
13	\$ 2,449,999	\$ -	\$ 1,949,999	5%	\$ (56,964.56)	\$ 2,393,034	4.79%
MSA total	\$ 42,605,826					\$ 41,579,377	83.16%

Region (Non-MSA Counties and counties with only rural places)	Initial Sub-region amount	Amount needed to reach \$500,000	Amount over \$500,000 that can be reallocated	Proportion of amount available to be reallocated	Amount to be reallocated	Final Sub-Amount for Compounded Need	Part of total award
1	\$ 690,222	\$ -	\$ 190,222	0%	\$ (5,556.89)	\$ 684,665	1.37%
2	\$ 541,180	\$ -	\$ 41,180	0%	\$ (1,202.97)	\$ 539,977	1.08%
3	\$ 556,486	\$ -	\$ 56,486	0%	\$ (1,650.10)	\$ 554,836	1.11%
4	\$ 1,404,658	\$ -	\$ 904,658	2%	\$ (26,427.43)	\$ 1,378,231	2.76%
5	\$ 879,353	\$ -	\$ 379,353	1%	\$ (11,081.90)	\$ 868,271	1.74%
6	\$ 355,928	\$ 144,072	\$ -	0%	\$ 144,072.33	\$ 500,000	1.00%
7	\$ 197,128	\$ 302,872	\$ -	0%	\$ 302,872.48	\$ 500,000	1.00%
8	\$ 543,818	\$ -	\$ 43,818	0%	\$ (1,280.05)	\$ 542,538	1.09%
9	\$ 431,723	\$ 68,277	\$ -	0%	\$ 68,276.59	\$ 500,000	1.00%
10	\$ 515,953	\$ -	\$ 15,953	0%	\$ (466.02)	\$ 515,487	1.03%
11	\$ 846,747	\$ -	\$ 346,747	1%	\$ (10,129.40)	\$ 836,618	1.67%
12	\$ 374,676	\$ 125,324	\$ -	0%	\$ 125,323.50	\$ 500,000	1.00%
13	\$ 56,301	\$ 443,699	\$ -	0%	\$ 443,698.90	\$ 500,000	1.00%
Non-MSA total	\$ 7,394,174				\$ -	\$ 8,420,623	16.84%
Total		\$ 1,113,392	\$ 38,113,392			\$ 50,000,000	

Texas Department of Housing and Community Affairs  
SAMPLE 2015 Housing Tax Credit Regional Allocation Formula Compounded need, Table 3

Minimum needed for each region	\$ 500,000
Amount available to be reallocated	\$ 38,113,392
Amount needed to bring underallocated regions to \$500,0000	\$ 1,113,392

Texas Department of Housing and Community Affairs

SAMPLE 2015 Housing Trust Fund Regional Allocation Formula Compounded Need, Table 1 - Raw Data

Region (MSA Counties with urban places)	People at 200% Poverty	HH at 200% Poverty	Cost Burden, Owners	Cost Burden, Renters	Overcrowded Owners	Overcrowded Renters	Unoccupied Units, For Sale	Unoccupied Units, For Rent
1	200,874	71,741	19,220	36,002	3,224	3,482	2,318	6,358
2	99,129	35,403	8,781	16,429	1,097	1,285	1,838	4,338
3	2,171,941	775,693	322,020	401,950	36,950	65,529	29,634	101,565
4	171,722	61,329	17,625	24,683	3,088	3,414	2,530	4,240
5	142,055	50,734	11,897	18,735	2,294	1,812	1,592	4,407
6	2,080,634	743,084	277,732	349,785	40,535	68,893	29,250	104,129
7	540,176	192,920	89,891	131,313	8,457	16,131	7,882	17,735
8	328,905	117,466	28,356	61,184	3,390	5,500	4,783	19,483
9	750,022	267,865	89,049	118,488	13,488	16,683	9,804	26,943
10	202,003	72,144	19,039	33,177	3,057	5,439	2,724	6,553
11	867,380	309,779	54,209	62,968	28,732	24,341	5,606	10,542
12	135,593	48,426	11,652	18,818	3,135	2,010	1,085	3,541
13	407,173	145,419	33,072	44,786	8,253	8,919	3,080	6,845

Region (non-MSA Counties and counties with only rural places)	People at 200% Poverty	HH at 200% Poverty	Cost Burden, Owners	Cost Burden, Renters	Overcrowded Owners	Overcrowded Renters	Unoccupied Units, For Sale	Unoccupied Units, For Rent
1	130,702	46,679	7,373	9,497	2,938	2,489	1,260	2,451
2	103,793	37,069	7,959	9,286	1,348	1,319	1,956	2,263
3	92,672	33,097	9,310	11,472	1,524	1,702	1,893	1,767
4	257,079	91,814	22,675	22,981	4,921	3,174	3,886	4,699
5	163,106	58,252	11,869	15,439	3,028	2,132	2,679	3,343
6	67,532	24,119	5,113	9,192	1,333	705	895	2,030
7	39,675	14,170	5,608	3,967	620	652	1,081	1,114
8	110,413	39,433	9,857	9,154	2,113	1,289	2,352	2,675
9	74,073	26,455	9,314	7,056	1,930	1,567	1,506	1,204
10	100,168	35,774	5,706	8,123	2,304	2,048	1,434	2,258
11	157,736	56,334	7,376	8,634	4,018	2,875	1,092	2,167
12	66,500	23,750	3,396	4,627	1,357	1,167	1,118	862
13	11,008	3,931	705	804	218	232	320	237
Total	9,472,064	3,382,880	1,088,804	1,438,550	183,352	244,789	123,598	343,749

Texas Department of Housing and Community Affairs  
SAMPLE 2015 Housing Trust Fund Regional Allocation Formula Compounded Need, Table 2 - Weights

Estimated RAF      \$      3,000,000.00

Region (MSA Counties with urban places)	Total of all Need Variables	Proportion of Total Need Variables	150% Weight	Regional Unoccupied Units	Proportion of Total Unoccupied Units	-50.00%	Sample Sub-region amount
1	133,669	2.1%	\$ 94,900	8,676	1.9%	\$ (27,847)	\$ 67,053
2	62,995	1.0%	\$ 44,724	6,176	1.3%	\$ (19,823)	\$ 24,902
3	1,602,142	25.3%	\$ 1,137,459	131,199	28.1%	\$ (421,097)	\$ 716,362
4	110,139	1.7%	\$ 78,195	6,770	1.4%	\$ (21,729)	\$ 56,466
5	85,472	1.3%	\$ 60,682	5,999	1.3%	\$ (19,254)	\$ 41,427
6	1,480,029	23.4%	\$ 1,050,763	133,379	28.5%	\$ (428,094)	\$ 622,669
7	438,712	6.9%	\$ 311,468	25,617	5.5%	\$ (82,220)	\$ 229,248
8	215,896	3.4%	\$ 153,278	24,266	5.2%	\$ (77,884)	\$ 75,394
9	505,573	8.0%	\$ 358,937	36,747	7.9%	\$ (117,943)	\$ 240,994
10	132,856	2.1%	\$ 94,323	9,277	2.0%	\$ (29,776)	\$ 64,547
11	480,029	7.6%	\$ 340,802	16,148	3.5%	\$ (51,829)	\$ 288,973
12	84,041	1.3%	\$ 59,666	4,626	1.0%	\$ (14,848)	\$ 44,818
13	240,449	3.8%	\$ 170,709	9,925	2.1%	\$ (31,855)	\$ 138,854

Region (non-MSA Counties and counties with only rural places)	Total of all Need Variables	Percentage of total need variables	150% Weight	Regional Unoccupied Units	Proportion of Total Unoccupied Units	-50.00%	Sub-region amount
1	68,976	1.1%	\$ 48,970	3,711	0.8%	\$ (11,911)	\$ 37,060
2	56,981	0.9%	\$ 40,454	4,219	0.9%	\$ (13,541)	\$ 26,913
3	57,105	0.9%	\$ 40,542	3,660	0.8%	\$ (11,747)	\$ 28,795
4	145,565	2.3%	\$ 103,345	8,585	1.8%	\$ (27,554)	\$ 75,791
5	90,720	1.4%	\$ 64,408	6,022	1.3%	\$ (19,328)	\$ 45,080
6	40,462	0.6%	\$ 28,726	2,925	0.6%	\$ (9,388)	\$ 19,338
7	25,017	0.4%	\$ 17,761	2,195	0.5%	\$ (7,045)	\$ 10,716
8	61,846	1.0%	\$ 43,908	5,027	1.1%	\$ (16,135)	\$ 27,774
9	46,322	0.7%	\$ 32,887	2,710	0.6%	\$ (8,698)	\$ 24,189
10	53,955	0.9%	\$ 38,306	3,692	0.8%	\$ (11,850)	\$ 26,456
11	79,237	1.3%	\$ 56,255	3,259	0.7%	\$ (10,460)	\$ 45,795
12	34,297	0.5%	\$ 24,350	1,980	0.4%	\$ (6,355)	\$ 17,995
13	5,890	0.1%	\$ 4,182	557	0.1%	\$ (1,788)	\$ 2,394
Total	6,338,375	100%		467,347	100%		\$ 3,000,000



10

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**NOVEMBER 13, 2014**

Presentation, Discussion, and Possible Action on Inducement Resolution No. 15-005 for Multifamily Housing Revenue Bonds and an Authorization for Filing Applications for 2014 Private Activity Bond Authority for Artist Lofts at Fort Worth Town Square

**RECOMMENDED ACTION**

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

**WHEREAS**, the inducement allows staff to submit an application to the Texas Bond Review Board (“BRB”) to await a 2014 Traditional Carryforward Designation Certification;

**NOW, therefore, it is hereby**

**RESOLVED**, that Inducement Resolution 15-005 to proceed with the application submission to the BRB for possible receipt of State Volume Cap issuance authority from the 2014 Private Activity Bond Program for Artist Lofts at Fort Worth Town Square (#14607) is hereby approved in the form presented to this meeting.

**BACKGROUND**

The BRB administers the state’s annual private activity bond authority for the State of Texas. The Department is an issuer of Private Activity Bonds and is required to induce an application for bonds prior to the submission to the BRB. Approval of the inducement resolution does not constitute approval of the Development but merely allows the Applicant the opportunity to move into the full application phase of the process.

Upon Board approval, the Department will submit an application to the Governor’s Office for approval to submit an application for a Traditional Carryforward Designation to finance the Artist Lofts at Fort Worth Town Square. Traditional Carryforward is the amount of state ceiling that is not reserved before December 15<sup>th</sup> or was reserved prior to December 15<sup>th</sup> and returned to the BRB due to cancellation prior to December 31<sup>st</sup>. A Traditional Carryforward Designation allows the applicant 36-months, rather than the Non-Traditional Carryforward’s statutory 150-days, to close on the Private Activity Bonds. This type of allocation allows applications with unique financing structures, such as this one, to utilize the Private Activity Bond Program. When various financing sources are being used it can be advantageous to have additional time to close on the bonds. Artist Lofts at Fort Worth Town Square is an example of such financing, in addition to the Private Activity Bonds and Housing Tax Credits, they propose to use both federal and state historic tax credits as well as Tax Increment Financing (“TIF”) funds from Reinvestment Zone 8 of the City of Fort Worth.

During the 36-month process, the Department will review the complete application for compliance with the Department's Rules and underwrite the transaction in accordance with the Real Estate Analysis Rules. The Department will schedule and conduct a public hearing and the complete application including a transcript from the hearing will then be presented before the Board for a decision on the issuance of the bonds as well as the determination of housing tax credits.

Each year, the State of Texas is notified of the cap on the amount of private activity tax exempt revenue bonds that may be issued within the state. Approximately \$581 million is set aside for multifamily until August 15<sup>th</sup> for the 2014 program year which includes the TDHCA set aside of approximately \$116 million. Inducement Resolution 15-005 reserves approximately \$50 million in private activity bonds. In addition to the previously stated reasons for pursuing a Traditional Carryforward designation, it also allows an Issuer to exceed the \$20 million cap that applies to Non-Traditional Carryforward reservations.

**Artist Lofts at Fort Worth Town Square (#14607)**

*General Information:* The proposed development is to be located at 401 West Lancaster Avenue in Fort Worth, Tarrant County. The application proposes the adaptive reuse and historic preservation of the Texas and Pacific Warehouse which was constructed between 1929 and 1931; and later placed on the National Register of Historic Places in 1978. The development will include 500 total units serving the general population. This transaction is proposed to be Priority 3 consisting of low income units that will be rent and income restricted at 60% of the Area Median Family Income (AMFI).

*Census Demographics:* Demographics for the census tract (1233.00) include an AMFI of \$97,018; the total population is 4,539; the minority population is 29.90%; the poverty rate is 20.97%; there are 298 owner occupied units and 1,504 renter units. (Census information from FFIEC Geocoding 2014).

*Public Comment:* The Department received letters of opposition from Downtown Fort Worth, Inc. and the Fort Worth Downtown Neighborhood Alliance. No letters of support have been received.

**RESOLUTION NO. 15-005**

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

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

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

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

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

WHEREAS, the Owners have indicated their willingness to enter into contractual arrangements with the Department providing assurance satisfactory to the Department that the requirements of the Act and the Department will be satisfied and that the Developments will satisfy State law, Section 142(d) and other applicable Sections of the Code and Treasury Regulations; and

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

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

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

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

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

## ARTICLE 1

### OFFICIAL INTENT; APPROVAL OF CERTAIN ACTIONS

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

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

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

costs that have been or will be paid subsequent to the date that is 60 days prior to the date hereof in connection with the acquisition and construction or rehabilitation of the Developments; (b) to fund any reserves that may be required for the benefit of the holders of the Bonds; and (c) to pay certain costs incurred in connection with the issuance of the Bonds.

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

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

Section 1.6. The Developments. Substantially all of the proceeds of the Bonds shall be used to finance the Developments, which are to be occupied entirely by Eligible Tenants, as determined by the Department, and which are to be occupied partially by persons and families of low income such that the requirements of Section 142(d) of the Code are met for the period required by the Code.

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

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

Section 1.9. No Commitment to Issue Bonds. Neither the Owners nor any other party is entitled to rely on this Resolution as a commitment to issue the Bonds and to loan funds, and the Department reserves the right not to issue the Bonds either with or without cause and with or without

notice, and in such event the Department shall not be subject to any liability or damages of any nature. Neither the Owners nor any one claiming by, through or under the Owners shall have any claim against the Department whatsoever as a result of any decision by the Department not to issue the Bonds.

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

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

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

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

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

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

## ARTICLE 2

### CERTAIN FINDINGS AND DETERMINATIONS

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

- (a) the Developments are necessary to provide decent, safe and sanitary housing at rentals that individuals or families of low and very low income and families of moderate income can afford;
- (b) the Owners will supply, in their Development, well-planned and well-designed housing for individuals or families of low and very low income and families of moderate income;
- (c) the Owners are financially responsible;
- (d) the financing of the Developments is a public purpose and will provide a public benefit;  
and
- (e) the Developments will be undertaken within the authority granted by the Act to the Department and the Owners.

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

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

## ARTICLE 3

### GENERAL PROVISIONS

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

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

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

*[Execution page follows]*



PASSED AND APPROVED this 13<sup>th</sup> day of November, 2014.

[SEAL]

By: \_\_\_\_\_  
Chair, Governing Board

ATTEST:

\_\_\_\_\_  
Secretary to the Governing Board

*Signature Page to Inducement Resolution*

**EXHIBIT “A”**

Description of the Owner and the Development

Project Name	Owner	Principals	Amount Not to Exceed
The Artist Lofts at Fort Worth Town Square	Artist Lofts at FWTS, Ltd., a Texas limited partnership	General Partner: The Fort Worth Merchant, LLC, a Texas limited liability company	\$50,000,000
Costs: Acquisition/reconstruction/historic adaptive reuse of the Texas & Pacific Warehouse into a 500-unit affordable, multifamily housing development to be known as The Artist Lofts at Fort Worth Town Square, to be located at 401 W. Lancaster Avenue, Fort Worth, TX 76102			



## Downtown Fort Worth, Inc.

Ms. Teresa Morales  
Multifamily Bond Administrator  
RE: PROJECT 14607

November 4, 2014

Dear Ms. Morales:

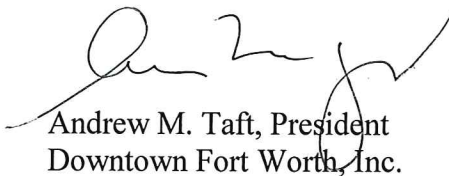
Downtown Fort Worth, Inc. has not taken a formal position on the preapplication for project number 14607. Based on the first letter from your office, we understood that there was going to be a public hearing on the project during which we would learn more. There has been no hearing. Since your deadline for public comment on the preapplication is today, I am writing this letter to express my position.

DFWI is a partner in affordable housing projects in downtown. We are financial participants in the 172 unit, mixed income Hillside development and have assisted the Housing Authority most recently with Hunter Plaza, another mixed income project. We have participated in the QAP process trying to level the playing field for scoring urban projects with the hope that we could attract more affordable housing to downtown. We are an advocate for affordable housing. But we believe that the provision of affordable housing in mixed income settings is important to the success of a project and it's stability within a neighborhood. Downtown is a neighborhood.

We believe this so firmly that we have worked with the City and Housing Authority to adopt this provision in Vision 2023, the Downtown Fort Worth Strategic Action Plan, a component of the City's Comprehensive Master Plan. Project 14607 is proposed to be a 500 unit, 100% affordable project. This is a huge concentration of affordable units with no market rate component. I have received calls from people who are not supportive of this proposal. Based on the feedback I have received, I believe this application will be met with significant opposition.

The lack of mixed income units in this project proposal does not comply with the Downtown Plan. By requiring a mixed income setting, the standards of management, operations and leasing will ensure that this project is a long term success and a good neighbor.

Sincerely,



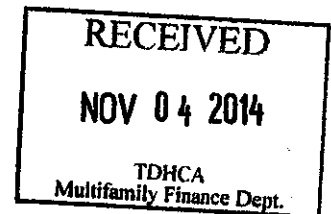
Andrew M. Taft, President  
Downtown Fort Worth, Inc.



November 4, 2014

Via Facsimile to 512-475-0764

Texas Department of Housing and Community Affairs  
Multifamily Finance Division  
P.O. Box 13941  
Austin TX 78711-3491



RE: Development Number: 14607  
Development Name: Artist Lofts at Fort Worth Town Square

Dear Bond Administrator and Staff:

These comments are delivered on behalf of the Board of Directors of the Fort Worth Downtown Neighborhood Alliance (the "DNA"), which is a neighborhood organization, concerning the above referenced development (the "Development") which is within the boundaries of the DNA in downtown Fort Worth.

The DNA is supportive of affordable housing development in downtown Fort Worth, which is consistent with the strategic plan for downtown; however, at this time, the DNA is opposed to this Development as proposed.

Thank you for the opportunity to offer our comments on this Development and thank you for your work on affordable housing here and throughout the state.

Sincerely,



Dale W. Brock  
Board President

1p

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**NOVEMBER 13, 2014**

Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with another Issuer

**RECOMMENDED ACTION**

**WHEREAS**, Parmer Place Apartments was originally awarded an allocation of Housing Tax Credits at the Board Meeting of April 10, 2014;

**WHEREAS**, due to changes in the financial structure the Applicant was unable to close on the bonds by the August 8, 2014, deadline and a new application was submitted on August 22, 2014;

**WHEREAS**, both a Certification of Reservation and a Carryforward Designation Certificate were issued by the Texas Bond Review Board (“BRB”) and will expire on March 26, 2015, and December 31, 2016, respectively;

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

**WHEREAS**, no compliance history or previous participation issues in accordance with 10 TAC §1.5 were identified by the Executive Award and Review Advisory Committee (“EARAC”);

**NOW, therefore, it is hereby**

**RESOLVED**, that the issuance of a Determination Notice of \$1,054,772 in 4% Housing Tax Credits, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department’s website for the Parmer Place Apartments is hereby approved in the form presented to this meeting.

**BACKGROUND**

*General Information:* The Parmer Place Apartments located in Austin, Travis County, involves the new construction of 252 units targeted to a general population and is currently zoned appropriately. The Carryforward Designation issued from the BRB does not have a prescribed restriction on the percentage of Area Median Family Income (“AMFI”) units that must be served and neither does the additional Certificate of Reservation which was issued under the Priority 3 designation. All of the units will be rent and income restricted at 60% of AMFI.

*Changes to the Application:* The current housing tax credit application includes a couple of changes from the previous application which include the use of a HUD 221(d)(4) loan rather than conventional financing as well as an increase in the reserved bond amount from the BRB.

*Organizational Structure:* The Borrower is Pedcor Investments 2012 CXXX, L.P., and the General Partner is SHFCTC-Parmer Place, LLC, which includes Strategic Housing Finance Corporation of Travis County and is comprised of the following individuals: Sarah Dale, Willie Anderson, Ofelia Elizondo Magdalena Blanco, Richard Moya, Melvin Wrenn and Wilmer Roberts. The General Partner is a subsidiary of the Strategic Housing Finance Corporation, thereby allowing the development to see a 100% property tax exemption.

*Previous Participation Review:* The EARAC met on November 3, 2014, and considered the previous participation review documentation relating to the organizational structure as noted above in accordance with the Previous Participation Reviews found in 10 TAC §1.5. After considering information provided in association with the Parmer Place Apartments application the EARAC recommended approval of the award.

*Census Demographics:* The development is located at 1500 East Parmer Lane in Austin. Demographics for the qualified census tract (0018.39) include an AMFI of \$71,442; the total population is 7,267; the minority population is 70.66%; the poverty rate is 5.27%; there are 1,264 owner-occupied units and 1,401 renter units. (Census information is from FFIEC Geocoding for 2014.)

*Public Comment:* The Department received letters of support from Travis County Commissioner Bruce Todd and State Senator Kirk Watson, and no letters of opposition have been received.

1q



**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**NOVEMBER 13, 2014**

Presentation, Discussion, and Possible Action to approve a Housing Tax Credit Application Amendment for Mariposa at Pecan Park in La Porte (#13144)

**RECOMMENDED ACTION**

**WHEREAS**, Mariposa at Pecan Park received an award of 9% Housing Tax Credits in 2013 to construct 180 multifamily units in La Porte;

**WHEREAS**, the Development Owner is requesting approval for an increase of the site acreage from 12.2544 acres to 12.989 as a result of the entry drives being purchased from the existing landowner rather than being located on an easement, which was anticipated at application,

**WHEREAS**, the increased acreage modifies the residential density by more than 5% requiring Board approval pursuant to Texas Government Code §2306.6712(d)(6); and

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

**NOW, therefore, it is hereby**

**RESOLVED**, that the amendment of the Housing Tax Credit application for Mariposa at Pecan Park is approved as presented to this meeting and the Executive Director and his designees are each authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

**BACKGROUND**

On July 1, 2014, as part of the Ten Percent Test submittal, the Development Owner requested an amendment to the previously approved Housing Tax Credit application for Mariposa at Pecan Park. The Development Owner requested approval for a 5.99% (0.7346 acres) increase in acreage of the original site due to the Owner purchasing the entry drives from the existing landowner rather than having the entry drives located on an easement, which was originally

anticipated. Ownership of the driveways will allow the Development Owner the ability to maintain the entry to the property.

This change does not affect the location or design of the residential buildings on the site and thus has no additional impact on the financial feasibility of the Development as underwritten. Furthermore, the street entrance was shown on the site plan at application; but ownership of this section was contemplated. In accordance with 10 TAC §10.405(a)(4)(G), this amendment request could be administratively approved by the Executive Director since the required increase in site acreage is less than 10%. However, the increase in acreage decreases the density by more than 5%, and, therefore, pursuant to Texas Government Code §2306.6712(d)(6) it is a material amendment which requires Board approval. The increased acreage results in a 5.65% decrease in density from 14.688 units per acre identified at underwriting to 13.858 units per acre after the purchase of the drive ways.

Staff recommends approval of the amendment request.

**T O :** LUCY TREVINO  
**F R O M :** STUART SHAW  
**R E G A R D I N G :** DEVELOPMENT CHANGES  
**D A T E :** JULY 1, 2014

---

Dear Ms. Trevino,

I am providing you the following information at the request of Mariposa Pecan Park LP. Mariposa Pecan Park LP had minor changes that do not rise to the level of neither material nor non-material amendment.

The Applicant experienced an increase in acreage because the entry drives were purchased from the existing landowner rather than through an easement. The final acreage for MPP is detailed in the attached title commitment and the increase was not more than 10%.

Additionally, the Applicant was able to secure construction and permanent financing from different sources than presented in the Application. The modification of lenders does not significantly affect the most recent underwriting analysis completed by the Department. The supporting documents required by the Post Carryover Activities Manual will be submitted as required. Please note that the City's construction period loan will remain unchanged.

The Applicant submitted a Notification of a Change of Ownership with the 10% test package that does not require an amendment.

Should the Department need additional information please contact Casey Bump in my office at 512-220-9902.

Sincerely,

  
Stuart Shaw  
Applicant's Representative







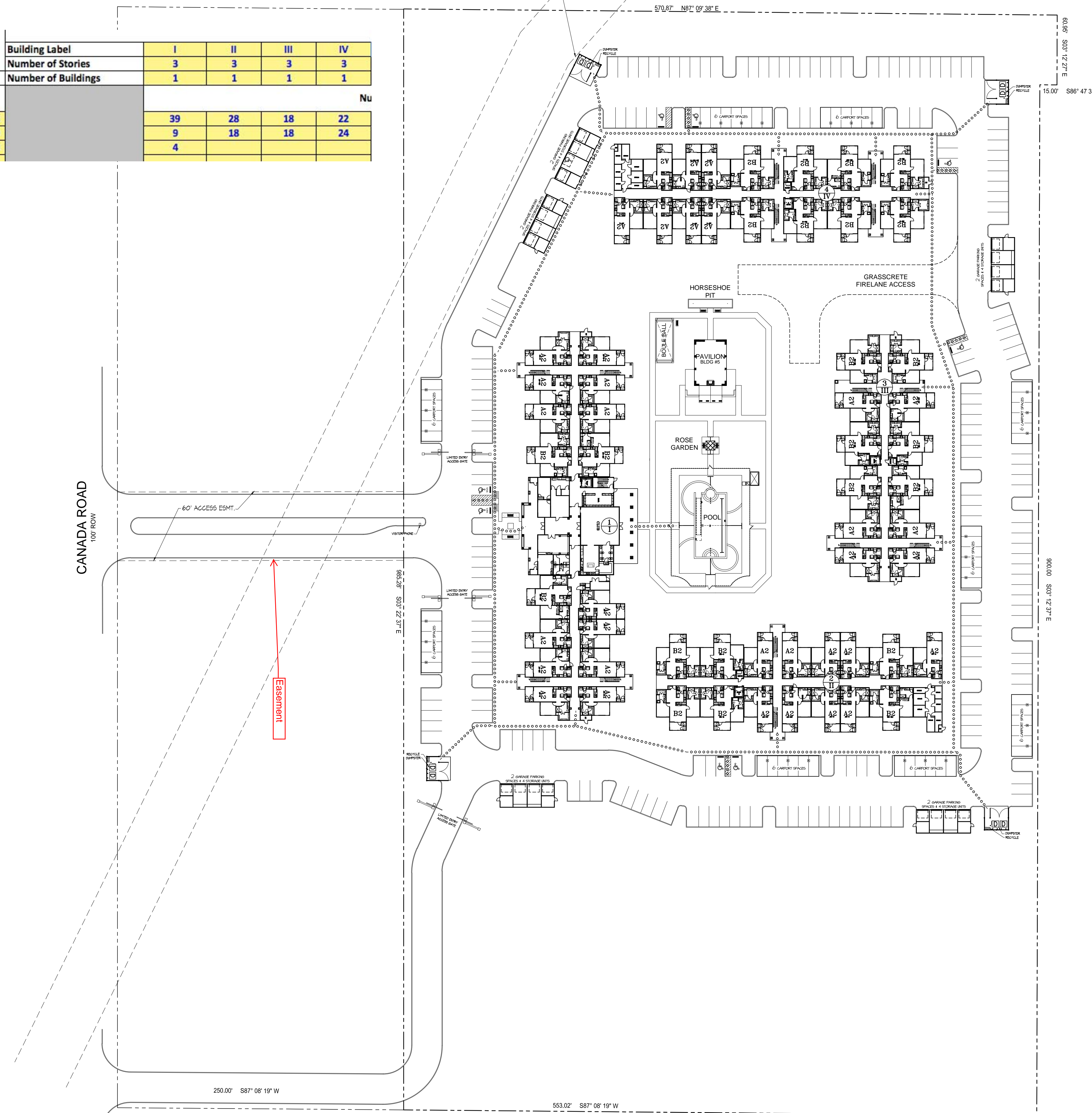
Site Plan from Application

EASEMENTS GRANTED TO HARBLE OIL & REFINING COMPANY BY INSTRUMENTS RECORDED IN VOLUME 178 PAGE 496 AND VOLUME 206 PAGE 16 AS AMENDED IN VOLUME 292 PAGE 416 AND VOLUME 870C PAGE 18 AND 102. ALL OF THE DEED RECORDS OF HARRIS COUNTY, TEXAS AND THESE INSTRUMENTS FILED FOR RECORD IN HARRIS COUNTY CLERK'S FILE NO. 1026. CHANGES AND REFILED UNDER L4810 AND ASSIGNED TO HARBLE PIPE LINE COMPANY BY INSTRUMENT FILED FOR RECORD UNDER HARRIS COUNTY CLERK'S FILE NO. 1066604.

Unit Type				Building Label			
Unit Label	# of Bedrooms	# of Baths	Sq. Ft. Per Unit	I	II	III	IV
A2	1	1	768	39	28	18	22
B2	2	2	1,090	9	18	18	24
B3	2	2	1,200	4			

Building Label	I	II	III	IV	Nu
Number of Stories	3	3	3	3	
Number of Buildings	1	1	1	1	



PARKING REQUIRED:	180 SPACES
PARKING PROVIDED:	
open	192 (7 HC Included in totals)
garages	10 (1 HC Included in totals)
carports	56 (1 HC Included in Totals)
total	258 (9 HC Included in totals)

# MARIPOSA AT PECAN PARK

LA PORT, TX - BONNER CARRINGTON

ARCHITECTURE • LAND PLANNING • LANDSCAPE DESIGN • CONSTRUCTION ADMINISTRATION •  
**KELLY GROSSMAN**  
 ARCHITECTS, L.L.C.

— ○ ○ ○ ○ ○ ○ ○ — ACCESSIBLE ROUTE

THIS SITE DOES NOT FALL WITHIN A FLOOD PLAIN

NORTH

0 25' 50' 100'

SCALE: 1:50

IF THIS BAR SCALE DOES NOT MEASURE 2", THEN THE DRAWING IS NOT TO SCALE.

**SITE PLAN**

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**NOVEMBER 13, 2014**

Presentation, Discussion, and Possible Action to approve a Housing Tax Credit Application Amendment for Catalon in Houston (#14017)

**RECOMMENDED ACTION**

**WHEREAS**, Catalon received an award of 9% Housing Tax Credits in 2014 to construct 142 multifamily units in Houston;

**WHEREAS**, the Development Owner is requesting approval of a significant modification of the site plan, which, pursuant to 10 TAC §10.405(a)(4)(A), represents a material alteration of the Development and, therefore, requires Board approval;

**WHEREAS**, the requested change to the site plan does not negatively affect the Development, nor does it have an adverse affect on the selection of the Application in the Application Round; and

**WHEREAS**, the Development Owner simultaneously submitted changes to the financing structure that could have a negative effect on the amount of allocated credit but a full review of these changes by underwriting staff has not yet been completed;

**NOW, therefore, it is hereby**

**RESOLVED**, that the site plan amendment of the Housing Tax Credit application for Catalon is approved as presented to this meeting and changes to the financing structure will be reviewed and may result in a revised lower credit amount as determined by the reevaluation of the underwriting. The Executive Director and his designees are each authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

**BACKGROUND**

On July 31, 2014, Catalon received an allocation of competitive housing tax credits and was issued a Commitment Notice on August 14, 2014, in the amount of \$1,500,000. The signed

Commitment Notice was returned to the Department on August 27, 2014. On September 15, 2014, the Applicant requested an amendment to the site plan in order to better accommodate on-site water detention as well as to provide better fire lane access to internal points of the Development.

Program staff has reviewed the site plan documentation provided and has determined that the proposed changes do not materially alter the Development in a negative manner, nor would they have adversely affected the selection of the Application in the Application Round (§10.405(a)(3)). Although the site plan changed, the development cost schedule only increased marginally (1.03%) and would not need to be re-underwritten for this reason alone. However, along with the new development cost schedule, the Applicant submitted revised sources and uses which included a significant increase in credit pricing and a corresponding decrease in conventional debt. The revised equity letter, dated August 25, 2014, increases the price per credit to \$1.02 (up from \$0.94). This is a significant change to the financing structure and needs to be re-underwritten by the Real Estate Analysis Division (“REA”).

Staff recommends approval of the site plan change conditioned upon a re-evaluation of the financing structure by REA and any associated reduction in credit



MGROUP

September 12, 2014

Jean Latasha  
Texas Department of Housing & Community Affairs  
PO Box 13941  
Austin, Texas 78711

RE: Amendment Request – TDHCA #14017 Catalon

via FTP and overnight

Dear Jean,

Attached herewith is our request to amend our site and building design for the Catalon due to site development conflicts that have been discovered once we proceeded with construction documents. Specifically, we need to modify our site layout to accommodate significant on-site detention that was not originally planned for at the scale required as well as modify the fire lanes to provide aerial apparatus access points to each building from internal access points and not from any public street. The impact of meeting these new requirements and still maintain the minimum on-site free parking ratios of TDHCA has required us to modify the number of buildings slightly as well as modify the unit mix to configure the new buildings. Unit types are the same as with the application with the exception that we added a new 2BR/2BA unit type called "B3" to the mix.

The amendment request does not affect any scoring item and does not change the set aside or unit bedroom or bathroom classification. There is also no change to the site control documents or any change to the site acreage. Unit NRA is virtually identical to the application with only a 9 SF reduction to the total NRA as modified thus this amendment request has no impact on the award or intent of the original architectural concept. Building materials and architecture remain the same.

Also attached are updated debt and equity commitment letters as well as all required application exhibits reflecting the various changes.

We appreciate staff's timely assistance with processing this request and would ask that we be included on the October board meeting if possible. We are scheduled to close on the equity and construction financing by December 1<sup>st</sup> so Board approval of the amendment is needed prior to closing. Attached is a check payable to TDHCA for the \$2,500 amendment fee.

Please let us know if we need to provide any further clarification or documentation.

Sincerely,

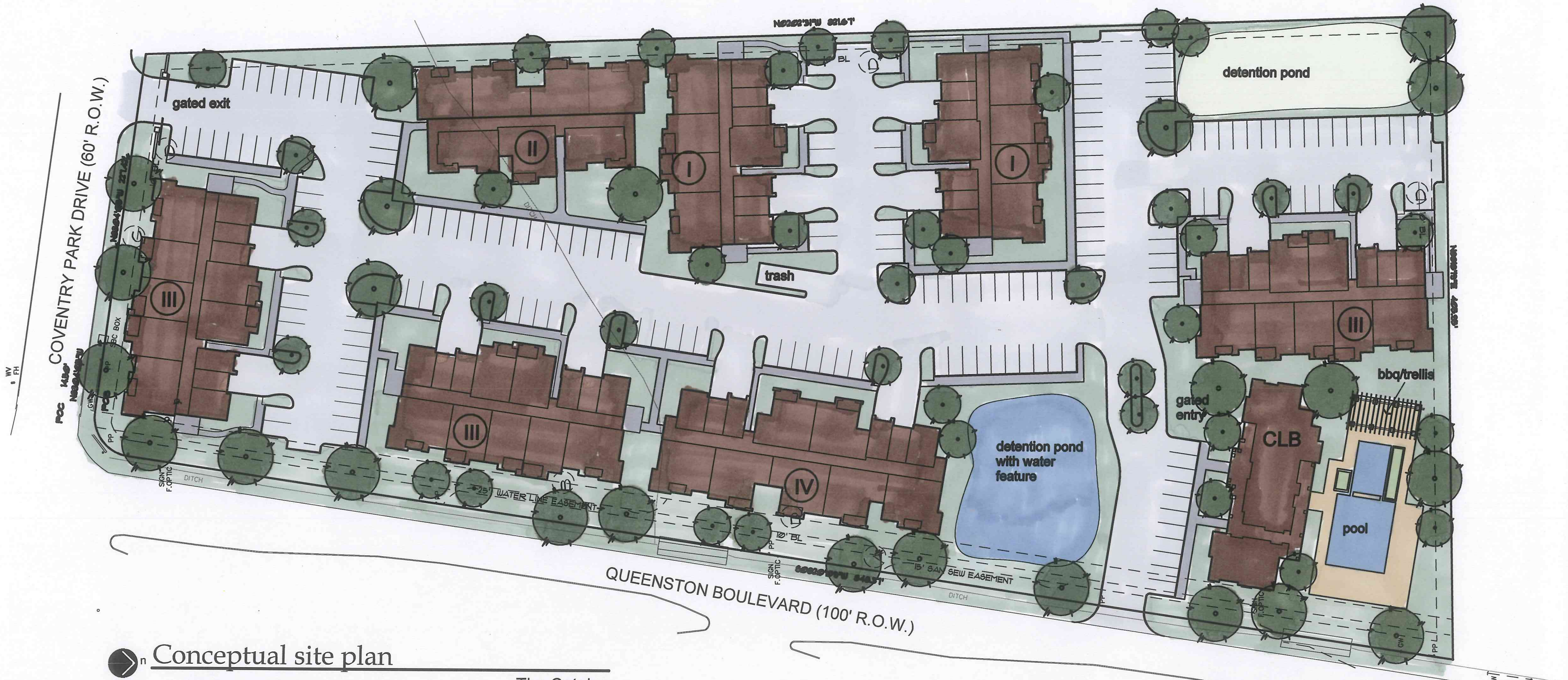
MGROUP HOLDINGS, INC

  
Mark Wusemeche

MM/oe







Conceptual site plan

1" = 60'

MGROUP + ARCHITECTS, INC.

The Catalon



1r

**BOARD ACTION REQUEST**  
**NEIGHBORHOOD STABILIZATION PROGRAM**  
**NOVEMBER 13, 2014**

Presentation, Discussion, and Possible Action to authorize the programming of NSP1 Program Income

**RECOMMENDED ACTION**

**WHEREAS**, on January 17, 2013, the Board approved the use of NSP1 Program Income to reimburse homebuyer and land bank expenses incurred after the NSP1 Expenditure deadline; and

**WHEREAS**, NSP Subgrantees have incurred expenses after the August 16, 2013, Expenditure deadline to close Single Family rental activities that were not approved for reimbursement in the previous action;

**NOW, therefore, it is hereby**

**RESOLVED**, the Board grants the Executive Director or his authorized designee authority to execute agreements to reimburse expenses for disposition of NSP1 Single Family Rental transactions to be funded from NSP program income as presented at this meeting.

**BACKGROUND**

The Neighborhood Stabilization Program (“NSP”) is a HUD-funded program authorized by HR3221, the “Housing and Economic Recovery Act of 2008” (“HERA”), as a supplemental allocation to the Community Development Block Grant (“CDBG”) Program through an amendment to the existing State of Texas 2008 CDBG Action Plan. The purpose of the program is to redevelop into affordable housing, or acquire and hold, abandoned and foreclosed properties in areas that are documented to have the greatest need for arresting declining property values as a result of excessive foreclosures.

The NSP Closeout Notice published by HUD on November 27, 2012, along with subsequent guidance has clarified the ability to continue certain activities after the August 16, 2013 extended Expenditure Deadline. HUD stated in the Notice that occupancy of all properties is not a requirement for expenditure, and that disposition is an activity they expect to continue until properties reach their final eligible use.

For the Texas NSP1, funds available for the purchase, rehabilitation or new construction of single-family homes were expended by the deadline, but all properties were not occupied. A continued source of funds is necessary to pay third-party costs required at final disposition. These costs will generally be tied to Title and Escrow fees, insurance, appraisals and inspections, but may extend to repairs required

to meet Housing Quality Standards or TREC Inspection requirements. Activity Delivery charges, in the form of staff time required to close transactions may also be budgeted.

It is proposed that funds required to close the single family rental transactions, along with reimbursement of carrying costs and potentially other costs be budgeted from available NSP1 Program Income, and made available to Subgrantees through a Reservation System Participation Agreement. The amount budgeted will be based on records of expenses submitted to NSP by the Subgrantee, the percentages established in earlier NOFAs and Contract would no longer apply.

# REPORT ITEMS

R1

## TDHCA Outreach Activities, September-October 2014

*A compilation of activities designed to increase the awareness of TDHCA programs and services or increase the visibility of the Department among key stakeholder groups and the general public*

<b>Event</b>	<b>Location</b>	<b>Date</b>	<b>Division</b>	<b>Purpose</b>
First Thursday Income Eligibility Training	Austin	Sept 4	Compliance	Training
Public Hearing/Draft 2015 Regional Allocation Formula Methodology	Austin	Sept 9	HOME, Housing Trust Fund, Multifamily Finance	Public Hearing
TAA-TDHCA First Thursday Income Eligibility Training	Houston	Sept 9	Compliance	Training
TAA-TDHCA Housing Tax Credit Training	Houston	Sept 10	Compliance	Training
Community Resource Coordination Groups State Workgroup Meeting	Austin	Sept 11	Housing Resource Center	Participant
Compliance Workgroup Discussion	Fort Worth	Sept 15	Compliance	Roundtable Discussion
TAA-TDHCA Housing Tax Credit Training	Lubbock	Sept 16	Compliance	Training
“Faces of Affordable Housing” Discussion on Aging & Independent Living	Dallas	Sept 24	Housing Resource Center	Roundtable Discussion
HOME HRA Technical Assistance/ Ebenz, Inc	Austin	Sept 25	HOME	Training & Outreach
Roundtable: Draft Section 811 PRA, 2015 QAP, 2015 Uniform Multifamily Rules	Austin	Sept 30	Multifamily Finance, Neighborhood Stabilization, Program Planning, Policy & Metrics	Roundtable Hearing
Public Hearing/Draft 2015-2019 State of Texas Consolidated Plan	San Antonio	Sept 30	Housing Resource Center	Public Hearing
2014 Texas Municipal League Conference	Houston	Sept 30 - Oct 3	External Affairs, Policy & Public Affairs	Exhibitor
Interagency Council for the Homeless Meeting	San Antonio	Oct 1	Housing Resource Center	Participant
Public Hearing/Draft 2015-2019 State of Texas Consolidated Plan	Harlingen	Oct 2	Housing Resource Center	Public Hearing
First Thursday Income Eligibility Training	Austin	Oct 2	Compliance	Training
Public Hearing/Draft 2015-2019 State of Texas Consolidated Plan	Austin	Oct 6	Housing Resource Center	Public Hearing
Intellectual and Developmental Disability System Redesign Advisory Committee/Housing Subcommittee	Austin	Oct 7	Housing Resource Center	Participant
Housing and Health Services Coordination Council	Austin	Oct 8	Housing Resource Center	Participant
Public Hearing/Draft 2015-2019 State of Texas Consolidated Plan	Fort Worth	Oct 8	Housing Resource Center	Public Hearing
Texas State Independent Living Council/Quarterly Meeting and Conference	San Antonio	Oct 9	Housing Resource Center	Participant
Interagency Coordination Group/Quarterly Meeting	Austin	Oct 9	Housing Resource Center	Participant
Grand Opening/Harmon Villas	Fort Worth	Oct 10	Multifamily Finance	Remarks, Participant
Online Forum/Section 811 PRA	Austin	Oct 13	Program Planning, Policy & Metrics	Administrator



<b>Event</b>	<b>Location</b>	<b>Date</b>	<b>Division</b>	<b>Purpose</b>
Texas Alliance of Information and Referral Services Conference	Austin	Oct 13-16	Housing Resource Center	Exhibitor
2014 American Planning Association-Texas Chapter Conference	Frisco	Oct 15-17	Multifamily Finance, Policy & Public Affairs	Panelist, Exhibitor
Council for the Prevention and Treatment of Mental Health and Substance Use Disorders	Austin	Oct 17	Housing Resource Center	Participant
Aging and Disability Resource Center Training	Austin	Oct 20	Housing Resource Center	Presentation
HOME TBRA Implementation Training/ Rolling Plains Mgt Corp.	Austin	Oct 21	HOME	Training
Amy Young Barrier Removal Program Administrators Training	Austin	Oct 22-23	Housing Trust Fund	Training
National Community Development Association (Region VI) Conference	McAllen	Oct 23	Multifamily Finance	Presentation
City of Fredericksburg/Affordable Housing Discussion	Fredericksburg	Oct 23	Executive	Briefing
Grand Re-Opening/Forest Park	Austin	Oct 27	Asset Management	Remarks, Participant
TAA-TDHCA Housing Tax Credit Training	Austin	Oct 28	Compliance	Training
TAA-TDHCA Housing Tax Credit Training	El Paso	Oct 30	Compliance	Training

## **Internet Postings of Note, September-October 2014**

*A list of new or noteworthy documents posted to the Department's web site*

**2015 Community Services Block Grant Program Allocations, Budget Forms, Public Hearing Forms and Board Certification** — relating to numerous documents required for the administration of 2015 CSBG Program contracts:

[www.tdhca.state.tx.us/community-affairs/csbg/guidance.htm](http://www.tdhca.state.tx.us/community-affairs/csbg/guidance.htm)

**2015 Draft Compliance Monitoring Rules** — detailing draft language relating to Compliance monitoring section of the Department's Uniform Multifamily Rules:

[www.tdhca.state.tx.us/pmcomp/manuals-rules-htc.htm](http://www.tdhca.state.tx.us/pmcomp/manuals-rules-htc.htm)

**Draft 2015-2019 State of Texas Consolidated Plan** — outlining long-range plans regarding the State's administration of the Community Development Block Grant, Housing Opportunities for Persons with AIDS, Emergency Solutions Grants and HOME Investment Partnerships programs:

[www.tdhca.state.tx.us/housing-center/consolidated-plan-2015-2019.htm](http://www.tdhca.state.tx.us/housing-center/consolidated-plan-2015-2019.htm)

**Overview of Draft 2015-2019 State of Texas Consolidated Plan: en Español** — Spanish language overview of draft Con Plan, including public hearing schedule and information regarding how to provide comment:

[www.tdhca.state.tx.us/housing-center/consolidated-plan-2015-2019.htm](http://www.tdhca.state.tx.us/housing-center/consolidated-plan-2015-2019.htm)

**Emergency Solutions Grant Program Guidance Page** — updated to include Implementation Workshop and Income Eligibility Training materials for ESG Program administrators:

[www.tdhca.state.tx.us/community-affairs/esgp/guidance-solutions.htm](http://www.tdhca.state.tx.us/community-affairs/esgp/guidance-solutions.htm)

**2014 HOME Multifamily Development NOFA** — notice of funding availability for qualifying entities seeking to develop affordable rental housing through the HOME Multifamily Development program:

[www.tdhca.state.tx.us/multifamily/nofas-rules.htm](http://www.tdhca.state.tx.us/multifamily/nofas-rules.htm); [www.tdhca.state.tx.us/nofa.htm](http://www.tdhca.state.tx.us/nofa.htm);

[www.tdhca.state.tx.us/multifamily/announcements.htm](http://www.tdhca.state.tx.us/multifamily/announcements.htm)

**2014 Community Services Block Grant Program Contractors** — *updating list containing names, contact information, service area, and other details for entities currently administering CSBG funding:*  
[www.tdhca.state.tx.us/community-affairs/csbg/index.htm](http://www.tdhca.state.tx.us/community-affairs/csbg/index.htm)

**2014 Comprehensive Energy Assistance Program Subrecipients** — *updating list containing names, contact information, service area, and other details for entities currently administering CEAP funding:*  
[www.tdhca.state.tx.us/community-affairs/ceap/index.htm](http://www.tdhca.state.tx.us/community-affairs/ceap/index.htm)

**2014 Weatherization Assistance Program Subrecipients** — *updating list containing names, contact information, service area, and other details for entities currently administering WAP funding:*  
[www.tdhca.state.tx.us/community-affairs/wap/index.htm](http://www.tdhca.state.tx.us/community-affairs/wap/index.htm)

**2015 Draft Qualified Allocation Plan** — *detailing draft language that, once finalized, will administer the 2015 Housing Tax Credit allocation cycle and awards:*  
[www.tdhca.state.tx.us/multifamily/nofas-rules.htm](http://www.tdhca.state.tx.us/multifamily/nofas-rules.htm)

**2015 Draft Uniform Multifamily Rules** — *detailing draft language that, once finalized, will serve as umbrella rule cross-cutting all multifamily housing activities:*  
[www.tdhca.state.tx.us/multifamily/nofas-rules.htm](http://www.tdhca.state.tx.us/multifamily/nofas-rules.htm)

**2014 HOME Multifamily Development Program: Application Log: 9/11/14** — *detailing current status of applications seeking funding through the Department's HOME Multifamily Development Program:*  
[www.tdhca.state.tx.us/multifamily/home/index.htm](http://www.tdhca.state.tx.us/multifamily/home/index.htm); [www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/](http://www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/)

**2015 Draft Asset Management Rules** — *detailing draft language that, once finalized, will administer the Department's Asset Management activities that ensure the long-term financial viability of developments financed by TDHCA:*  
[www.tdhca.state.tx.us/asset-management/announcements.htm](http://www.tdhca.state.tx.us/asset-management/announcements.htm)

**Tenant Rights and Resources Guide for TDHCA Monitored Rental Properties (Staff Draft)** — *draft copy providing information to potential tenants of properties financed by TDHCA regarding their right to make housing choices and receive equal access to housing and related programs under the law:*  
[www.tdhca.state.tx.us/pmcomp/manuals-rules-htc.htm](http://www.tdhca.state.tx.us/pmcomp/manuals-rules-htc.htm)

**2015 Draft Real Estate Analysis Rules** — *detailing draft language that, once finalized, will administer the Department's underwriting, market analysis, appraisal, environmental site assessment, property condition assessment, and related standards:*  
[www.tdhca.state.tx.us/rea/index.htm](http://www.tdhca.state.tx.us/rea/index.htm)

**Request for Proposals: TRACS Processing Duties for Section 811 PRA Program** — *seeking a qualified entity to handle Tenant Rental Assistance Certification System (TRACS) processing duties for the Section 811 Project Rental Assistance (PRA) Program (links to the Comptroller's Office web page):*  
[http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=113907](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=113907)

**Section 811 PRA: Draft Property Agreement Provisions** — *outlining terms regarding the commitment of units, marketing, Use Agreement, and other contractual obligations on the part of property managers participating in the Department's Section 811 PRA initiative:*  
[www.tdhca.state.tx.us/section-811-pra/index.htm](http://www.tdhca.state.tx.us/section-811-pra/index.htm)

**Program Services: Section 3 Business Registry** — *listing firms that meet one of the regulatory definitions of a Section 3 business and included in a searchable database that can be used by agencies that receive HUD funds, developers, contractors, and others to facilitate the award of certain HUD-funded contracts:*  
[www.tdhca.state.tx.us/program-services/hud-section-3/compliance-resources.htm](http://www.tdhca.state.tx.us/program-services/hud-section-3/compliance-resources.htm)

**2015 Amy Young Barrier Removal Program NOFA** — notice of funding availability for qualifying entities seeking to make home modifications for persons with disabilities:

[www.tdhca.state.tx.us/htf/single-family/amy-young.htm](http://www.tdhca.state.tx.us/htf/single-family/amy-young.htm); [www.tdhca.state.tx.us/htf/nofa.htm](http://www.tdhca.state.tx.us/htf/nofa.htm)

**Carryover Manual and Package** — relating to information required of developments that received a 2014 Competitive Housing Tax Credit Commitment Notice:

[www.tdhca.state.tx.us/multifamily/apply-for-funds.htm](http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm)

**Housing Tax Credit Property Inventory as of October 9, 2014** — listing tax credit properties in the Department's portfolio by city, developer info, and TDHCA file number:

[www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm](http://www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm); [www.tdhca.state.tx.us/multifamily/housing-tax-credits-4pct/index.htm](http://www.tdhca.state.tx.us/multifamily/housing-tax-credits-4pct/index.htm)

**4% HTC Bond Status Log as of October 10, 2014** — detailing applicants seeking Housing Tax Credits in conjunction with bond financing through a local issuer:

[www.tdhca.state.tx.us/multifamily/housing-tax-credits-4pct/index.htm](http://www.tdhca.state.tx.us/multifamily/housing-tax-credits-4pct/index.htm);

[www.tdhca.state.tx.us/multifamily/bond/index.htm](http://www.tdhca.state.tx.us/multifamily/bond/index.htm)

**Texas Bootstrap Loan Program NOFA** — notice of funding availability for qualifying Nonprofit Owner-Builder Housing Providers seeking to administer self-help housing program:

[www.tdhca.state.tx.us/oci/bootstrap.htm](http://www.tdhca.state.tx.us/oci/bootstrap.htm)

**State Income Limits** — relating to the Department's Amy Young Barrier Removal Program, Bootstrap Self-Help Housing Program and Contract for Deed Conversion Program Assistance Grants:

[www.tdhca.state.tx.us/pmcomp/irl/index.htm#htf](http://www.tdhca.state.tx.us/pmcomp/irl/index.htm#htf)

**Amended 2014 HOME Single Family Programs Reservation System NOFA** — notice of funding availability for qualifying entities seeking to administer HOME single-family funds as a reservation participant:

[www.tdhca.state.tx.us/home-division/nofas.htm](http://www.tdhca.state.tx.us/home-division/nofas.htm); <http://www.tdhca.state.tx.us/nofa.htm>

**2015 Draft HTC Site Demographic Characteristics Report (Per Capita Census Tract Eligibility) as of October 17, 2014** — detailing place name, population, housing units, MSA, rural/urban, and region:

[www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm](http://www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm); [www.tdhca.state.tx.us/multifamily/housing-tax-credits-4pct/index.htm](http://www.tdhca.state.tx.us/multifamily/housing-tax-credits-4pct/index.htm)

**Competitive Housing Tax Credits Award and Waiting List as of October 17, 2014** — listing applications receiving an allocation during the 2014 9% credit cycle, as well as those applications remaining on the waiting list:

[www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm](http://www.tdhca.state.tx.us/multifamily/housing-tax-credits-9pct/index.htm)

**2015 Homeless Housing and Services Program: Allocations and Contact Information** — detailing cities currently administering HHSP funds, amounts allocated, key staff and contact information:

[www.tdhca.state.tx.us/community-affairs/hhsp/index.htm](http://www.tdhca.state.tx.us/community-affairs/hhsp/index.htm)

R2

**BOARD REPORT ITEM**  
**FINANCIAL ADMINISTRATION DIVISION**  
**NOVEMBER 13, 2014**

Report on the Department's 4<sup>th</sup> Quarter Investment Report in accordance with the Public Funds Investment Act ("PFIA")

**BACKGROUND**

The Department's investment portfolio consists of two distinct parts. One part is related to bond funds under trust indentures which are not subject to the 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 \$895,253,784 of which \$866,580,157 is not subject to the PFIA. This report addresses the remaining \$28,673,627 (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 which are fully collateralized and secured by U.S. Government Securities. A repurchase agreement is an agreement to repurchase that security at a specific price and date which in this case was August 29, 2014, with an effective interest rate of 0.03%. The overall objective of these investments is to safeguard principal while maintaining liquidity.

**Below is a description of each fund group and its corresponding accounts.**

- The **General Fund** accounts maintain funds for administrative purposes to fund expenses related to the Department's ongoing operations. These accounts contain balances related to bond residuals, fee income generated from the Mortgage Credit Certificate ("MCC") Program, escrow funds, single family and multifamily bond administration fees, and balances associated with the Below Market Interest Rate ("BMIR") Program.
- The **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 fees and asset management fees collected from multifamily developers. The number of low income units and authority to collect these fees is outlined in statute, Department rules and 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 statute and the Department's Qualified Allocation Plan. These fees are generated for the purpose of offsetting expenses incurred by the Department related to the administration of the Tax Credit Program.

This report is in the prescribed format and detail 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 thru 4 of the report.

During the 4<sup>th</sup> Quarter, as it relates to the investments covered by the PFIA, the carrying value decreased by \$691,439 (See Page 1) for a total of \$28,673,627. The decrease is described below by fund groups.

**General Fund:** The General Fund decreased by \$514,883. This consists primarily of \$269,000 received in bond administration fees, \$30,000 in interest income and \$458,000 in MCC fees. Disbursements included \$1 million transferred to fund the operating budget and \$356,200 in bond related expenses.

**Housing Trust Fund:** The Housing Trust Fund increased \$151,078. This consists primarily of \$1.5 million received in loan repayments and disbursements of \$1.3 million for loans and grants.

**Compliance:** Compliance funds decreased \$43,192. The majority of the decrease is attributed to the Department receiving \$1.2 million in income related to compliance fees while transferring \$1.3 million to fund the operating budget.

**Housing Initiative:** Housing Initiative funds decreased \$284,443. The variance is generally a result of the Department receiving \$425,888 in fees related to tax credit activities and transferring \$645,050 to fund the operating budget.

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
HOUSING FINANCE DIVISION**

**PUBLIC FUNDS INVESTMENT ACT  
INTERNAL MANAGEMENT REPORT  
(TEX. GOV'T CODE, §2256.023)  
QUARTER ENDING AUGUST 31, 2014**

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
HOUSING FINANCE DIVISION  
PUBLIC FUNDS INVESTMENT ACT  
Internal Management Report (Sec. 2256.023)  
Quarter Ending August 31, 2014

(b) (4) Summary statement of each pooled fund group:

NON-INDENTURE RELATED:	Investment Type	FAIR VALUE (MARKET) @ 8/31/14	CARRYING VALUE @ 5/31/14	CARRYING VALUE @ 8/31/14	FAIR VALUE (MARKET) @ 8/31/14	CHANGE IN FAIR VALUE (MARKET)	ACCRUED INT REC'BL @ 8/31/14	RECOGNIZED GAIN
General Fund	Mortgage Backed Securities	1,840,197.41	1,759,111.34	726,887.40	764,249.97	(43,723.50)	3,950.65	0.00
General Fund	Repurchase Agreement	6,215,603.43	6,215,603.43	6,732,944.15	6,732,944.15	-	16.82	0.00
Housing Trust Fund	Repurchase Agreement	4,918,008.53	4,918,008.53	5,069,086.71	5,069,086.71	-	12.91	0.00
Compliance	Repurchase Agreement	8,605,165.49	8,605,165.49	8,561,973.96	8,561,973.96	-	21.41	0.00
Housing Initiatives	Repurchase Agreement	7,867,177.42	7,867,177.42	7,582,734.50	7,582,734.50	-	19.16	0.00
<b>TOTAL</b>		<b>29,446,152.28</b>	<b>29,366,068.21</b>	<b>28,673,628.72</b>	<b>28,710,989.29</b>	<b>(43,723.50)</b>	<b>4,020.95</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) conformance 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 15, 2014

 David Cervantes, Chief Financial Officer	Date <u>10/31/14</u>
--	----------------------



**Texas Department of Housing and Community Affairs**  
**Non-Indenture Related Investment Summary**  
**For Period Ending August 31, 2014**

Investment Type	Issue	Current	Current	Current	Beginning	Beginning	Accretions/ Purchases	Amortizations/ Sales	Maturities	Transfers	Ending	Ending	Change In Market Value	Recognized Gain
		Interest Rate	Purchase Date	Maturity Date	Carrying Value 05/31/14	Market Value 05/31/14					Carrying Value 08/31/14	Market Value 08/31/14		
Repo Agmt	General Fund	0.03	08/29/14	09/02/14	1,555,040.82	1,555,040.82	55,117.09				1,610,157.91	1,610,157.91		
Repo Agmt	General Fund	0.03	08/29/14	09/02/14	32,457.25	32,457.25	22,899.00				55,356.25	55,356.25		
Repo Agmt	General Fund	0.03	08/29/14	09/02/14	501,947.37	501,947.37			(196,341.08)		305,606.29	305,606.29		
Repo Agmt	General Fund				24,277.08	24,277.08			(24,277.08)					
Repo Agmt	General Fund				47,827.92	47,827.92			(47,827.92)					
Repo Agmt	General Fund	0.03	08/29/14	09/02/14	2,269,675.27	2,269,675.27			(781,469.69)		1,488,205.58	1,488,205.58		
Repo Agmt	General Fund	0.03	08/29/14	09/02/14	271,374.45	271,374.45	38,021.87				309,396.32	309,396.32		
Repo Agmt	General Fund	0.03	08/29/14	09/02/14	290,884.03	290,884.03	54,606.26				345,490.29	345,490.29		
GNMA	General Fund	7.50	08/31/89	07/20/18	79,320.65	84,985.73			(5,195.32)		74,125.33	79,168.08	(622.33)	
GNMA	General Fund	7.50	10/31/89	09/20/18	139,495.53	148,882.18			(10,741.74)		128,753.79	136,977.29	(1,163.15)	
GNMA	General Fund	7.50	01/01/90	11/20/18	76,158.44	81,283.14			(5,477.63)		70,680.81	75,195.19	(610.32)	
GNMA	General Fund	7.50	01/01/90	12/20/18	71,940.67	77,218.96			(4,397.89)		67,542.78	71,999.93	(821.14)	
GNMA	General Fund	7.50	02/27/90	12/20/18	7,866.08	7,895.11			(443.22)		7,422.86	7,452.40	0.51	
GNMA	General Fund	7.50	03/30/90	01/20/19	83,917.00	90,073.99			(5,365.97)		78,551.03	83,805.31	(902.71)	
GNMA	General Fund	7.50	04/26/90	03/20/19	66,153.46	71,007.14			(3,946.82)		62,206.64	66,311.66	(748.66)	
GNMA	General Fund	7.50	05/29/90	04/20/19	84,067.72	90,071.84			(5,721.75)		78,345.97	83,379.70	(970.39)	
GNMA	General Fund	2.65	01/29/13	12/15/42	47,729.70	46,277.29			(332.44)		47,397.26	46,305.23	360.38	
GNMA	General Fund	3.20	01/29/13	10/15/42	112,422.62	113,477.14			(561.69)		111,860.93	113,655.18	739.73	
Repo Agmt	General Fund	0.03	08/29/14	09/02/14	1,222,119.24	1,222,119.24	1,396,612.27				2,618,731.51	2,618,731.51		
GNMA	General Fund				3,854.50	3,868.65			(964.99)	(2,889.51)			(14.15)	
GNMA	General Fund				14,748.04	14,815.88			(848.94)	(13,899.10)			(67.84)	
GNMA	General Fund				185,635.60	198,516.85			(13,142.55)	(172,493.05)			(12,881.25)	
GNMA	General Fund				13,985.69	14,050.02			(800.82)	(13,184.87)			(64.33)	
GNMA	General Fund				43,644.68	46,964.29			(2,371.00)	(41,273.68)			(3,319.61)	
GNMA	General Fund				7,958.64	7,995.25			(437.20)	(7,521.44)			(36.61)	
GNMA	General Fund				58,156.71	63,471.07			(3,559.41)	(54,597.30)			(5,314.36)	
GNMA	General Fund				3,653.91	3,669.18			(738.24)	(2,915.67)			(15.27)	
GNMA	General Fund				7,564.51	7,598.40			(4,608.24)	(2,956.27)			(33.89)	
GNMA	General Fund				1,731.39	1,735.67			(865.89)	(865.50)			(4.28)	
GNMA	General Fund				1,896.09	1,903.35			(1,618.27)	(277.82)			(7.26)	
GNMA	General Fund				5,066.91	5,088.55			(4,748.10)	(318.81)			(21.64)	
GNMA	General Fund				2,089.05	2,095.48			(2,089.05)				(6.43)	
GNMA	General Fund				4,824.80	4,845.31			(2,744.44)	(2,080.36)			(20.51)	
GNMA	General Fund				1,257.62	1,261.62			(787.95)	(469.67)			(4.00)	
GNMA	General Fund				6,608.25	6,640.37			(3,924.75)	(2,683.50)			(32.12)	
GNMA	General Fund				5,867.78	5,903.05			(3,536.15)	(2,331.63)			(35.27)	
GNMA	General Fund				3,701.23	3,724.18			(1,703.36)	(1,997.87)			(22.95)	
GNMA	General Fund				5,985.64	6,030.65			(2,896.74)	(3,088.90)			(45.01)	
GNMA	General Fund				1,861.40	1,866.00			(901.14)	(960.26)			(4.60)	
GNMA	General Fund				6,976.83	7,016.88			(3,405.20)	(3,571.63)			(40.05)	
GNMA	General Fund				5,663.80	5,690.82			(3,932.03)	(1,731.77)			(27.02)	
GNMA	General Fund				1,777.56	1,782.43			(1,064.98)	(712.58)			(4.87)	
GNMA	General Fund				1,608.95	1,612.92			(881.65)	(727.30)			(3.97)	
GNMA	General Fund				18,613.72	18,744.95			(10,474.80)	(8,138.92)			(131.23)	
GNMA	General Fund				3,481.56	3,503.15			(1,652.74)	(1,828.82)			(21.59)	
GNMA	General Fund				3,440.26	3,451.20			(3,440.26)				(10.94)	
GNMA	General Fund				3,680.60	3,700.99			(1,729.40)	(1,951.20)			(20.39)	
GNMA	General Fund				18,152.63	18,280.24			(9,112.58)	(9,040.05)			(127.61)	
GNMA	General Fund				2,711.45	2,719.15			(938.79)	(1,772.66)			(7.70)	
GNMA	General Fund				2,791.13	2,799.42			(759.81)	(2,031.32)			(8.29)	
GNMA	General Fund				19,507.49	19,666.09			(5,912.49)	(13,595.00)			(158.60)	
GNMA	General Fund				5,029.43	5,262.29			(1,429.69)	(3,599.74)			(232.86)	
GNMA	General Fund				2,941.16	2,961.01			(1,840.62)	(1,100.54)			(19.85)	
GNMA	General Fund				6,719.01	6,743.27			(1,931.67)	(4,787.34)			(24.26)	

Investment Type	Issue	Current Interest Rate	Current Purchase Date	Current Maturity Date	Beginning Carrying Value 05/31/14	Beginning Market Value 05/31/14	Accretions/Purchases	Amortizations/Sales	Maturities	Transfers	Ending Carrying Value 08/31/14	Ending Market Value 08/31/14	Change In Market Value	Recognized Gain
GNMA	General Fund				4,409.20	4,421.28			(4,409.20)				(12.08)	
GNMA	General Fund				11,125.70	11,210.92			(3,529.55)	(7,596.15)			(85.22)	
GNMA	General Fund				6,052.63	6,332.87			(1,503.85)	(4,548.78)			(280.24)	
GNMA	General Fund				7,903.13	7,977.26			(2,454.48)	(5,448.65)			(74.13)	
GNMA	General Fund				12,502.49	13,081.36			(2,926.21)	(9,576.28)			(578.87)	
GNMA	General Fund				12,174.52	12,256.09			(3,198.85)	(8,975.67)			(81.57)	
GNMA	General Fund				18,497.68	18,651.03			(9,465.58)	(9,032.10)			(153.35)	
GNMA	General Fund				18,808.78	18,878.75			(866.41)	(17,942.37)			(69.97)	
GNMA	General Fund				1,555.96	1,560.80			(331.05)	(1,224.91)			(4.84)	
GNMA	General Fund				10,874.25	10,959.07			(2,769.45)	(8,104.80)			(84.82)	
GNMA	General Fund				7,488.22	7,919.17			(1,625.78)	(5,862.44)			(430.95)	
GNMA	General Fund				18,654.00	18,817.97			(4,891.81)	(13,762.19)			(163.97)	
GNMA	General Fund				11,357.16	12,010.76			(2,193.04)	(9,164.12)			(653.60)	
GNMA	General Fund				20,464.05	20,645.16			(4,809.36)	(15,654.69)			(181.11)	
GNMA	General Fund				13,353.60	13,403.14			(626.73)	(12,726.87)			(49.54)	
GNMA	General Fund				6,225.22	6,245.14			(1,085.61)	(5,139.61)			(19.92)	
GNMA	General Fund				10,042.58	10,118.30			(5,110.81)	(4,931.77)			(75.72)	
GNMA	General Fund				3,684.82	3,698.71			(782.91)	(2,901.91)			(13.89)	
GNMA	General Fund				12,735.15	13,468.06			(2,326.76)	(10,408.39)			(732.91)	
GNMA	General Fund				7,741.67	7,827.68			(1,699.53)	(6,042.14)			(86.01)	
GNMA	General Fund				9,624.16	9,659.87			(459.72)	(9,164.44)			(35.71)	
GNMA	General Fund				11,127.23	11,261.65			(1,843.07)	(9,284.16)			(134.42)	
GNMA	General Fund				14,137.38	14,202.84			(646.67)	(13,490.71)			(65.46)	
GNMA	General Fund				14,858.31	14,982.23			(3,631.08)	(11,227.23)			(123.92)	
GNMA	General Fund				35,985.81	36,749.07			(14,942.75)	(21,043.06)			(763.26)	
GNMA	General Fund				20,254.84	21,420.51			(2,998.45)	(17,256.39)			(1,165.67)	
GNMA	General Fund				3,326.77	3,354.58			(1,018.42)	(2,308.35)			(27.81)	
GNMA	General Fund				42,697.93	46,296.08			(1,539.74)	(41,158.19)			(3,598.15)	
GNMA	General Fund				45,811.02	48,991.68			(4,657.12)	(41,153.90)			(3,180.66)	
GNMA	General Fund				2,449.66	2,458.50			(711.55)	(1,738.11)			(8.84)	
GNMA	General Fund				48,677.52	50,986.78			(10,372.52)	(38,305.00)			(2,309.26)	
GNMA	General Fund				42,250.01	43,198.95			(3,854.96)	(38,395.05)			(948.94)	
<b>General Fund Total</b>					7,974,714.77	8,055,800.84	1,567,256.49	(1,049,915.77)	(247,261.43)	(784,962.51)	7,459,831.55	7,497,194.12	(43,723.50)	0.00
Repo Agmt	Housing Trust Fund	0.03	08/29/14	09/02/14	30,373.09	30,373.09	43,358.53				73,731.62	73,731.62		
Repo Agmt	Housing Trust Fund	0.03	08/29/14	09/02/14	4,730.37	4,730.37	10.77				4,741.14	4,741.14		
Repo Agmt	Housing Trust Fund	0.03	08/29/14	09/02/14	299,162.37	299,162.37	54,951.64				354,114.01	354,114.01		
Repo Agmt	Housing Trust Fund				210,078.12	210,078.12		(210,078.12)						
Repo Agmt	Housing Trust Fund				11,741.24	11,741.24		(11,741.24)						
Repo Agmt	Housing Trust Fund	0.03	08/29/14	09/02/14			116,568.12				116,568.12	116,568.12		
Repo Agmt	General Revenue Appn	0.03	08/29/14	09/02/14	97,938.72	97,938.72	144.45				98,083.17	98,083.17		
Repo Agmt	General Revenue Appn	0.03	08/29/14	09/02/14	455,876.29	455,876.29	434,034.89				889,911.18	889,911.18		
Repo Agmt	General Revenue Appn	0.03	08/29/14	09/02/14	154,817.02	154,817.02	531,956.72				686,773.74	686,773.74		
Repo Agmt	General Revenue Appn	0.03	08/29/14	09/02/14	83,672.02	83,672.02	90,212.77				173,884.79	173,884.79		
Repo Agmt	Housing Trust Fund-GR				31,883.03	31,883.03		(31,883.03)						
Repo Agmt	Housing Trust Fund-GR	0.03	08/29/14	09/02/14	1,122,114.73	1,122,114.73		(356,053.79)			766,060.94	766,060.94		
Repo Agmt	Bootstrap -GR	0.03	08/29/14	09/02/14	83,342.08	83,342.08					83,342.08	83,342.08		
Repo Agmt	Bootstrap -GR	0.03	08/29/14	09/02/14	38,540.00	38,540.00		(37,993.53)			546.47	546.47		
Repo Agmt	Bootstrap -GR	0.03	08/29/14	09/02/14	1,832,739.45	1,832,739.45		(465,910.00)			1,366,829.45	1,366,829.45		
Repo Agmt	Contract for Deed Conversion	0.03	08/29/14	09/02/14	461,000.00	461,000.00		(6,500.00)			454,500.00	454,500.00		
<b>Housing Trust Fund Total</b>					4,918,008.53	4,918,008.53	1,271,237.89	(1,120,159.71)	0.00	0.00	5,069,086.71	5,069,086.71	0.00	0.00
Repo Agmt	Multi Family	0.03	08/29/14	09/02/14	1,031,426.96	1,031,426.96	75,465.51				1,106,892.47	1,106,892.47		
Repo Agmt	Multi Family	0.03	08/29/14	09/02/14	762,562.09	762,562.09	45,345.45				807,907.54	807,907.54		
Repo Agmt	Low Income Tax Credit Prog.	0.03	08/29/14	09/02/14	6,811,176.44	6,811,176.44		(164,002.49)			6,647,173.95	6,647,173.95		
<b>Compliance Total</b>					8,605,165.49	8,605,165.49	120,810.96	(164,002.49)	0.00	0.00	8,561,973.96	8,561,973.96	0.00	0.00

Investment Type	Issue	Current	Current	Current	Beginning	Beginning	Accretions/ Purchases	Amortizations/ Sales	Maturities	Transfers	Ending	Ending	Change In Market Value	Recognized Gain
		Interest Rate	Purchase Date	Maturity Date	Carrying Value 05/31/14	Market Value 05/31/14					Carrying Value 08/31/14	Market Value 08/31/14		
Repo Agmt	Low Income Tax Credit Prog.	0.03	08/29/14	09/02/14	863,066.93	863,066.93		(72,433.56)			790,633.37	790,633.37		
Repo Agmt	Low Income Tax Credit Prog.	0.03	08/29/14	09/02/14	6,631,760.35	6,631,760.35		(210,939.40)			6,420,820.95	6,420,820.95		
Repo Agmt	Low Income Tax Credit Prog.	0.03	08/29/14	09/02/14	372,350.14	372,350.14		(1,069.96)			371,280.18	371,280.18		
<b>Low Income Tax Credit Prog. Total</b>					7,867,177.42	7,867,177.42	0.00	(284,442.92)	0.00	0.00	7,582,734.50	7,582,734.50	0.00	0.00
<b>Total Investment Summary</b>					29,365,066.21	29,446,152.28	2,959,305.34	(2,618,520.89)	(247,261.43)	(784,962.51)	28,673,626.72	28,710,989.29	(43,723.50)	0.00

R3

**BOARD REPORT ITEM**  
**BOND FINANCE DIVISION**  
**NOVEMBER 13, 2014**

**REPORT ITEM**

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 was revised and approved at the Board Meeting of April 10, 2014, to exclude funds invested under a bond trust indenture for the benefit of bond holders because each trust indenture controls the authorized investments under that particular trust 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 shows in detail the types of investments, their maturity, their carrying (face amount) value and their fair value at the beginning and end of the quarter.
- The detail for investment activity can be found online at TDHCA's Board Meeting Information Center website at <http://www.tdhca.state.tx.us/board/meetings.htm>.
- Overall, the portfolio carrying value decreased by \$18.5 million (See Page 1 of the attached Bond Trust Indenture Internal Management Report) for a total of \$866,580,157. The decrease reflects loan repayments and bond redemptions.

The portfolio consists of those investments described in the attached Bond Trust Indenture Internal Management Report.

	<b><u>Beginning Quarter</u></b>	<b><u>Ending Quarter</u></b>
<b>Mortgage Backed Securities ("MBS")</b>	87%	85%
<b>Guaranteed Investment Contract/ Investment Agreement ("GIC/IA")</b>	5%	3%
<b>Repurchase Agreements</b>	4%	7%
<b>Money Markets and Mutual Funds</b>	4%	5%

The 2% decrease in MBS is due to the principal payments received on the underlying mortgages. The 2% decrease in GIC/IA and 3% increase in Repurchase Agreements are a result of the draw on funds held in the GICs representing of mortgage payments that will be used for bond redemptions on September 1, 2014.

The portfolio activity for the quarter:

- The maturities in MBS this quarter were \$38 million which represents loan repayments or payoffs. The table below shows the trend in new loans and loan payoffs.

	4th Qtr	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	
	FY 13	FY 14	FY 14	FY 14	FY 14	Total
Purchases	3,109,759	-	-	-	-	3,109,759
Sales	-	20,238,887	-	-	-	20,238,887
Maturities	64,711,331	45,617,217	36,063,849	32,111,580	38,527,660	178,503,977


- The process of valuing investments at fair value (market value) identifies unrealized gains and losses. These gains or losses do not impact the overall portfolio because the Department does not typically liquidate these investments (mortgage backed securities) but holds them until maturity.
- The fair value (the amount at which a financial instrument could be exchanged in a current transaction between willing parties) decreased \$4 million (See Pages 1 and 2), with fair value being greater than the carrying value. The national average for a 30-year fixed mortgage, as reported by the Freddie Mac Primary Mortgage Market Survey as of August 31, 2014, was 4.10%, down from 4.12% at the end of May 2014. There are various factors that affect the fair 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 the overall change 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 more important than the relative value in the bond market as a whole.
- The more relevant measures of indenture parity, projected future cash flows, and the comparison of current interest income to interest expense are reported on page 3 in the Bond Trust Indenture Parity Comparison. This report shows parity (ratio of assets to liabilities) by indentures with assets greater than liabilities in a range from 99.47% to 136.99% which would indicate the Department has sufficient assets to meet its obligations. The interest comparison reflects interest income greater than interest expense and indicates a positive cash flow.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
 BOND FINANCE DIVISION  
 BOND TRUST INDENTURES  
 Supplemental Internal Management Report  
 Quarter Ending August 31, 2014

Summary statement of each pooled fund group:

INDENTURE	FAIR VALUE	CARRYING	ACCRETION/ PURCHASES	CHANGE IN CARRYING VALUE			CARRYING	FAIR VALUE	CHANGE IN FAIR VALUE (MARKET)	ACCRUED INT REC'VBL @ 8/31/14	RECOGNIZED GAIN
	(MARKET) @ 05/31/14	VALUE @ 05/31/14		AMORTIZATION/ SALES	MATURITIES	TRANSFERS		VALUE @ 08/31/14			
Single Family	528,733,947.00	484,498,640.45	29,870,559.41	(13,952,027.81)	(23,863,594.82)	0.00	476,553,577.23	517,598,416.68	(3,190,467.10)	1,770,368.70	0.00
RMRB	330,968,276.78	309,108,380.56	1,705,474.64	(4,494,920.28)	(14,204,236.07)	0.00	292,114,698.85	312,840,817.53	(1,133,777.54)	1,043,936.53	0.00
CHMRB	5,888,925.23	5,412,834.01	103,742.85	(221,048.48)	(269,659.40)	0.00	5,025,868.98	5,482,595.06	(19,365.14)	26,914.35	0.00
Taxable Mortgage Program	9,620,261.36	9,432,813.67	1,249,283.24	(791,281.41)	(83,094.69)	784,962.51	10,592,683.32	10,825,811.61	45,680.60	20,704.21	0.00
Multi Family	78,325,094.73	76,665,714.90	13,340,107.23	(7,605,418.49)	(107,074.84)	0.00	82,293,328.80	83,870,815.74	(81,892.89)	0.00	0.00
<b>INDENTURE TOTAL</b>	<b>953,536,505.10</b>	<b>885,118,383.59</b>	<b>46,269,167.37</b>	<b>(27,064,696.47)</b>	<b>(38,527,659.82)</b>	<b>784,962.51</b>	<b>866,580,157.18</b>	<b>930,618,456.62</b>	<b>(4,379,822.07)</b>	<b>2,861,923.79</b>	<b>0.00</b>

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 15, 2014

 Date <u>10/24/13</u> David Cervantes, Chief Financial Officer
---

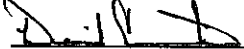
**TEXAS DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS**  
**BOND FINANCE DIVISION**  
**BOND TRUST INDENTURES**  
**Supplemental Internal Management Report**  
**Quarter Ending August 31, 2014**

Summary statement of each pooled investment group:

INVESTMENT TYPE	FAIR VALUE (MARKET) @ 05/31/14	CARRYING VALUE @ 05/31/14	ACCRETION/ PURCHASES	AMORTIZATION/ SALES	MATURITIES	TRANSFERS	CARRYING VALUE @ 08/31/14	FAIR VALUE (MARKET) @ 08/31/14	CHANGE IN FAIR VALUE (MARKET)	RECOGNIZED GAIN
<b>INDENTURE RELATED:</b>										
Mortgage-Backed Securities	839,461,100.10	771,042,978.59	0.00	0.00	(38,527,659.82)	784,962.51	733,300,281.28	797,338,580.72	(4,379,822.07)	0.00
Guaranteed Inv Contracts	38,804,799.90	38,804,799.90	40,946.41	(11,677,565.76)	0.00	0.00	27,168,180.55	27,168,180.55	-	0.00
Investment Agreements	4,867,102.67	4,867,102.67	0.00	(3,037,666.19)	0.00	0.00	1,829,436.48	1,829,436.48	-	0.00
Treasury-Backed Mutual Funds	39,038,389.06	39,038,389.06	13,340,107.23	(7,058,173.24)	0.00	0.00	45,320,323.05	45,320,323.05	-	0.00
Repurchase Agreements	31,365,113.37	31,365,113.37	32,888,113.73	(5,291,291.28)	0.00	0.00	58,961,935.82	58,961,935.82	-	0.00
<b>INDENTURE TOTAL</b>	<b>953,536,505.10</b>	<b>885,118,383.59</b>	<b>46,269,167.37</b>	<b>(27,064,696.47)</b>	<b>(38,527,659.82)</b>	<b>784,962.51</b>	<b>866,580,157.18</b>	<b>930,618,456.62</b>	<b>(4,379,822.07)</b>	<b>0.00</b>

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 15, 2014

 Date 10/24/14 David Cervantes, Chief Financial Officer
--



**Texas Department of Housing and Community Affairs**  
**Bond Finance Division**  
**Executive Summary**  
As of August 31, 2014

	Single Family Indenture Funds	Residential Mortgage Revenue Bond Indenture Funds	Collateralized Home Mortgage Revenue Bond Indenture Funds	Taxable Mortgage Program	Multi-Family Indenture Funds	Combined Totals
<b>PARITY COMPARISON:</b>						
PARITY ASSETS						
Cash	\$ 144,030	\$ 5,737	\$ -		\$ 18,779,436	\$ 18,929,203
Investments <sup>(1)</sup>	\$ 66,911,275	\$ 14,852,948	\$ 487,919	\$ 4,242,425	\$ 80,435,182	\$ 166,929,749
Mortgage Backed Securities <sup>(1)</sup>	\$ 410,867,527	\$ 277,412,966	\$ 4,536,989	\$ 6,350,259	\$ -	\$ 699,167,740
Loans Receivable <sup>(2)</sup>	\$ 1,740,982			997,721,774		\$ 999,462,756
Accrued Interest Receivable	\$ 4,445,091	\$ 2,102,215	\$ 54,087	\$ 13,470	\$ 9,154,546	\$ 15,769,409
<b>TOTAL PARITY ASSETS</b>	<b>\$ 484,108,905</b>	<b>\$ 294,373,866</b>	<b>\$ 5,078,995</b>	<b>\$ 10,606,153</b>	<b>\$ 1,106,090,938</b>	<b>\$ 1,900,258,857</b>
PARITY LIABILITIES						
Bonds Payable <sup>(1)</sup>	\$ 429,890,000	\$ 260,775,000	\$ 3,700,000		\$ 997,897,738	\$ 1,692,262,738
Accrued Interest Payable	\$ 8,422,003	\$ 1,578,066	\$ 7,694		\$ 9,253,017	\$ 19,260,780
Other Non-Current Liabilities <sup>(3)</sup>					\$ 104,805,062	\$ 104,805,062
<b>TOTAL PARITY LIABILITIES</b>	<b>\$ 438,312,003</b>	<b>\$ 262,353,066</b>	<b>\$ 3,707,694</b>	<b>\$ -</b>	<b>\$ 1,111,955,817</b>	<b>\$ 1,816,328,580</b>
PARITY DIFFERENCE	\$ 45,796,902	\$ 32,020,800	\$ 1,371,301	N/A	\$ (5,864,879)	\$ 83,930,277
<b>PARITY</b>	<b>110.45%</b>	<b>112.21%</b>	<b>136.99%</b>	<b>N/A</b>	<b>99.47%</b>	<b>104.62%</b>
<b>INTEREST COMPARISON For the <i>twelfth</i> Fiscal Month Only (not Fiscal Year to Date) :</b>						
INTEREST INCOME						
Interest & Investment Income	\$ 4,696,957	\$ 2,106,360	\$ 55,710	\$ -	\$ 3,485,712	\$ 10,344,739
<b>TOTAL INTEREST INCOME</b>	<b>\$ 4,696,957</b>	<b>\$ 2,106,360</b>	<b>\$ 55,710</b>	<b>\$ -</b>	<b>\$ 3,485,712</b>	<b>\$ 10,344,739</b>
INTEREST EXPENSE						
Interest on Bonds	\$ 1,404,457	\$ 778,372	\$ 21,262	\$ -	\$ 3,485,711	\$ 5,689,802
<b>TOTAL INTEREST EXPENSE</b>	<b>\$ 1,404,457</b>	<b>\$ 778,372</b>	<b>\$ 21,262</b>	<b>\$ -</b>	<b>\$ 3,485,711</b>	<b>\$ 5,689,802</b>
NET INTEREST INTEREST RATIO	\$ 3,292,500 <b>334.43%</b>	\$ 1,327,988 <b>270.61%</b>	\$ 34,448 <b>262.02%</b>	N/A <b>N/A</b>	\$ 1 <b>100.00%</b>	\$ 4,654,937 <b>181.81%</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 rating agencies.

(2) Loans Receivable include whole loans only. Special mortgage loans are excluded.

(3) Other Non-Current Liabilities include "Due to Developers" (for insurance, taxes and other operating expenses) and "Earning Due to Developers" (on investments).

R4

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**NOVEMBER 13, 2014**

Report on the Status of the 2014 Competitive Housing Tax Credit Application Cycle

**BACKGROUND**

The initial issuance of 65 commitments of Competitive Housing Tax Credit was approved at the July 31, 2014 meeting, and at that meeting the board also approved the Waiting List, which is composed of all Applications that were not approved by the Board for a commitment of 2014 Housing Tax Credits and that have not been terminated by the Department or withdrawn by the Applicant. The Board further approved that the list of Applications accepted as the Waiting List be “ranked by score in descending order of priority” and subject to the same allocation process as set out in §11.6 of the Qualified Allocation Plan (QAP).

Of note, the award for Timbercreek Village Apartments (#14005) was conditioned by the Executive Award and Review Advisory Committee (“EARAC”) upon closing the cost certification review for Riverplace Apartments, #09370/100211, as demonstrated by the issuance of IRS Forms 8609. Although IRS Forms 8609 have not yet been issued for this development, EARAC voted that the condition has been met because the remaining item is dependent upon the Department to complete.

At the October 9, 2014 meeting, four additional commitments of Competitive Housing Tax Credit were approved by the Board from the Waiting List. The Board further directed staff that should sufficient credits become available to award any other applications from the Waiting List, such awards should be made from the Board-approved Waiting List in accordance with the ranking, methodology, and other requirements set forth in Department rules, and authorized the Executive Director to implement and carry out the award of such credits in full compliance with the requirements of the Department’s rules and requirements to fully utilize all available tax credits prior to January 1, 2015, and report such awards to the Board at the next available meeting subsequent to such awards.

As of November 5, 2014, staff has determined that there is \$1,143,241 in available credit. The majority of this available credit resulted from the return of two 2013 Allocations, both of which came from the At-Risk set-aside. Following the methodology prescribed in §11.6 of the QAP, staff recommends an award of \$499,957 for Whitestone Apartments and Tamaric Apartments (#14003) located in urban region 7, and an award of \$499,000 for Royal Gardens (#14029) located in Urban Region 2. Both awards are conditioned upon completion of the conditions of

their respective program, underwriting and previous participation reviews, underwriting reports, and any other special conditions that the Board may consider appropriate

The chart below outlines the series of events that led to these award recommendations.

<b>Date</b>	<b>Action</b>	<b>Credit returned or (awarded)</b>	<b>Balance of credit in statewide collapse</b>
October 9, 2014	Balance of credit after Board approval of 4 waiting list applications		\$473,647
	Return to Rural Region 8 is not enough to fund the next highest application in that sub-region, so credit is added to statewide collapse	\$23,127	\$496,774
November 3	Two returns to At-Risk Set-Aside goes back to the same Set-Aside; staff recommendation of \$499k to Whitestone/Tamaric Apartments, and remaining \$146k added to statewide collapse	\$456,288 \$190,179 (\$499,957)	\$643,284
November 5	Most underserved region is Urban Region 2; staff recommends \$499k to Royal Gardens	(\$499,000)	\$144,284

As of this Board meeting, and assuming approval of the additional awards to Whitestone/Tamaric Apartments and Royal Gardens, there is an estimated \$144,284 in credit remaining. This amount of remaining credit is insufficient to fund the next application on the Waiting List and, therefore, in accordance with the Waiting List procedures reflected in §11.6(4) of the QAP, this credit will be held until such time as the amount available to award is sufficient to fund the next application on the Waiting List.



<b>Region 3/Rural</b>																															
14266	Abbingtion Junction of Pottsboro	NE corner of the intersection of Spur 316 and West Highway 120	Pottsboro	Grayson	75076	3	Rural		NC	47	9	56	General	\$	571,794	X	William J. Rea, Jr.	Sean Brady	134	17	4	8	4	167	C	Recommended	A	48181000302	1st	8.4%	
14102	StoneLeaf at Glen Rose	2001 Bo Gibbs Blvd.	Glen Rose	Somervell	76043	3	Rural		NC	45	4	49	General	\$	547,973		Ben Dempsey	Victoria Sugrue	132	17	4	8	4	165	C		A	48425000200	3rd	7.3%	
					<b>Estimated Amount Available to Allocate</b>		<b>\$582,088</b>							<b>Total HTCs Requested</b>		<b>\$ 1,119,767</b>															
<b>Region 3/Urban</b>																															
14205	Avondale Apartments	14 +/- acres in SEC of US 287 & Avondale Haslet Road	Fort Worth	Tarrant	76052	3	Urban		NC	144	16	160	General	\$	1,500,000	X	Kecia Boulware	Donna Rickenbacker	132	17	4	8	4	165	C	Recommended	C	48439114103	1st	3.0%	
14088	Mariposa Apartment Homes at Spring Hollow	Approx the NE corner of Spring Hollow Dr and E McLeroy Blvd	Saginaw	Tarrant	76131	3	Urban		NC	140	54	194	Elderly	\$	1,500,000	X	Stuart Shaw	Casey Bump	131	17	4	8	4	164	C	Recommended	A	48439114003	2nd	5.8%	
14180	Serenity Place Apartments	3124 Denley	Dallas	Dallas	75216	3	Urban	X	NC	45	0	45	Supp. Hsng.	\$	483,262	X	Sherman Roberts	Will Henderson	131	17	4	8	4	164	C	Recommended	A	48113005700	4th	41.2%	
14295	M2 Apartments	Southeast Quadrant of McKinney Ranch Parkway and Collin McKinney Parkway	McKinney	Collin	75070	3	Urban		NC	130	52	182	General	\$	1,500,000	X	Brandon Bolin	Alan McDonald	131	17	4	8	4	164	C	Recommended	A	48085030601	1st	1.5%	
14087	Cypress Creek Apartment Homes at Joshua	Approx the SW corner of Joshua Station Blvd and S. Broadway St	Joshua	Johnson	76058	3	Urban		NC	145	36	181	General	\$	1,500,000	X	X	Stuart Shaw	Casey Bump	131	17	4	8	4	164	C	Recommended	A	48251130214	2nd	10.6%
14051	Churchill at Champions Circle Community	SWQ Hwy 114 & 135W (south of 114 and west of 135W)	Fort Worth	Denton	76177	3	Urban	X	NC	132	0	132	General	\$	1,500,000	X	Brad Forslund	Becky Villanueva	130	17	4	8	4	163	C	Recommended	A	48121020308	2nd	4.4%	
14158	Bishop Gardens	SWQ Hardeman Blvd and FM 156	Justin	Denton	76247	3	Urban		NC	60	12	72	General	\$	721,167	X	X	Stacy Kaplowitz	Alyssa Carpenter	130	17	4	8	4	163	C	Recommended	C	48121020309	2nd	6.3%
14292	Cypress Creek Apartment Homes at Parker Creek North	Approx the SW quadrant of I-30 and Circle Lane	Royce City	Rockwall	75189	3	Urban		NC	140	80	220	General	\$	1,500,000	X	X	Stuart Shaw	Casey Bump	130	17	4	8	4	163	C	Recommended	A	48397040402	2nd	6.1%
14141	HICKORY VILLAGE APARTMENTS	3401 Hickory Tree Road	Balch Springs	Dallas	75180	3	Urban	X	NC	108	12	120	General	\$	1,378,210		Monique S. Allen	Maryann VanSchoor	129	17	4	8	4	162	N		N	48113017201	4th	26.2%	
14288	Villas at Boston Heights	3510 Boston Avenue	Benbrook	Tarrant	76116	3	Urban		NC	131	13	144	General	\$	1,500,000		Deepak P. Sulakhe	Len Villicic	129	17	4	8	4	162	N		N	48439110901	2nd	1.5%	
14221	Palladium Van Alstyne Senior Living	North side of N. College Ave. approx. 900 ft. east of I-75	Grayson	Grayson	75495	3	Urban		NC	90	30	120	Elderly	\$	885,089	X	Thomas E. Huth	Mary Henderson/Dru	128	17	4	8	4	161	C		N	48181001803	1st	6.5%	
14135	Heritage Park Vista II	8729 Ray White Blvd	Fort Worth	Tarrant	76244	3	Urban		NC	77	8	85	Elderly	\$	877,000		Dan Allgeier	Robert Hoskins	128	17	8	8	0	161	N		N	48439113921	1st	8.4%	
14163	HomeTowne at Presidio Junction	Southeast quadrant of Harmon Road and Presidio Vista Drive	Fort Worth	Tarrant	76177	3	Urban		NC	132	36	168	Elderly	\$	1,500,000		Kenneth W. Fambro, II	Christina Schwartz	128	17	8	8	0	161	N		N	48439113926	1st	5.6%	
14233	Art at Palladium View	NWQ Westpoint Blvd and Scenic Vista Dr	Fort Worth	Tarrant	76108	3	Urban		NC	97	11	108	General	\$	1,500,000		Mitchell M. Friedman	Lisa Stephens	128	17	4	8	4	161	N		N	48439110805	2nd	1.1%	
14198	Columbia at Renaissance Square	3801 W. G. Daniel Dr (see below)	Fort Worth	Tarrant	76119	3	Urban		NC	112	28	140	General	\$	1,451,819		Clara Trejos	Roderick Teachey	128	17	8	8	0	161	N		N	48439104604	4th	30.9%	
14174	Hopkins Crossing Apartments	Hopkins Rd NW of E McCart St. (FM1173)	Krum	Denton	76249	3	Urban		NC	120	10	130	General	\$	1,500,000		Donna Rickenbacker	Doak Brown	132	17	4	0	4	157	N		N	48121020202	2nd	2.9%	
14228	Art at Elysium Grand	W side of IH 35 E, S of Lillian Miller Pkwy	Denton	Denton	76210	3	Urban		NC	85	7	92	General	\$	1,345,000		Mitchell M. Friedman	Lisa Stephens	130	0	4	0	4	138	N		N	48121021303	2nd	8.6%	
					<b>Estimated Amount Available to Allocate</b>		<b>\$10,875,745</b>							<b>Total HTCs Requested</b>		<b>\$ 22,141,547</b>															
<b>Region 4/Rural</b>																															
14092	Madison Oaks Apartments	1009 Gilmer	Winnsboro	Wood	75494	4	Rural		NC	54	6	60	General	\$	564,500	X	X	Leslie Holleman	Jeremy Mears	134	17	4	8	4	167	C	Recommended	A	48499950200	4th	23.9%
14133	Mission Village of Jacksonville	SWQ of Frankston St and Johnson St	Jacksonville	Cherokee	75766	4	Rural		NC	48	0	48	General	\$	610,000	X	X	Michael P. Ash	Alyssa Carpenter	134	17	4	8	4	167	C	Recommended	A	480739950500	4th	34.8%
14271	Abbingtion Walk of Emory	Spence Drive approx. 600 ft. north of Lake Fork Drive	Emory	Rains	75440	4	Rural		NC	50	6	56	General	\$	596,000	X	William J. Rea, Jr.	Sean Brady	134	17	4	8	4	167	C	Recommended	A	48379950100	2nd	10.9%	
14188	Reserve at Whitehouse	1000 Texas 110	Whitehouse	Smith	75791	4	Rural		NC	72	0	72	General	\$	960,000	X	Brian McGeady	Chris Applequist	132	17	4	8	4	165	C		A	48423002009	1st	4.6%	
14184	Rivers Bluff Apartments	200-300 Block of Tennonson Road	Mount Pleasant	Titus	75455	4	Rural		NC	74	6	80	General	\$	842,000		Rick J. Deyoe	Lisa Rucker	128	17	4	8	4	161	N		N	484499950300	1st	13.0%	
					<b>Estimated Amount Available to Allocate</b>		<b>\$1,453,853</b>							<b>Total HTCs Requested</b>		<b>\$ 3,572,500</b>															
<b>Region 4/Urban</b>																															
14269	Abbingtion Glen of Nash	East New Boston Road approx. 800 feet east of North Kings Highway	Nash	Bowie	75569	4	Urban		NC	64	8	72	General	\$	781,100	X	William J. Rea, Jr.	Sean Brady	132	17	4	8	4	165	C	Recommended	A	48037010902	1st	14.3%	
					<b>Estimated Amount Available to Allocate</b>		<b>\$1,088,762</b>							<b>Total HTCs Requested</b>		<b>\$ 781,100</b>															
<b>Region 5/Rural</b>																															
14054	Whispering Oaks	816 Memphis Street	West Orange	Orange	77630	5	Rural		NC	70	0	70	General	\$	824,448	X	Miranda Ashline	Tamea Dula	123	17	4	8	4	156	C	Recommended	A	48361020500	3rd	19.8%	
14189	Citrus Cove	Approximately 1200 Texas Avenue	Bridge City	Orange	77611	5	Rural		NC	72	8	80	General	\$	823,000	X	Jim Bergman	Tami Stombaugh	129	17	4	0	4	154	C	Recommended	A	48361022400	2nd	14.2%	
14063	Hudson Providence	Northeast quadrant of Ted Trout Drive & Oscar Berry Road	Hudson	Angelina	75904	5	Rural		NC	80	0	80	Elderly	\$	890,000	X	Miranda Ashline	Tamea Dula	116	17	4	8	4	149	C		A	48005000301	1st	13.3%	
					<b>Estimated Amount Available to Allocate</b>		<b>\$1,565,902</b>							<b>Total HTCs Requested</b>		<b>\$ 2,537,448</b>															
<b>Region 5/Urban</b>																															
14155	Cypress Place	W Side of Old Dowlen Rd, N of Dowlen Rd	Beaumont	Jefferson	77706	5	Urban		NC	76	0	76	General	\$	921,000	X	Stacy Kaplowitz	Alyssa Carpenter	126	0	4	0	4	134	C	Recommended	C	48245000307	1st	6.7%	
					<b>Estimated Amount Available to Allocate</b>		<b>\$813,126</b>							<b>Total HTCs Requested</b>		<b>\$ 921,000</b>															
<b>Region 6/Rural</b>																															
14274	Heritage Plaza	325 Flagship Boulevard	Montgomery	Montgomery	77356	6	Rural	X	NC	64	16	80	General	\$	750,000	X	Chris Richardson	Jessica Bailey	133	17	4	8	4	166	C	Recommended	A	48339694500	1st	12.6%	
14043	Carriage Crossing	31500-31700 Waller Tomball Rd	Waller	Harris	77484	6	Rural		NC	64	16	80	General	\$	750,000		David Mark Koogler	Zach Cavender	133	17	4	8	4	166	N		N	48201556000	2nd	11.8%	
14052	Waverly Village	255 Tafelski Road	New Waverly	Walker	77358	6	Rural		RC	50	0	50	General	\$	714,479	X	Tracy Ambridge	Tamea Dula	128	17	4	8	4	161	N		N	48471790200	1st	15.9%	
					<b>Estimated Amount Available to Allocate</b>		<b>\$500,000</b>							<b>Total HTCs Requested</b>		<b>\$ 1,464,479</b>															
<b>Region 6/Urban</b>																															
14168	The Villages of Dickinson	406 Deats Rd	Dickinson	Galveston	77539	6	Urban		RC	120	0	120	General	\$	1,500,000	X	Justin Hartz	Alyssa Carpenter	131	17	4	8	4	164	C	Recommended	A	48167720900	2nd	17.8%	
14220	Palladium Lake Jackson	South side of FM 2004 & west of Old Angleton Rd.	Lake Jackson	Brazoria	77566	6	Urban		NC	120	30	150	General	\$	1,442,232		Thomas Huth	Mary Henderson/Dru	131	17	4	8	4	164	C	Credit Returned 09/16/15	A	48039663600	1st	2.0%	
14148	Greens at Brentford	SWC of Beechnut and Brentford Dr.	Mission Bend (Houston)	Fort Bend	77083	6	Urban		NC	120	30	150	General	\$	1,412,949	X	Les Kilday	Phyllis Seefeldt	128	15.5	4	8	4	159.5	C	Recommended	A	48157672602	2nd	8.2%	
14272	The Lodge at Huffmeister	West side of Huffmeister Road across from Shaft Drive	Cypress (Houston ETJ)	Harris	77429	6	Urban	X	NC	142	28	170	General	\$	1,500,000	X	Chris Richardson	Jessica Bailey	127	15.5	4	8	4	158.5	C	Recommended	A	48201552200	2nd	14.8%	
14017	Catalon	Queenston Blvd & Coventry Park Dr	Houston	Harris	77084	6	Urban		NC	119	23	142	General	\$	1,500,000	X	Mark Musemeche	Ofelia Elizondo	127	15.5	4	8	4	158.5	C	Recommended	A	48201541500	1st	4.4%	
14113	Avenue Terraces	4300 Irvington Boulevard	Houston	Harris	77009	6	Urban	X	NC	43	5	48	General	\$	566,000	X	Mary Lawler	Jason Holoubek	125	17	8	8	0	158	C	Recommended	A	48201210500	4th	39.3%	
14291	Cypress Creek Apartment Homes at Wayside	Approx the NW quadrant of S Wayside Dr and Texas Beltway 8	Houston	Harris	77048	6	Urban		NC	140	60	200	General	\$	1,500,000	X	Stuart Shaw	Casey Bump	124	17	8	8	0	157	C	Recommended	A	48201330800	2nd	9.7%	
14273	Forestwood Lodge	Purple Sage Road across from Purple Sage Elementary	Houston ETJ	Harris	77049	6	Urban	X	NC	142	28	170	General	\$	1,500,000		Chris Richardson	Jessica Bailey	125	15.5	4	8	4	156.5	N		N	48201232401	2nd	14.5%	
14103	The Women's Home Housing Phase II	7600 block of Hammerly Blvd.	Deer Park	Harris	77055	6	Urban	X	NC	84	0	84	Supp. Hsng.	\$	1,309,195		Stephan Fairfield	Donna Rickenbacker	123	17	8	8	0	156	UR	Recommended	P	48201552040	4th	4	

14015	The Monarch	8500 block S. Sam Houston Pkwy E	Houston	Harris	77075	6	Urban		NC	130	26	156	General	\$	1,500,000	Mark Musemeche	Ofelia Elizondo	126	0	4	8	4	142	N			48201333991	1st	4.1%				
14032	Reserve at Compton Road	North of Compton Street & East of FM 521	Arcola	Fort Bend	77583	6	Urban		NC	120	0	120	General	\$	1,500,000	Brian McGeady	Chris Applequist	125	0	4	8	4	141	N			48157670800	2nd	11.2%				
14019	Tuscany Park at Arcola	Post Oak Road (350' south of Hwy 6)	Arcola	Fort Bend	77583	6	Urban		NC	120	16	136	General	\$	1,500,000	Mark Musemeche	Ofelia Elizondo	130	0	4	0	4	138	N			48157674501	1st	3.5%				
14166	Hurstbourne Crossing	NW Quadrant of Oates Rd and IH 10	Houston	Harris	77013	6	Urban		NC	120	0	120	General	\$	1,500,000	Justin Hartz	Alyssa Carpenter	120	0	4	-8	4	120	N			48201232600	2nd	4.8%				
	<b>Estimated Amount Available to Allocate</b>													\$	<b>32,701,343</b>																		
<b>Region 7/Rural</b>																																	
14007	Liberty Manor	Bailey Lane, approx. 500' north of Hwy 29 W	Liberty Hill	Williamson	78642	7	Rural		NC	65	3	68	Elderly	\$	740,851	X	Kenneth G. Blankenship	Breck Kean	131	17	4	8	4	164	C	Recommended	A	48491020202	1st	9.9%			
14157	Pecan Pointe	SWQ Agnes and Childers Dr	Bastrop	Bastrop	78602	7	Rural		NC	62	18	80	General	\$	749,925	X	Stacy Kaplowitz	Alyssa Carpenter	130	17	4	8	4	163	N			48021950400	3rd	7.3%			
14006	Oak Grove Village	1101 Broadway	Marble Falls	Burnet	78654	7	Rural		X	NC	38	4	42	Elderly	\$	500,000	X	Mark Mayfield	Dennis Hoover	131	17	4	8	4	-5	159	C			48053960700	4th	19.7%	
	<b>Estimated Amount Available to Allocate</b>													\$	<b>1,990,776</b>																		
<b>Region 7/Urban</b>																																	
14069	Southwest Trails Phase II	8500 Highway 71	Austin	Travis	78735	7	Urban		X	NC	58	0	58	Supp. Hsing.	\$	900,000	X	Walter Moreau	Jennifer Hicks	135	17	8	8	0	168	C	Recommended	A	48453001908	1st	11.9%		
14068	Bluebonnet Studios	2301 South Lamar Blvd.	Austin	Travis	78704	7	Urban		X	NC	107	0	107	Supp. Hsing.	\$	845,500	X	Walter Moreau	Jennifer Hicks	133	17	8	8	0	166	C	Recommended	A	48453001304	2nd	10.5%		
14226	Art at Bratton's Edge	SEC Long Vista Dr and Bratton Ln	Austin	Travis	78728	7	Urban		NC	68	8	76	General	\$	1,056,000	X	Louis Wolfson III	Lisa Stephens	132	17	4	8	4	165	C	Recommended	A	48453001853	1st	4.2%			
14070	Rutledge Spur Apartments	NEC of Rutledge Spur and FM 620	Austin	Williamson	78717	7	Urban		X	NC	128	0	128	General	\$	1,254,485	X	Walter Moreau	Jennifer Hicks	130	17	4	8	4	163	C	Recommended	A	48451020311	2nd	4.7%		
14107	Villas at Buda	FM 967 and Robert S. Light Blvd.	Buda	Hays	78610	7	Urban		NC	128	32	160	General	\$	1,500,000			Kecia Boulware	Arjun Nagarkatti	132	17	4	0	4	157	N			48209010902	1st	3.8%		
14203	Longhorn's Landing	14,127 acres at S. Loop 4 and Robert S. Light Blvd.	Buda	Hays	78610	7	Urban		NC	115	22	137	General	\$	1,500,000			Jorge A. Aguirre	Donna Rickenbacker	130	17	4	0	4	155	N			48209010902	1st	3.8%		
14243	Merritt Lakeline Station	southeast quadrant of Lakeline Mall Drive and N. Lake Creek Parkway	Austin	Williamson	78717	7	Urban		X	NC	110	90	200	General	\$	1,500,000			Colby Denison	Lisa Beauchamp	130	0	4	8	4	146	N			48491020311	2nd	4.7%	
	<b>Estimated Amount Available to Allocate</b>													\$	<b>8,555,985</b>																		
<b>Region 8/Rural</b>																																	
14109	Hidden Glen	Northeast of the intersection of Mary Ln & Vanessa St.	Salado	Bell	76571	8	Rural		NC	50	0	50	Elderly	\$	514,453	X	Will Markel	Jim Markel	132	17	4	8	0	161	C	Recommended	A	48027023403	1st	5.0%			
14099	Belle Towers	0 Cottonwood	Brenham	Washington	77833	8	Rural		NC	70	6	76	Elderly	\$	750,000			Marvalette Hunter	Thomas Jones	125	17	4	8	4	158	C	Recommended	C	48477170100	4th	14.5%		
14126	Shadow Hills Apartments	1800 Block of Old Brandon Road	Hillsboro	Hill	76645	8	Rural		NC	60	0	60	General	\$	645,000			Vaughn C. Zimmerman	Ben Mitchell	54	17	4	8	4	87	N			48217961100	1st	11.4%		
	<b>Estimated Amount Available to Allocate</b>													\$	<b>1,909,453</b>																		
<b>Region 8/Urban</b>																																	
14229	Barron's Branch II	N 9th St and Indiana Ave as well as N 9th St and West Ave	Waco	McLennan	76707	8	Urban		NC	76	0	76	General	\$	1,104,000	X	David O. Deutch	Lisa Stephens	127	17	8	8	0	160	C	Recommended	A	48309001200	4th	51.4%			
14200	Constitution Court Phase II	722 Constitution Drive	Copperas Cove	Coryell	76522	8	Urban		NC	69	3	72	General	\$	923,821	X	Emmanuel H. Gluckzin, Jr.	Pixie Stracener	121	17	8	8	0	154	C	Recommended	A	48099010504	4th	27.1%			
	<b>Estimated Amount Available to Allocate</b>													\$	<b>2,027,821</b>																		
<b>Region 9/Rural</b>																																	
14106	Manor Lane Senior Apartments	Avenue G and 29th Street (Garden Park Subdivision)	Hondo	Medina	78861	9	Rural		X	NC	48	0	48	Elderly	\$	685,745			Renée Sandell	Rick Haymond						UR	A	48325000500	3rd	21.4%			
	<b>Estimated Amount Available to Allocate</b>													\$	<b>685,745</b>																		
<b>Region 9/Urban</b>																																	
14227	Liberty Pass	N Side of Lookout Rd, E of Jordan Rd	Selma	Comal	78154	9	Urban		NC	96	8	104	General	\$	1,500,000	X	X	Michael D. Wohl	Lisa Stephens	134	17	4	8	4	167	C	Recommended	A	48091310801	1st	2.0%		
14150	EAGLES REST	8401 N. FM 1560 and a portion of 8445 N. FM 1560	Bexar	San Antonio (ETJ)	78254	9	Urban		X	NC	102	6	108	General	\$	1,378,181	X	Meghan Garza-Oswald	Maryann VanSchoor	132	17	4	8	4	165	C	Recommended	A	48029181729	1st	2.7%		
14285	The Arbor at Centerbrook	13.13 acres on Centerbrook; NWQ of Centerbrook and Athenian Drive	Bexar	Live Oak	78148	9	Urban		NC	80	0	80	General	\$	1,062,039	X		Dan Wilson	Henry Flores	132	17	4	8	4	165	C	Recommended	A	48029121702	1st	8.9%		
14300	Vista Pointe at Wild Pine	11.169 acres on Wild Pine; SEQ of Wild Pine and Lone Star Parkway	San Antonio	Bexar	78253	9	Urban		NC	120	0	120	General	\$	1,464,051			Dan Wilson	Henry Flores	130	17	4	8	4	163	N		2 mile/same year w/14150	N	48029172005	1st	0.6%	
14254	Silver Oaks Village	NEC of Reed Road and Loop 1604	San Antonio	Bexar	78251	9	Urban		NC	152	0	152	General	\$	1,500,000			Manish Verma	Janice Degollado	132	17	4	4	4	161	N			N	48029171918	1st	3.5%	
14011	Artisan at Remigio	3760 Remigio Street	San Antonio	Bexar	78211	9	Urban		X	NC	140	0	140	General	\$	1,500,000			Edgar Sandoval	Ryan Wilson	128	17	8	8	0	161	N			N	48029161100	4th	16.2%
14151	ECKHERT VILLAGE	NEC of Bandera Road & Eckhart Road	San Antonio	Bexar	78238	9	Urban		X	NC	80	0	80	General	\$	1,040,049			Meghan Garza-Oswald	Maryann VanSchoor	128	17	4	8	4	161	N			N	48029181704	2nd	14.5%
14118	WESTPOINT APARTMENTS	Westpointe Subdivision at termination of Hunters Ridge	New Braunfels	Comal	78132	9	Urban		X	NC	82	0	82	General	\$	1,097,351	X	Meghan Garza-Oswald	Maryann VanSchoor	128	0	4	0	4	136	N			N	48091310802	1st	11.4%	
	<b>Estimated Amount Available to Allocate</b>													\$	<b>10,541,671</b>																		
<b>Region 10/Rural</b>																																	
14306	Live Oak Villas	West side of Highway 281 approx 350' north of Chapelle Drive	George West	Live Oak	787022	10	Rural		NC	41	7	48	General	\$	527,200	X	Kyndel Bennett	Lora Myrick	127	17	4	8	0	156	C	Recommended	A	48297950300	3rd	3.4%			
14303	The Cottages at Bailey Square	Southeast Corner of N. Valley Street and E. Bailey Street	Cuero	DeWitt	77954	10	Rural		NC	42	6	48	Elderly	\$	583,252	X	Audrey Martin	Valentin DeLeon	122	17	4	8	4	155	N			N	48123970300	1st	10.3%		
	<b>Estimated Amount Available to Allocate</b>													\$	<b>1,110,452</b>																		
<b>Region 10/Urban</b>																																	
14282	Riverstone Apartments	3501 Airline Road	Corpus Christi	Nueces	74141	10	Urban		NC	60	0	60	General	\$	813,778	X	Michael Gardner	Henry Flores	130	17	4	8	4	163	C	Recommended	A	48355005414	1st	4.0%			
	<b>Estimated Amount Available to Allocate</b>													\$	<b>813,778</b>																		
<b>Region 11/Rural</b>																																	
14297	Casitas Los Olmos	380 Farm to Market Road 3168	Raymondville	Willacy	78526	11	Rural		X	NC	80	0	80	General	\$	897,613	X	Nick Mitchell-Bennett	Mark Moseley	131	17	4	8	4	164	C	Recommended	A	48489950400	1st	33.8%		
14209	Riverside Village Apartments	Intersection of Robertson Rd. and Bates Rd.	Rio Hondo	Cameron	78583	11	Rural		NC	60	0	60	General	\$	714,000	X	Tim Lang	Brenda Cooper	131	8.5	4	8	4	155.5	C			N	48061010100	2nd	28.4%		
14185	Vista Del Valle Apartments	southwest corner of FM 491 and 7th Street	La Villa	Hidalgo	78562	11	Rural		X	NC	80	0	80	General	\$	896,000			Rick J. Deyoe	Juli Gonzalez	122	17	4	8	4	155	N			N	48215024600	3rd	44.5%
	<b>Estimated Amount Available to Allocate</b>													\$	<b>2,507,613</b>																		
<b>Region 11/Urban</b>																																	
14177	Orchard Estates Apartments	10+/- acres East Side of Stewart Rd. N of 4 Mile Line	Alton (ETJ)	Hidalgo	78573	11	Urban		NC	134	6	140	General	\$	1,440,000	X	Steve Lollis	Donna Rickenbacker	134	17	4	8	4	167	C	Recommended	A	48215024106	1st	26.4%			
14036	La Esperanza De Alton	East of Stewart Road and South of Main Street	Alton	Hidalgo	78573	11	Urban		NC	72	8	80	General	\$	815,601	X	Sara Reidy	Linda S. Brown	134	17	4	8	4	167	C	Recommended	A	48215024106	1st	26.4%			
14256	Retama Park	200 Thompson Drive	Brownsville	Cameron	78575	11	Urban		NC	133	15	148	General	\$	1,500,000	X	Manish Verma	Janice Degollado	132	17	4	8	4	165	C	Recommended	A	48061014400	1st	25.5%			
14283	Bella Vista Apartments	+/- 15.8 Acres in NWQ of 4 Mile Road and Shary Road	Alton (ETJ)	Hidalgo	78573	11	Urban		NC																								

Region 13/Rural																																			
14073	Homestead Palms	14597 Santiesteban	Homestead Palms South	El Paso	79938	13	Rural		NC	48	0	48	General	\$	467,000	X	R.L. "Bobby" Bowling, IV	Demetrio Jimenez	117	0	4	8	4	133	C	Recommended	A	48141010341	2nd	19.3%					
14194	Laureles del Este	SWQ Fabens St & Citizen Transfer Station Rd	Fabens	El Paso	79838	13	Rural		NC	40	0	40	General	\$	407,447		Ike J. Monty	Roy Lopez	110	0	4	8	4	126	N		N	48141010505	4th	50.6%					
														<b>Total HTCs Requested</b>	<b>\$</b>	<b>874,447</b>																			
Region 13/Urban																																			
14037	Artspace El Paso Lofts	601 N. Oregon Street	El Paso	El Paso	79901	13	Urban		NC	51	0	51	General	\$	918,913	X	Sarah White	Greg Handberg	126	17	4	8	4	159	C	Recommended	A	48141001600	4th	46.6%					
14128	Sherman Plaza	4528 Blanco Ave.	El Paso	El Paso	79905	13	Urban	X	NC	198	0	198	General	\$	1,500,000	X	Juan A. Olvera	Alyssa Carpenter	120	17	8	8	0	153	C	Pending underwriting appeal	A	48141003000	4th	41.6%					
14302	Socorro Palms	Located in Northwest quadrant of Passmore and Socorro Rd. Intersection	Socorro	El Paso	79927	13	Urban		NC	110	42	152	General	\$	1,266,077	X	R.L. "Bobby" Bowling, IV	Demetrio Jimenez	115	17	4	8	4	148	C	Recommended	A	48141010401	2nd	20.7%					
14193	Villas at West Mountain	NWQ Helen of Troy & New Harvest	El Paso	El Paso	79912	13	Urban		NC	66	10	76	General	\$	745,065		Ike J. Monty	Roy Lopez	118	0	4	8	4	134	UR	Recommended	C	48141010215	1st	5.3%					
14075	Pellicano Palms	Corner of Aviation Way off of Pellicano Drive	El Paso	El Paso	79928	13	Urban		NC	110	42	152	General	\$	1,266,077		R.L. "Bobby" Bowling, IV	Demetrio Jimenez	130	0	4	8	4	-12	134	N		N	48141010342	1st	8.9%				
14074	Dyer Palms	Between Dyer St. and Palomino St. off of Ameen Dr	El Paso	El Paso	79924	13	Urban		NC	110	42	152	General	\$	1,266,077		R.L. "Bobby" Bowling, IV	Demetrio Jimenez	118	0	4	8	4	-12	122	N		N	48141000108	3rd	25.8%				
														<b>Total HTCs Requested</b>	<b>\$</b>	<b>6,962,209</b>																			

TOTALS																						
<b>Total Estimated 2014 Credit Ceiling</b>			<b>\$63,218,574</b>			<b>Total Applications Received 146</b>			<b>Total HTCs Requested</b>			<b>\$145,956,546</b>			<b>Total Tax Credits Awards Recommended</b>			<b>\$ 63,074,290</b>				
																	<b>Remaining Tax Credits Available for Allocation</b>			<b>\$ 144,284</b>		
																	<b>Total Number of Applications Recommended for Award</b>			<b>\$ 70</b>		



# **ACTION ITEMS**

2

**BOARD ACTION REQUEST**

**EXECUTIVE**

**NOVEMBER 13, 2014**

Presentation, Discussion, and Possible Action on the Executive Director's Appointment of an Internal Auditor.

**RECOMMENDED ACTION**

**WHEREAS**, TEX. GOV'T CODE §2306.073 provides that the executive director shall, with the approval of the Board, appoint the internal auditor; and

**WHEREAS**, the executive director has recommended that the Board grant approval for the designation of Mark Scott as the Department's Director of Internal Audit,

**NOW, therefore, it is hereby**

**RESOLVED**, that the appointment by the executive director of Mark Scott as the Director of Internal Audit is hereby approved; and

**FURTHER RESOLVED**, that Leslie Bingham, as the incumbent Chair of the Audit Committee, is hereby authorized and empowered, for and on behalf of this Board, to approve the initial salary of the Director of Internal Audit.

**BACKGROUND**

Since the retirement of the previous Director of Internal Audit, Betsy Schwing has capably served as Acting Director of Internal Audit. The executive director, on behalf of the Board and the management team, extends sincere thanks to her for this valuable service under challenging and short staffed conditions.

During the past month the executive director has overseen a recruitment, interview, and selection process to identify the Director of Internal Audit. A number of extremely capable and well qualified candidates were interviewed, and through that process the executive director, with participation by the executive team, determined that Mark Scott was the most qualified.

3

**BOARD ACTION REQUEST**  
**SECTION 811 PRA PROGRAM**  
**NOVEMBER 13, 2014**

Presentation, Discussion, and Possible Action approving the Program Selection Guidelines for 2015 9% Housing Tax Credit Applicants placing Section 811 Units in Existing Properties and regarding contractual issues with HUD.

**RECOMMENDED ACTION**

**WHEREAS**, the Texas Department of Housing and Community Affairs (“Department”) was awarded \$12 million from the U.S. Department of Housing and Urban Development (“HUD”) for the Section 811 Project Rental Assistance Demonstration Program (“Section 811 PRA”) on February 12, 2013;

**WHEREAS**, the Department anticipates executing a Cooperative Agreement which will formalize the administration of those funds between HUD and the Department for the Section 811 PRA;

**WHEREAS**, the Department applied for an additional \$12 million in 2013 Section 811 PRA funds from HUD;

**WHEREAS**, when an applicant for the 2015 Competitive (9%) Housing Tax Credits (“HTC”) Program elects points on the Application by committing units for participation in Section 811 PRA, that Applicant has the option of committing units in an existing development in the Applicant’s or Affiliate’s portfolio instead of in the Development proposed in the HTC Application;

**WHEREAS**, if TDHCA awards tax credits to Developments proposing to commit units in existing properties, criteria will need to be established so that staff may select existing properties that receive Section 811 PRA units; and

**WHEREAS**, staff requests Board approval of its Program Selection Guidelines for 2015 9% Housing Tax Credit Applicants placing Section 811 PRA units in existing properties.

**NOW, therefore, it is hereby**

**RESOLVED**, the Department is authorized to use the Program Selection Guidelines for 2015 9% HTC Applicants placing Section 811 Units in existing properties as drafted and proceed with executing the Section 811 PRA Property Agreements and other HUD required Section 811 contracts and documents for any and all properties eligible for the Section 811 funds conditioned on the Executive Director’s approval; and

**FURTHER RESOLVED**, the Department is authorized to make non-substantive and technical changes to the Program Selection Guidelines for 2015 HTC Applicants placing Section 811 Units in Existing Properties, and any additional changes necessary to provide consistency with federal laws, regulations, and guidance, as they may be amended from time to time provided however that nothing herein shall be constructed to give staff authority to impose conditions contrary to state law existing now or henceforth in effect.

## **BACKGROUND**

To provide options to applicants for the 2015 Competitive (9%) Housing Tax Credits (“HTC”) who wish to participate in the State’s Section 811 Project Rental Assistance program and to more quickly serve qualified persons with disabilities who are in need of affordable, accessible and integrated housing, Department staff have developed a mechanism for applicants to qualify for points in the 2015 Qualified Allocation Plan and place the units in an existing properties rather than the Development that is applying for Competitive 9% HTCs.

The ability for applicants to place units in existing properties will result in many of the Section 811 PRA property development requirements for new construction or rehabilitation to be inapplicable. TDHCA has created criteria, however, that are anticipated to bring in high quality existing properties by requiring high standards for physical inspection, compliance history and occupancy rates. In addition, existing properties cannot have been awarded before 2002 and must be in close proximity to public transportation. The existing properties with these characteristics will create a balance of properties, along with those properties in the newly awarded in the 2015 9% HTC round, that will help the Department to meet the goals of the program. Department staff anticipates that allowing applicants for the 9% HTC program to place Section 811 PRA units in existing properties will allow the Department to serve tenants starting in 2015 and provide a certain number of properties with close proximity to transit, which some Section 811 tenants will need.

### **Section 811 PRA Program Background**

On February 12, 2013, HUD announced that Texas was one of 13 states selected to participate in the first ever Section 811 Housing for Persons with Disabilities Project Rental Assistance Demonstration Program. This new Section 811 PRA is designed to assist state housing agencies to expand integrated supportive housing opportunities for people with the most significant and long term disabilities.

The Department anticipates executing a Cooperative Agreement with HUD soon which will serve as the guiding regulations for the program, since HUD has not yet promulgated rules.

TDHCA is a partner with the State’s Medicaid agency, the Health and Human Services Commission (“HHSC”) , and four of its other agencies in Section 811 PRA. In this partnership, TDHCA contributes the housing voucher administration and expertise, while the health and human service agencies contribute the provision and coordination of services.

The Section 811 PRA funds provide for five years of rental assistance, but the Department anticipates that funding will be renewed annually beyond the initial five years of funding. The Department anticipates this will serve between 300 and 400 households over the five year period, depending on household size, rents, etc.

### **Program Concept**

Once a Development agrees to participate in the Section 811 PRA program, the multifamily Development will enter into a Property Agreement with the Department committing to, among other things, a set number of units that they will be willing to set aside for use by the target populations. In addition, to participate in the program, the property will be required to execute with the Department contracts and other documents required by HUD, including a Use Agreement and Rental Assistance Contract. The Health and Human Services agencies have local providers who will identify income-eligible clients (households earning at or below 30% Area Median Family Income) within the target populations that are in a position to transition into a stable housing unit. Those HHSC agencies will educate the client during this process and then refer the client to TDHCA for placement in a unit at a participating property of their choice. If there are no units available, clients will have the option of being placed on a waiting list for one or more of the Developments. Upon being reached on a specific waiting list (or at first lease-up if applicable), the client will be notified. Assuming they satisfy any property level screening requirements, the client will then sign a lease, move into their unit at that property, and a portion of monthly payments for the unit will begin being made to the property owner on that client's behalf. Services will be provided by the HHSC agencies for the clients.

### **Program Areas**

Due to the large size of the State of Texas and the primary locations of concentrations of the three Target Populations, TDHCA will focus the agency's resources on seven geographic areas, all of which are Metropolitan Statistical Areas ("MSAs") and are geographically dispersed statewide:

1. Austin-Round Rock-San Marcos
2. Brownsville-Harlingen
3. Dallas-Fort Worth-Arlington
4. El Paso
5. Houston-Sugar Land-Baytown
6. McAllen-Edinburg-Mission
7. San Antonio-New Braunfels

### **Contractual Issues**

Staff may provide legal advice to the Board regarding certain contractual issues that have arisen with HUD. It is possible the Board may subsequently take action to provide guidance on these matters.

**Attachment 1**  
**Section 811 Project Rental Assistance (PRA) for Persons with Disabilities**  
**Program**  
**Program Selection Guidelines for 2015 Housing Tax Credit Applicants**  
**placing Section 811 Units in Existing Developments**

**Description of Section 811 Program**

The Section 811 Project Rental Assistance (“PRA”) Program creates affordable housing, through project based rental assistance, for extremely low-income persons with disabilities linked with long term services through a partnership between the Texas Department of Housing and Community Affairs (“TDHCA”), and the State Medicaid Agency, the Texas Health and Human Services Commission (“HHSC”).

**Purpose**

The following are Program Guidelines for Development Owners proposing to commit units for participation in the Section 811 PRA Program under the following circumstances:

- (1) An Applicant for the 2015 Competitive (9%) Housing Tax Credits (“HTCs”) elects points on the Application by committing units for participation in the Section 811 PRA Program; **and**
- (2) That Applicant wishes to commit units in an existing Development in the Applicant’s or Affiliate’s portfolio instead of in the Development proposed in the HTC Application.

These are not guidelines for Developments proposed in a 2015 Competitive HTC Application. Those Developments must meet the guidelines established in the 2015 QAP.

Existing Developments are those where all of the units have been placed in service or are expected to be placed in service on or before December 31, 2016 and that are part of that Applicant’s or an Affiliate’s existing portfolio. The following outlines the program guidelines for these existing Developments. However, in addition to these requirements, a Development must meet all HUD and TDHCA requirements for participation in the Section 811 PRA Program. TDHCA will make the final determination if a property meets the requirements of these Program Selection Guidelines; however, the Applicant is responsible for understanding and complying with the requirements of the Section 811 PRA program.

**Program Requirements**

The Development is required to comply with all program guidelines created by the Department and HUD and the Development Owner must execute all required documents, including a Property Agreement, Rental Assistance Contract, and Use Agreement.



## **Eligible Existing Developments**

Eligible Existing Developments must meet all of the following requirements:

- The Development received an award (tax credit, direct loan, etc.) under a TDHCA administered program in or after 2002;
- The Development has at least 5 housing units;
- The Development must provide and be eligible for all of the units required for that 2015 QAP application. The 811 units cannot be placed in more than one Development per 2015 application.
- The Development is in one of the Metropolitan Statistical Areas (“MSAs”) listed in Program Availability;
- During the 6 months prior to 2015 HTC application submission, the Development maintained at least 85 percent physical occupancy for a period of at least 3 consecutive months (or the Development has not placed in service yet or has placed in service within the last 12 months);
- The Development had a UPCS score of at least 80 on its most recent TDHCA inspection or has not yet had a UPCS inspection;
- The Development is not ineligible under §10.101(a)(3) and (4) of the 2015 Uniform Multifamily Rules;
- The Development is operating in accordance with the accessibility requirements of Section 504, the Rehabilitation Act of 1973 (29 U.S.C. Section 794), as specified under 24 C.F.R. Part 8, Subpart C or operating under the 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" Federal Register 79 FR 29671;
- The Development is not Transitional Housing as defined in the 2015 Uniform Multifamily Rules; and
- The Development is not a Qualified Elderly Development.

In addition, Existing Properties must meet one of the two following requirements:

- The Development agrees to provide at no cost to the tenant accessible transportation when the Property Management Office is open, such as cab vouchers or a specialized van on-site, to a bus or other public transit stop; or
- The Development is within a quarter mile of a bus or other public transit stop.

## **Unit Requirements**

Failure for a unit to meet these requirements does not make the entire Development ineligible, rather only those units.

- Units in the Development are not eligible for Section 811 assistance if they have an existing project-based or operating housing subsidy attached to them or if they have received any form of

long-term operating subsidy within the last six months prior to receiving Section 811 Rental Assistance Payments.

- Units with an existing age restriction (except for restrictions requiring one member to be at least 18) are not eligible.
- Units with an existing use restriction for persons with disabilities are not eligible.

**Unit Integration Requirements**

- Section 811 PRA units must be dispersed throughout the Development.
- Developments cannot exceed the integration requirements of TDHCA and HUD. The table below illustrates the maximum number of units a Development can set aside (restrict), or have an occupancy preference for persons with disabilities, including Section 811 PRA units.

Section 811 PRA Integration Rule Table

<b>Development Size</b>	<b>HUD 811 Integration Rule</b>	<b>TDHCA Integration Rule*</b>	<b>Most Restrictive (what is required)</b>
Small Housing Developments (Less than 50 Units)	25%	36%	25%
Large Housing Developments (50 or More Units)	25%	18%	18%

**\*Properties that are exempt from TDHCA Integrated Housing Rule (such as Supportive Housing) are not exempt from HUD’s Integration Requirements of 25%.**

**Approval Process:**

Applicants requesting approval for an existing property must submit their request no later than January 26, 2015. Staff response on approval will be provided to the Applicant no later than February 20, 2015.

**Program Availability**

The Section 811 PRA Program will provide units within the following Metropolitan Statistical Areas in the state:

- Austin-Round Rock-San Marcos
- Brownsville-Harlingen
- Dallas-Fort Worth-Arlington
- El Paso
- Houston-Sugar Land-Baytown
- McAllen-Edinburg-Mission
- San Antonio-New Braunfels

4a

Item 4a

To Be Posted 3 Days Prior to the  
Board Meeting

4b

Item 4b

To Be Posted 3 Days Prior to the  
Board Meeting

5a

Item 5a

To Be Posted 3 Days Prior to the  
Board Meeting



5b

Item 5b

To Be Posted 3 Days Prior to the  
Board Meeting

5c

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**NOVEMBER 13, 2014**

Presentation, Discussion, and Possible Action to adopt the 2015 Multifamily Programs Procedures Manual

**RECOMMENDED ACTION**

**WHEREAS**, the rules relating to multifamily program funding are contained in the Administration Rules, Uniform Multifamily Rules, Housing Tax Credit Qualified Allocation Plan and Multifamily Housing Revenue Bond Rules;

**WHEREAS**, the Department has created the Multifamily Programs Procedures Manual as a resource guide for applicants; and

**WHEREAS**, pursuant to Chapter 2306, Texas Government Code the Board shall adopt a manual to provide information regarding the administration of and eligibility for participation in the housing tax credit program;

**NOW, therefore, it is hereby,**

**RESOLVED**, the 2015 Multifamily Programs Procedures Manual is hereby approved and the publication of the Manual on the Department's website shall occur no later than the date the adoption of the Uniform Multifamily Rules and Housing Tax Credit Qualified Allocation Plan are filed for publication in the *Texas Register*; and

**FURTHER RESOLVED**, 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 make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, to complete the remaining portions of the manual which will provide additional guidance based on the final approved rules, and amend from time to time as it deems necessary to provide guidance on the filing of multifamily related documents.

**BACKGROUND**

As part of the annual rule-making process for multifamily-related funding, the Multifamily Finance Division creates a Multifamily Programs Procedures Manual. The purpose of the

manual is to provide guidance on the filing of a multifamily application and other multifamily program-related documents. Staff creates this manual as a resource guide which includes references to the rules and examples of acceptable documentation or development plans based on the program rules and requirements. The Board's action in approving the adoption of this manual allows staff the flexibility to provide more detailed instructions and amend it deemed necessary in order to effectively implement the Department's multifamily program rules once such rules have been adopted. Staff notes that the manual contains the main headings of various categories and/or tabs that will mirror the application and upon adoption of the rules and the finalization of the application staff will finalize this manual with instructions, guidance and references to the rules. Additionally, from time to time staff may update the manual based on additional information that may become available or to correct inconsistencies or to clarify information contained therein.



**TEXAS DEPARTMENT OF  
HOUSING & COMMUNITY AFFAIRS**

*Building Homes. Strengthening Communities.*

**2015**  
**Multifamily Programs**  
**Procedures Manual**

221 East 11<sup>th</sup> Street  
Austin, Texas 78701

# 2015 Multifamily Application Procedures Manual

---

## Table of Contents

<b>Introduction to the 2015 Multifamily Application.....</b>	<b>3</b>
Programs .....	3
General Organization of the Application .....	3
Using this Manual .....	4
<b>Instructions for Completing the Electronic Application .....</b>	<b>5</b>
Instructions for Converting the Excel file to PDF .....	6
Creating Bookmarks .....	7
<b>Pre-Application (for Competitive HTC only).....</b>	<b>9</b>
Pre-Application Delivery Instructions .....	9
Competitive Application Cycle.....	9
Pre-Application Assembly Instructions .....	9
Required Documentation for the Pre-Application .....	9
<b>Application.....</b>	<b>10</b>
Application Delivery Instructions .....	10
Competitive Application Cycle.....	10
Application Assembly Instructions .....	11
Required Forms and Exhibits for the Application .....	13
Part 1- Administrative Tabs .....	13
Part 2 – Development Site .....	13
Part 3- Development Activities.....	14
Part 4- Development Financing .....	15
Part 5 – Development Organization.....	16
Part 6 – Third Party Reports .....	17
<b>HOME/CHDO Information.....</b>	<b>18</b>
Application Delivery Instructions .....	18
HOME Program Information .....	18
CHDO Overview .....	18
<b>Supplemental Information .....</b>	<b>19</b>
Requests for Waiver and Staff Determinations .....	19
Public Viewing of Pre-Applications and Applications .....	19
Applicable Rules and Reference Materials .....	20

# Introduction to the 2015 Multifamily Application

## Programs

In March 2012, the Texas Department of Housing and Community Affairs' ("TDHCA" or "Department") Governing Board adopted resolution 12-019 which acknowledged the re-organization of the Department and its divisions. This re-organization shifted program staff and responsibilities to more closely align with the Department's mission.

Under the new structure, all multifamily funding programs were officially moved under the Multifamily Finance umbrella. The multifamily components of the HOME, Neighborhood Stabilization Program (NSP), and Housing Trust Fund (HTF) are now administered by Multifamily Finance Division staff. All Single-Family financing for the HOME, NSP, and HTF programs will be administered by their respective divisions, and will not be covered in this manual. The programs administered by the Multifamily Finance Division currently include:

- 9% Housing Tax Credits
- 4% Housing Tax Credits
- Tax Exempt Bonds
- Multifamily HOME
- Multifamily NSP
- Multifamily HTF

As a result of the Department's re-organization and the subsequent changes to the Uniform Multifamily Rules and Qualified Allocation Plan, staff also updated the Uniform Application in order to simplify the application process for applicants.

## General Organization of the Application

The 2015 Application has fully integrated each of the Multifamily Programs into one coherent application and is divided into six (6) parts listed below, each of which will be briefly explained in this section, and fully explained later in this Manual.

- Administrative
- Development Site
- Development Activities
- Finance
- Organization
- Third Party

The **Administrative** section of the Application collects the most basic information about the proposed Development and the Applicant contact information. The purpose of the administrative section



# 2015 Multifamily Application Procedures Manual

---

is to identify the program(s) to which the Application is submitted and includes the Applicant and Developer Certifications.

The **Development Site** section of the Application includes all of the information related to the physical location of the proposed Development site, such as the development address, census tract number, flood zone designation, as well as information about the schools and elected officials in the community.

The **Development Activities** section of the Application includes all of the information about what activity is being proposed, from what is being built to the services provided to the tenants. This section includes the architectural drawings and information regarding existing structures on the development site.

The **Finance** section of the Application includes all of the sources of financing, the development cost schedule, annual operating expenses, and the rent schedule.

The **Organization** section of the Application includes information about the Applicant, Developer, and Non-Profit entities involved with the Application, along with all of their owners, managers, and board members. It includes the organizational charts and evidence of experience as well as credit limit documentation.

The **Third Party** section briefly identifies the entities used for the Environmental Site Assessment, Market Study, and Property Condition Assessment, as well as any other required reports.

Of particular interest is the fact that the application, with respect to the competitive 9% housing tax credit program, is not separated into sections based on eligibility and selection criteria. Instead, items that affect an application's score are found throughout the application. For instance, scoring criteria that are site-specific, such as Underserved Areas, are located in the Development Site portion of the application, while other scoring criteria, such as the Commitment of Funding from a Local Political Subdivision, are found in the Finance section.

## Using this Manual

The purpose of this manual is to provide a brief description of each tab in the application and guidance as to the Department's submission requirements and what is acceptable supporting documentation. While the Department expects that this guide may not contemplate all unforeseen situations, we hope that the information will provide an adequate foundation upon which you may build your understanding of this program. This manual may in certain instances provide examples of documentation that could be submitted to comply with a particular rule or requirement. In some instances the rule may allow for alternative documentation not specifically contemplated herein, and in such instances staff will review such documentation for compliance with the applicable rule.

The Department always stands ready to assist you in understanding the tax credit program and other sources of multifamily financing offered by the Department and the means by which an application is to be presented. The Department will offer direct assistance to any individual that requires this service in the preparation of the multifamily application. However, the Department will not take the responsibility of completing the application package for you. The Department looks forward to your continuing interest in the Multifamily Finance programs and in the creation of safe and high quality affordable housing for the citizens of the State of Texas.

# Instructions for Completing the Electronic Application

---

### What you will learn in this section:

- ✓ How to download the Electronic Application Materials
- ✓ How to convert the Excel Application to PDF
- ✓ How to set Bookmarks

All Applicants are required to use the 2015 Uniform Application, and/or any supplemental files provided by TDHCA located at the following link: (<http://www.tdhca.state.tx.us/multifamily/apply-for-funds.htm>).

1. To download any of the electronic Application files, right-click on the link at the website provided above, select “Save Target As” and choose the storage location on your computer. The Excel file should be named in the following format -- <Application #\_Development Name>.xls (e.g. 15001\_Austin\_Crossing.xls). If an Application number has not been previously assigned then the file should be named as follows -- <Development Name>.xls (e.g. Austin\_Crossing.xls).
2. Please do not transfer tabs from one Excel file to another, even if it is for the same Application. If you plan to submit more than one Application, please make additional copies of the 2015 Uniform Application file **after** completing portions of the Application that are common to all of your Applications and **before** completing any portions that are not common to all of your Applications.
3. Any cell that is highlighted yellow is available to be manipulated by the applicant. All other cells (unless specifically stated) are for Department use only, have been pre-formatted to automatically calculate information provided, and are locked. Applicants may view any formulas within the cells. Applicants may not add additional columns or rows to the spreadsheets, unless otherwise stated.
4. All questions are intended to elicit a response, so please do not leave out any requested information. If references are made by the Applicant to external spreadsheets those references must be removed prior to submission to TDHCA as this may hamper the proper functioning of internal evaluation tools and make pertinent information unavailable to TDHCA.
5. This electronic Application has been designed so that much of the calculations regarding development cost, eligible basis, and eligible point items will automatically compute once enough information has been entered. If you see a “#VALUE” or “DIV/0” in a cell these values should disappear upon data entry in other tabs.

# 2015 Multifamily Application Procedures Manual

---

**Tip – Complete the Development Narrative and the Rent Schedule in the Development Activities and Finance Parts of the Application first to take full advantage of the automated calculations.**

6. Be sure to save the file as you fill it out!

If you have difficulty downloading files from the website, contact Jason Burr at (512) 475-3986, or [Jason.burr@tdhca.state.tx.us](mailto:Jason.burr@tdhca.state.tx.us).

## Instructions for Converting the Excel file to PDF

Once the Excel Application file is completed and you are ready to convert the file to PDF, follow these instructions.

**Tip- Be sure to check all of the Page Breaks in the Excel files before you convert to PDF.**

### Excel 2007 Users:

Click the **Microsoft Office Button**  , point to the arrow next to **Save As**, and then click **PDF or XPS**.

1. In the **File Name** list, type or select a name for the workbook.
2. In the **Save as type** list, click **PDF**.
3. If you want to open the file immediately after saving it, select the **Open file after publishing** check box. This check box is available only if you have a PDF reader installed on your computer.
4. Next to **Optimize for**, do one of the following, depending on whether file size or print quality is more important to you:
  - If the workbook requires high print quality, click **Standard (publishing online and printing)**.
  - If the print quality is less important than file size, click **Minimum size (publishing online)**.
5. Click **Options**. Under **Publish What** select **Entire Workbook** and click **OK**.
6. Click **Publish**.

### Excel 1997-2003 Users:

1. With the Excel file open go to the Adobe PDF drop-down box from the task bar (if using Excel 2007 click on “Acrobat” tab in the task bar)
2. Select “Convert to Adobe PDF” from the drop-down list (Excel 2007- select “Create PDF”)
3. The Adobe PDFMaker box will appear. On the left hand side of the box all of the sheets within the Excel file will be listed and you will be prompted to select the sheets you would like to convert to PDF. Once the sheets you want to convert are selected click on the “Add

# 2015 Multifamily Application Procedures Manual

---

Sheets” button to move those sheets over to the right-handed side of the Adobe PDFMaker box, this will list the sheets selected to be converted to PDF.

4. Once all sheets you have selected appear on the right-hand side under “Sheets in PDF” click on the “Convert to PDF” button.
5. You will be prompted to create a name and save the PDF file. The PDF file should be named in the following format -- <Application #\_Development Name>.pdf (e.g. 15001\_Austin\_Crossing.pdf). If an Application number has not been previously assigned then the file should be named as follows --<Development Name>.pdf (e.g. Austin\_Crossing.pdf)
6. A pop-up box will appear that asks “Do you want to proceed without creating tags?” Click Yes.

Remember that there are forms that require a signature. Once you have executed all required documents scan them and re-insert the scanned forms back into the order required. The Application submitted should be the electronic copy created from the Excel file, not a scanned copy of the Excel or PDF file. Scanned copies of the Application are difficult to read, and slow down the process for staff and applicants.

## Creating Bookmarks

Once the file has been converted to PDF and all executed forms have been re-inserted into their appropriate location within the file, you will need to create Bookmarks. Bookmarks may or may not have already been created as part of the conversion process. You will need to designate or re-set the locations. To correctly set the Bookmark locations you must have the PDF file open in Adobe Acrobat. Click on the Bookmark icon located on the left-hand side of the Adobe Acrobat screen, or go to the task bar and select these options in the following order: **View** → **Navigation Panels** → **Bookmarks**.

If a Bookmark has already been created for each tab within the Excel file, simply re-set the bookmarks to the correct locations. To re-set the location for the Bookmarks, go to the first page of each separately labeled form/exhibit. You will then right-click on the corresponding Bookmark for the form/exhibit you are currently viewing. Select **Set Destination** and a pop-up box will appear asking you the following: "Are you sure you want to set the destination of the selected bookmark to the current location?" Select **Yes**.

If Bookmarks were not already created within the Excel file, then you will need to create these Bookmarks. Go to **Document** → **Add Bookmark**. Right-click on the first Bookmark and re-name it for the appropriate form or exhibit. You will then need to set the location of the Bookmark by going to the first page of each form or exhibit, right click on the corresponding Bookmark and select **Set Destination**. A pop-up box will appear asking you the following: "Are you sure you want to set the destination of the selected bookmark to the current location?" Select **Yes**.

*Tabs within the Excel Application workbook have been color coded to distinguish between “Parts” of the Application consistent with this manual. Additionally, beside each bulleted item a label to use for purposes of bookmarking the final PDF Application file is included in parentheses.*

If after conversion of the Excel file to PDF you have extra blank pages of any exhibit, you can delete those pages in order to limit the size of the file. To delete any extra, unnecessary pages identify the

# 2015 Multifamily Application Procedures Manual

---

page number(s) you want deleted. On the Adobe Acrobat Task Bar click on Document and select Delete Pages from the drop down list. A box will appear prompting you to select which page(s) you would like to delete. Enter the page numbers to be deleted and hit OK.

The PDF formatted file must be checked for the following prior to submission:

- ✓ All tabs and/or volumes must be correctly bookmarked
- ✓ Files should average less than 100 kilobytes per page
- ✓ Files must be readable with free PDF file viewers including Adobe Reader and be compatible with Adobe Reader 5.0 and above
- ✓ Files should be saved so that “Fast Web View” (or page at a time downloading) is enabled
- ✓ Text within the PDF file should be searchable using the “Find” command in the PDF viewer

If you have any questions on using or experience difficulties with the Microsoft Excel based application, contact Kathryn Saar via email at [kathryn.saar@tdhca.state.tx.us](mailto:kathryn.saar@tdhca.state.tx.us). In some instances a file may have small variations in bookmarks, file sizes, or readability that are not explicitly cited as requirements in the rule. Staff will use a reasonableness standard in determining when such deviations rise to the level of necessitating termination or other remedy.

DRAFT

# Pre-Application (for Competitive HTC only)

---

**What you will learn in this section:**

- ✓ Pre-Application delivery instructions
- ✓ Pre-Application assembly instructions
- ✓ Required Pre-Application documentation

---

## Pre-Application Delivery Instructions

---

## Competitive Application Cycle

The Pre-Application must be received by TDHCA no later than 5:00 p.m. (Central Time Zone) on Tuesday, January 8, 2015.

---

## Pre-Application Assembly Instructions

---

## Required Documentation for the Pre-Application

## Application

### What you will learn in this section:

- ✓ Application delivery instructions
- ✓ Application assembly instructions
- ✓ How to fill out the electronic Application file
- ✓ Required Application exhibits

**NOTE:** 4% Tax Credit Applications for Bond Financed Developments can be submitted throughout the year. Submission of these Applications is based on the Bond Review Board Priority designation and the 75-day deadlines posted on the Departments website at the following link: <http://www.tdhca.state.tx.us/multifamily/htc/index.htm>.

### Application Delivery Instructions

Deliver To: Multifamily Finance Division  
(overnights) Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78701

Regular Mail: P.O. Box 13941  
Austin, Texas 78711

Please note that the Applicant is solely responsible for proper delivery of the Application. Late deliveries will not be accepted.

### Competitive Application Cycle

The Application must be received by TDHCA no later than 5:00 p.m. (Central Time Zone) on Friday, February 27, 2015. On February 27, the Department will accept walk-in delivery, and tables will be set up in one of the Department's conference rooms from 8:00 a.m. to 5:00 p.m. Department resources may not be used to copy, format, or assemble the Application. **All required supplemental reports must be submitted simultaneously with the application** (unless otherwise noted).

Mailed or courier packages must be received by TDHCA on or before 5:00 p.m. (Central Time Zone) Friday, February 27 2015. TDHCA shall not be responsible for any delivery failure on the part of the Applicant. If the Applicant chooses to use a postal or courier service to deliver the Application to TDHCA and such service fails to deliver the Application by the deadline, then the Application will be considered untimely and will not be accepted.

Applicants are advised to take any steps necessary to ensure timely delivery of all application materials. In many cases applicants bring multiple copies of the application files, test the files on computers other than the computer used to assemble the files, rely on their legal counsels in or near Austin to retain a copy in the event of unforeseen circumstances, etc. Applicants should not expect to

# 2015 Multifamily Application Procedures Manual

have the opportunity to complete the application materials at TDHCA offices on the final day of the submission period.

## Application Assembly Instructions

For each Application the Applicant must ensure execution of all necessary forms and supporting documentation, and place them in the appropriate order according to this manual. The submitted Application should be the electronic copy created from the Excel file, **not** a scanned copy of the Excel or PDF file. Scanned copies of the Application are difficult to read, and slow down the process for staff and applicants.

All Application materials must be submitted in electronic format only, unless specifically noted otherwise. The Applicant must deliver:

1. One VIRUS-FREE CD-R in a protective hard plastic case containing the following:
  - the completed, active Microsoft Excel based 2015 Multifamily Uniform Application; and
  - the completed, executed PDF copy of the 2015 Multifamily Uniform Application with all attachments;
2. One VIRUS-FREE CD-R in a protective hard plastic case containing a complete, single file, searchable copy of the following 3<sup>rd</sup> party reports:
  - Phase I Environmental Site Assessment,
  - Property Condition Assessment (where applicable),
  - Appraisal (where applicable)
  - Feasibility Study
  - If the Market Study is available, it may be included on the CD with all other 3<sup>rd</sup> party reports.

**Note: The Department will also accept one CD-R with both the Application and the Third Party Reports on the same disc. Staff appreciates that third party reports may come directly from the report provider and will also accept one third party report per disc. However, the entire Application (both the Excel and the PDF files), regardless of how the third party reports are submitted, must be included on one single disc. Tabs within the Application should not be separated into separate files or on to separate discs.**

3. Completed hard copy of the 2015 Payment Receipt. Attach check for the correct Application Fee made out to “Texas Department of Housing and Community Affairs”; and
4. Completed and fully executed 2015 Electronic Application Filing Agreement (**ONLY REQUIRED IF NOT SUBMITTED AT PRE-APPLICATION**).
5. Payment – the fee for competitive Housing Tax Credit Applications is \$30 per unit as represented in the Application. If a pre-application was submitted, the fee is \$20 per unit as represented in the full application (regardless of any change in the number of units from pre-application to application). A 10% discount applies to some fees pursuant to §10.901(3) of the Uniform Multifamily Rules. *Please do not submit checks for more than the applicable fee.*

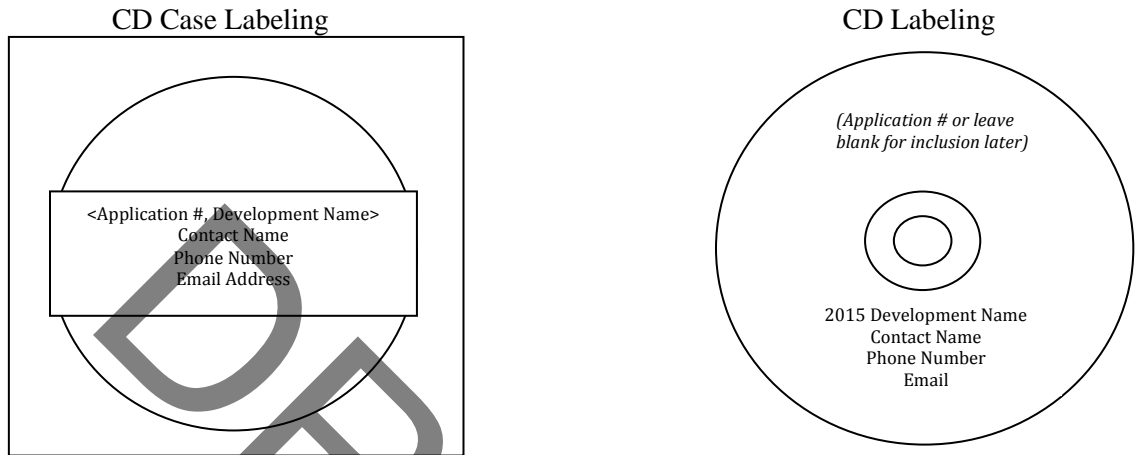
Label the CD protective case with a standard label containing the typed-in development name, application number (if assigned at Pre-Application) and the Applicant’s name with email address to contact. If an application number has not previously been assigned or a Pre-Application was not submitted for the same Development Site, leave 2” above the label for a TDHCA Application Number label that will be added later by TDHCA. **PLEASE DO NOT ATTACH ADHESIVE**



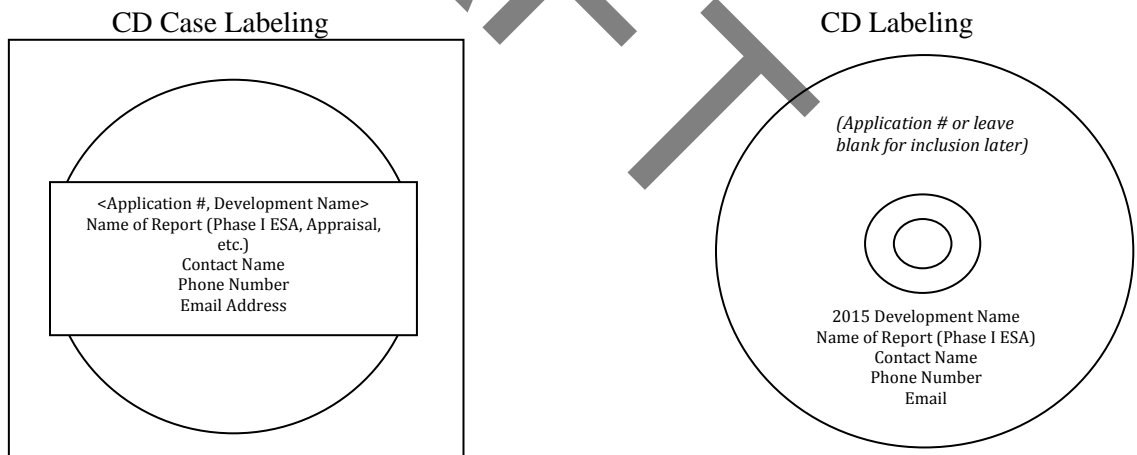
# 2015 Multifamily Application Procedures Manual

**LABEL TO THE CD ITSELF.** Rather, write the requested information legibly on the printed side of the CD itself with a felt-tip pen. Refer to labeling illustrations below. **Double-check the CD to verify that it contains the properly named virus-free application files.**

## CD LABELING INSTRUCTIONS FOR APPLICATION



## CD LABELING INSTRUCTIONS FOR THIRD PARTY REPORTS (if applicable)



# 2015 Multifamily Application Procedures Manual

## Required Forms and Exhibits for the Application

The 2015 Multifamily Housing Application form consists of six (6) parts. Complete all applicable parts. Those cells in which require entry are highlighted yellow. Some of the required information for this form has been entered in a previous tab and will auto fill here as applicable. Please review and ensure all information is accurate. Remember to include any supporting documentation.

## Part 1- Administrative Tabs

- ❖ **Tab 1 – Application Certification**
- ❖ **Tab 2 – Certification of Development Owner**
- ❖ **Tab 3 – Certification of Applicant Eligibility**
- ❖ **Tab 4 – HOME Development Certification**
- ❖ **Tab 5 – Applicant Information Page**
- ❖ **Tab 6 – Self-Score (Competitive HTC Only)**

## Part 2 – Development Site

The blue colored Development Site tabs (8-15) collects all information specific to the physical location of the Development site.

- ❖ **Tab 7 – Site Information Form Part I**
  - **Part 1 – Development Address**
  - **Part 2 – Census Tract Information**
  - **Part 3 – Mandatory Community Assets**
  - **Part 4 – Undesirable Area Features**
  - **Part 5 – Resolutions**
  - **Part 6 – Zoning and Flood Zone Designation:**
- ❖ **Tab 8 – Supporting Documentation for the Site Information Form**
  - **Street Map**
  - **Census Tract Map**
  - **Community Assets Map**
  - **Evidence of Department Preclearance of Undesirable Area Features**
  - **Resolutions**
  - **Evidence of Zoning or Re-zoning in process**
  - **Flood Zone Designation**

# 2015 Multifamily Application Procedures Manual

---

- ❖ **Tab 9 – Site Information Form Part II**
  - Part 1 – Educational Excellence
  - Part 2 – Opportunity Index
  - Part 3 – Underserved Area
  - Part 4 – Community Revitalization
  - Part 5 – Declared Disaster Area
  - Part 6 – Input from Community Organizations
  - Part 7 – Local Government Support
  
- ❖ **Tab 10 – Supporting Documentation for the Site Information Form Part II**
  - School Attendance Zone Map and/school rating
  - Map of Community Assets
  - Evidence of Underserved area
  - Community Revitalization Plan
  - Letters from Community Organizations
  
- ❖ **Tab 11 – Site Information Form Part III**
  - Part 1 – Site Acreage
  - Part 2 – Site Control
  - Part 3 – 30% Increase in Eligible Basis (“Basis Boost”)
  
- ❖ **Tab 12 – Supporting Documentation from Site Information Part II**
  - Evidence of Site Control
  - Title Commitment or Title Policy
  - Site & Neighborhood Standards
  
- ❖ **Tab 13 – Multiple Site Information Form**
  
- ❖ **Tab 14 – Elected Officials**
  
- ❖ **Tab 15 – Neighborhood Organizations**
  
- ❖ **Tab 16 – Certification of Notifications (All Programs)**

## Part 3- Development Activities

- ❖ **Tab 17 – Development Narrative**
  - Part 1 - Construction Type
  - Part 2 – Target Population
  - Part 3 – Staff Determinations
  - Part 4 – Narrative
  - Part 5 – Funding Request

# 2015 Multifamily Application Procedures Manual

---

- **Part 6 – Set-Aside**
- **Part 7 – Previously Awarded State and Federal Funding**
- **Part 8 – Qualified Low Income Housing Development Election**
  
- ❖ **Tab 18 – Development Activities Part I**
  - **Part 1 – Common Amenities**
  - **Part 2 – Unit Requirements**
  - **Part 3 – Tenant Supportive Services**
  - **Part 4 – Development Accessibility Requirements**
  
- ❖ **Tab 19 – Development Activities Part II**
  - **Part 1 – Size and Quality of the Units**
  - **Part 2 – Income Levels of the Tenants**
  - **Part 3 – Rent Levels of the Tenants**
  - **Part 4 – Tenant Services**
  - **Part 5 – Tenant Populations with Special Housing Needs**
  - **Part 6 – Pre-application Participation**
  - **Part 7 – Extended Affordability or Historic Preservation**
  - **Part 8 – Right of First Refusal**
  - **Part 9 – Funding Request Amount**
  
- ❖ **Tab 20 – Acquisition and Rehabilitation Information**
  - **Part 1 – At-Risk Set-Aside (Competitive HTC Developments applying under the At-Risk Set-Aside ONLY)**
  - **Part 2 – Existing Development Assistance on Housing Rehabilitation Activities**
  - **Part 3 – Lead Based Paint (HOME Applications Only)**
  
- ❖ **Tab 21 – Occupied Rehabilitation Developments**
  
- ❖ **Tab 22 – Architectural Drawings**
  
- ❖ **Tab 23 – Specifications and Building/Unit Configuration**

## Part 4- Development Financing

- ❖ **Tab 24 – Rent Schedule**
  
- ❖ **Tab 25 – Utility Allowances**
  
- ❖ **Tab 26 – Annual Operating Expenses**

# 2015 Multifamily Application Procedures Manual

---

- ❖ **Tab 27 – 15 Year Pro Forma**
- ❖ **Tab 28 – Offsite Costs Breakdown**
- ❖ **Tab 29 – Site Work Costs Breakdown**
- ❖ **Tab 30 – Development Cost Schedule**
- ❖ **Tab 31 – Financing Narrative and Summary of Sources and Uses**
- ❖ **Tab 32 – Financial Capacity and Construction Oversight (HOME Applications only)**
- ❖ **Tab 33 – Matching Funds (HOME Applications only)**
- ❖ **Tab 34 – Finance Scoring (competitive HTC Applications only)**
  - **Part 1 – Commitment of Development Funding by Local Political Subdivision (LPS) (§11.9(d)(2))**
  - **Part 2 – Financial Feasibility (§11.9(e)(1))**
  - **Part 3 – Leveraging of Private, State, and Federal Resources (§11.9(e)(4))**
- ❖ **Tab 35 – Supporting Documentation**

## Part 5 – Development Organization

The Development Organization tabs are colored green, and include all information regarding the Development Team members. The Organizational Charts, Previous Participation exhibits, and Credit Limit documents are all located in this section.

- ❖ **Tab 36 – Sponsor Characteristics**
  - **Part 1 – Qualified Non-Profit**
  - **Part 2 – Qualified HUB**
- ❖ **Tab 37 – Applicant and Developer Ownership Charts**
- ❖ **Tab 38 – List of Organizations and Principals**
- ❖ **Tab 39 – Previous Participation Form**

# 2015 Multifamily Application Procedures Manual

---

- ❖ **Tab 40 – Nonprofit Participation**
  
- ❖ **Tab 41 – Nonprofit Supporting Documentation**
  
- ❖ **Tab 42 – Development Team Members**
  
- ❖ **Tab 43 – HOME Management Plan Certification (HOME Applicants only)**
  
- ❖ **Tab 44 – Architect Certification**
  
- ❖ **Tab 45 – Experience Certificate**
  
- ❖ **Tab 46 – 9% Applicant Credit Limit Documentation and Certification**

## **Part 6 – Third Party Reports**

All third party reports must be submitted in their entirety by the deadline specified below. Incomplete reports may result in termination of the application. Reports should be submitted in a searchable electronic copy in the format of a single file containing all of the required information and conform to Subchapter D of the Uniform Multifamily Rules. Exhibits should be clearly bookmarked.

- ❖ **Tab 47 – Third Party Reports**

# HOME/CHDO Information

## Application Delivery Instructions

To be updated upon release of a 2015 NOFA

## HOME Program Information

To be updated upon release of a 2015 NOFA

## CHDO Overview

To be updated upon release of a 2015 NOFA

DRAFT

## Supplemental Information

### Requests for Waiver and Staff Determinations

The Department will accept requests for waivers and staff determinations at any time during the Application Acceptance Period. These requests can be submitted separately from the application or with the pre-application or full application submission. Requests WILL NOT be accepted after full application submission. Requests should be submitted directly to the appropriate staff below and when possible submitted electronically, either directly through email attachment or on a disc. Hard copies will be accepted in cases where the requests include information that cannot be reasonably converted into electronic form.

For Competitive 9% HTC Applications, Kathryn Saar at [kathryn.saar@thca.state.tx.us](mailto:kathryn.saar@thca.state.tx.us)  
For 4% HTC/Bond Applications, Teresa Morales at [teresa.morales@tdhca.state.tx.us](mailto:teresa.morales@tdhca.state.tx.us)  
For HOME Applications, Eric Weiner at [eric.weiner@tdhca.state.tx.us](mailto:eric.weiner@tdhca.state.tx.us)

Requests for waivers are appropriate when an Applicant violates a rule and/or proposes a development that violates a rule, and as such they must be specific to an actual proposed Development (or Application). They should include an explanation as to how the circumstances surrounding the request are out of the applicant's control and how, if such waiver is not granted, the Department would not fulfill some specific requirements of law. Applicants should familiarize themselves with §10.207(a) of the Uniform Multifamily Rules and are encouraged to contact staff to discuss the request before submission.

Requests for staff determinations should be submitted in cases where certain definitions or terms do not fully account for activities proposed in an application. For example, if an applicant proposes a scattered site development that involves different census tracts that would score differently on the Opportunity Index, that applicant may request a staff determination prior to application submission in order to ascertain how staff will apply the rule and ultimately award points. Similarly, an applicant proposing a combination of rehabilitation and adaptive reuse may request a staff determination as to how to classify the activity. Applicants should familiarize themselves with §10.3(b) of the Uniform Multifamily Rules.

### Public Viewing of Pre-Applications and Applications

The Department will allow the public to view any Pre-Applications or Applications that have been submitted to the Department in an electronic format. These electronic versions will be available within approximately two weeks of the close of the Application Acceptance Period. An Applicant may request via an open records request an electronic copy between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday. There may be an associated cost with requesting this information. To submit an open records request or to coordinate the viewing of a Pre-Application or Application please contact Misael Arroyo in the Multifamily Finance Division at [misael.arroyo@tdhca.state.tx.us](mailto:misael.arroyo@tdhca.state.tx.us).



# 2015 Multifamily Application Procedures Manual

---

## Applicable Rules and Reference Materials

2015 SITE DEMOGRAPHIC CHARACTERISTICS REPORT

2015 UNIFORM MULTIFAMILY RULES

2015 QUALIFIED ALLOCATION PLAN

TEXAS GOVERNMENT CODE CHAPTER 2306

INTERNAL REVENUE CODE SECTION 42

TEXAS GOVERNMENT CODE CHAPTER 1372

DRAFT

5d

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**NOVEMBER 13, 2014**

Presentation, Discussion, and Possible Action regarding Awards of HOME funds from the 2014-1 HOME Multifamily Development Program Notice of Funding Availability.

**RECOMMENDED ACTION**

**WHEREAS**, the Department has received 26 applications for HOME awards under the 2014-1 HOME Multifamily Development Program Notice of Funding Availability (“NOFA”);

**WHEREAS**, no awards have been made under the NOFA to date and \$16,800,000 is available to award to eligible applications;

**WHEREAS**, nine applications, including Liberty Pass (14227), Riverside Park Apartments (14122), Madison Oaks Apartments (14092), Cypress Creek Apartment Homes at Joshua Station (14087), Mission Village of Monahans (14132), Cypress Creek Apartment Homes at Parker Creek North (14292), Mission Village of Jacksonville (14133), The Reserves at Brookside (14170), and Bishop Gardens (14158) have received complete reviews for compliance with program and underwriting requirements and are ranked as the highest priority applications under the NOFA; and

**WHEREAS**, each of the nine previously referenced applications were also awarded Competitive (9%) Housing Tax Credits from the 2014 tax credit ceiling;

**NOW, therefore, it is hereby**

**RESOLVED**, that commitments of HOME funding from the 2014-1 HOME Multifamily Development Program Notice of Funding Availability for Liberty Pass (14227), Riverside Park Apartments (14122), Madison Oaks Apartments (14092), Cypress Creek Apartment Homes at Joshua Station (14087), Mission Village of Monahans (14132), Cypress Creek Apartment Homes at Parker Creek North (14292), Mission Village of Jacksonville (14133), The Reserves at Brookside (14170), and Bishop Gardens (14158) are hereby approved in the form presented at this meeting, and as amended by the Board for any appeals or tax credit allocation decisions previously heard and determined; and

**FURTHER RESOLVED**, that the Board’s approval is conditioned upon satisfaction of all conditions of underwriting and completion of any other reviews required to ensure compliance with the applicable rules and requirements for HOME Multifamily Development Program funds.

## **BACKGROUND**

On September 4, 2014, the Board approved the 2014-1 HOME Multifamily Development (“MFD”) Program NOFA with \$16,800,000 in funds (\$9,500,000 under the General Set-Aside and \$7,300,000 under the Community Housing Development Organization (“CHDO”) Set-Aside). Due to the timing of the 9% tax credit cycle, 9% Housing Tax Credit applicants were allowed to request HOME funds in accordance with the January 2014 Board approved policy. These applications have been accepted as submissions under the 2014-1 HOME MFD NOFA in accordance with the same policy and the Board action at the September Board meeting to approve the release of the NOFA. To date, no funds have been awarded under the NOFA.

Staff is recommending nine applications for HOME awards, totaling \$7,595,000 under the General Set-Aside. The recommended applications and award amounts are outlined in the attached award recommendations log. All nine applications propose new construction. In total, these nine applications will result in 71 HOME-assisted units. Each of the applications has been underwritten and determined to meet the Real Estate Analysis rules and requirements and has received a previous participation review.

Should the recommended awards be approved, approximately \$9.2M will remain available under the NOFA with \$1,905,000 under the General Set-Aside and \$7,300,000 under the CHDO Set-Aside, of which, two CHDO applications requesting \$8,000,000 are still under review. Subsequent award recommendations for applications undergoing staff reviews may appear on future Board agendas.

The Application and Award Recommendations Log is attached.



**2014 HOME Multifamily Development (MFD) Program - Application Log - October 31, 2014**  
**Per 2014-1 HOME MFD Notice of Funding Availability published in the Texas Register on 09/19/2014**

**General Set-Aside**

Total Set Aside Funding Level: \$ **9,500,000**

File #	Reg.	Date Received (1)	Development Name	City	Housing Activity (2)	Reqstd HOME Units	Total units	Target Population	Layering (3)	Requested Project Funds	As Underwritten	Status
14227	9	2/24/2014	Liberty Pass	Selma	NC	7	104	General	9%	\$1,000,000.00	\$1,000,000.00	Recommended for HOME award.
14225	2	2/27/2014	The Residences at Snyder	Snyder	NC	6	48	General	9%	\$500,000.00		Not recommended for 9% HTC
14122	2	2/27/2014	Riverside Park Apartments	Early	NC	10	60	General	9%	\$1,000,000.00	\$1,000,000.00	Recommended for HOME award.
14092	4	2/27/2014	Madison Oaks Apartments	Winnsboro	NC	8	60	General	9%	\$850,000.00	\$850,000.00	Recommended for HOME award.
14006	7	2/28/2014	Oak Grove Village	Marble Falls	NC	9	42	Elderly	9%	\$1,000,000.00		Not recommended for 9% HTC
14063	5	2/28/2014	Hudson Providence	Hudson	NC	3	80	Elderly	9%	\$300,000.00		Not recommended for 9% HTC
14094	3	2/28/2014	Cypress Creek Apartment Homes at Broadway	Joshua	NC	12	200	General	9%	\$1,000,000.00		Not recommended for 9% HTC
14087	3	2/28/2014	Cypress Creek Apartment Homes at Joshua Station	Joshua	NC	14	181	General	9%	\$1,000,000.00	\$1,000,000.00	Recommended for HOME award.
14105	2	2/28/2014	Royal Gardens	Iowa Park	NC	4	49	General	9%	\$600,000.00		Not recommended for 9% HTC
14114	3	2/28/2014	The Waters at Granbury	Granbury	NC	8	80	General	9%	\$1,000,000.00		Not recommended for 9% HTC

14118	9	2/28/2014	Westpointe Apartments	New Braunfels	NC	7	82	General	9%	\$1,000,000.00		Not recommended for 9% HTC
14132	12	2/28/2014	Mission Village of Monahans	Monahans	NC	5	49	General	9%	\$600,000.00	\$600,000.00	Recommended for HOME award.
14157	7	2/28/2014	Pecan Pointe	Bastrop	NC	8	80	General	9%	\$1,000,000.00		Not recommended for 9% HTC
14188	4	2/28/2014	Reserve at Whitehouse	Whitehouse	NC	10	72	General	9%	\$1,000,000.00		Not recommended for 9% HTC
14221	3	2/28/2014	Palladium Van Alstyne Senior Living	Van Alstyne	NC	10	120	Elderly	9%	\$1,000,000.00		Not recommended for 9% HTC
14292	3	2/28/2014	Cypress Creek Apartment Homes at Parker Creek North	Royse City	NC	9	220	General	9%	\$1,000,000.00	\$1,000,000.00	Recommended for HOME award.
14303	10	2/28/2014	The Cottages at Bailey Square	Cuero	NC	9	48	Elderly	9%	\$945,000.00		Not recommended for 9% HTC
14133	4	2/28/2014	Mission Village of Jacksonville	Jacksonville	NC	4	48	General	9%	\$445,000.00	\$445,000.00	Recommended for HOME award.
14170	1	2/28/2014	The Reserves at Brookside	Borger	NC	6	48	General	9%	\$700,000.00	\$700,000.00	Recommended for HOME award.
14158	3	2/28/2014	Bishop Gardens	Justin	NC	8	72	General	9%	\$1,000,000.00	\$1,000,000.00	Recommended for HOME award.
14039	4	3/3/2014	StoneLeaf at Hughes Springs	Hughes Springs	NC	0	60	General	9%	\$340,000.00		Not recommended for 9% HTC
14207	11	3/6/2014	Alamo Vista	Alamo	NC	5	120	General	9%	\$600,000.00		Not recommended for 9% HTC
14209	11	3/6/2014	Riverside Village Apartments	Rio Hondo	NC	4	60	General	9%	\$500,000.00		Not recommended for 9% HTC
14052	6	3/12/2014	Waverly Village	New Waverly	NC	6	50	General	9%	\$700,000.00		Not recommended for 9% HTC
<b>Total General Applications</b>			<b>24</b>	<b>Unit Totals:</b>		<b>172</b>	<b>2,033</b>	<b>Total:</b>		<b>\$ 19,080,000</b>	<b>\$ 7,595,000</b>	

**CHDO Set-Aside**

Total Set Aside Funding Level: \$ **7,300,000**

File #	Reg.	Date Received	Development Name	City	Housing Activity <sup>(1)</sup>	Reqstd HOME Units	Total units	Target Population <sup>(2)</sup>	Layering <sup>(3)</sup>	Requested Project Funds	As Underwritten	Status
14244	12	2/28/2014	Merritt Estates	Midland	NC	10	192	General	9%	\$1,000,000.00		Not recommended for 9% HTC
14417	7	10/10/2014	Waters at Sunrise	Round Rock	NC	35	300	General	4%	\$4,000,000.00		Under Review
14501	11	10/30/2014	Cornerstone Apts	Brownsville	NC	28	108	General	NA	\$4,000,000.00		Under Review
<b>Total CHDO Applications</b>			<b>3</b>	<b>Unit Totals:</b>		<b>73</b>	<b>600</b>	<b>Total:</b>		<b>\$ 9,000,000.00</b>	<b>\$ -</b>	

Sorted by Date Received

1 = Date Received: The date that the application, all required 3rd Party Reports, and Application Fees were received. Time received is currently not reflected.

2 = Housing Activity: New Construction=NC, Rehabilitation=R

3 = Layering of Other Department Active Applications: 9%=9% Competitive Tax Credits, 4%=4% Tax Credit Program

5e



**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**NOVEMBER 13, 2014**

Presentation, Discussion, and Possible Action to Approve the Programming of Program Income from the Tax Credit Assistance Program.

**RECOMMENDED ACTION**

**WHEREAS**, Board Resolution 09-043 authorized the use of all funds available to the state by the Federal Government under the Tax Credit Assistance Program (“TCAP”) to be made in the form of loans;

**WHEREAS**, the Department has collected approximately \$6 million in TCAP loan repayments which have not been programmed; and

**WHEREAS**, the Department desires to allow interested parties to apply for funds to leverage their requests for Housing Tax Credits in the 2015 Application Cycle.

**NOW, therefore, it is hereby**

**RESOLVED**, that the issuance of up to \$6,000,000 be made available through a Notice of Funding Availability (“NOFA”) for Applicants also applying for Housing Tax Credits in the form of interest bearing debt to further the Department’s mission to create more affordable housing;

**FURTHER RESOLVED**, that the NOFA should give priority to rural rental rehabilitation developments and mixed-income developments in High Opportunity Areas; and

**FURTHER RESOLVED**, that to the extent the NOFA is approved, staff is authorized, empowered, and directed, for and on behalf of the Department to execute such documents, instruments and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

**BACKGROUND**

President Barack Obama signed into law the American Recovery and Reinvestment Act of 2009 on February 17, 2009, which provided for dedicated funds to assist in the development of properties that had been awarded low income housing tax credits (“LIHTCs”) between October 1, 2006 and September 30, 2009. On May 21, 2009, the Board, by ratifying Resolution No. 09-043, determined that the state should utilize all funds made available to the state by the Federal Government under the Tax Credit Assistance Program and resolved to make awards consistent with the criteria also set forth in Board Resolution No. 09-0543. As of March 25, 2011, 59 developments (8,394 units) were funded with \$148,354,769 in TCAP funds granted by HUD under the American Recovery and Reinvestment Act.

In the TCAP grant agreement, HUD requires that loan repayments and interest earned after the financial closeout of the grant period are used for the development and operation of housing that remains affordable, for a period of not less than 15 years, to households whose annual incomes does not exceed 80 percent of the median family income for the area. These restrictions apply only to the first use of any loan repayments earned after the grant period. Once these funds are used to develop or operate affordable housing, any return on these funds is unrestricted.

Staff recommends that the accumulated loan repayments be programmed through the Multifamily Finance Division to facilitate the production of multifamily rental housing using rules, processes and procedures that mirror the compliance requirements of the Housing Tax Credit Program. Staff further recommends that the funds be restricted to developments also utilizing Housing Tax Credits and that rural rental rehabilitation and mixed-income developments (those with at least 10% of the units serving as market rate units) in High-Opportunity areas be prioritized in any Notices of Funding Availability. In addition, staff also recommends that the funds be utilized, where requested, in Participating Jurisdictions, areas of the state where applicants are generally precluded from utilizing Department HOME funds. Staff has been in contact with several potential stakeholders who are supportive of these concepts.

5f

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**NOVEMBER 13, 2014**

Presentation, Discussion, and Possible Action on a request for an Extension of a deadline to submit documentation as a condition of a Housing Tax Credit Award for Application #14130, Tays, El Paso

**RECOMMENDED ACTION**

**WHEREAS**, a 2014 Competitive Housing Tax Credit Application was submitted for Tays (#14130);

**WHEREAS**, the application was terminated pursuant to 10 TAC §10.101(a)(4) of the 2014 Uniform Multifamily Rules (“Rules”), related to Undesirable Area Features, because the Development Site was determined to be located within 1,000 feet of a significant presence of blighted structures, significant criminal activity, and an active railway;

**WHEREAS**, the Applicant timely appealed the termination, and the Governing Board heard the appeal at the July 31, 2014 board meeting;

**WHEREAS**, the Board granted the appeal and further resolved that, should the application for Tays be recommended for an award of housing tax credits, that the award be conditioned upon the Applicant obtaining a letter from the appropriate officials at HUD with authority to speak for Fair Housing and Equal Opportunity stating that this specific proposed transaction complies fully with the Fair Housing Act;

**WHEREAS**, the application was subsequently recommended for an award, and the Board further resolved that the condition of the award be satisfied by the Carryover Delivery Date, November 3, 2014; and

**WHEREAS**, the applicant was unable to obtain the required letter and has requested an extension of the deadline to satisfy the condition;

**NOW, therefore, it is hereby**

**RESOLVED**, that the request for the extension for Tays (#14130) is hereby granted through December 10, 2014.

## **BACKGROUND**

A 2014 Competitive Housing Tax Credit application was submitted for Tays, located in El Paso, Urban Region 13. Pursuant to §10.101(a)(4) of the Rules, the application included a request for pre-clearance which indicated that the proposed development is located in the Chamizal Neighborhood, described as primarily residential with some commercial business, namely grocery stores, restaurants, repair shops, and retail. The request also included information regarding proximity to heavy industrial and some instances of blight and crime as well as to an active railway. On May 13, 2014, staff granted pre-clearance for the site.

Subsequent to that action, staff's review of a challenge to the Tays application prompted a site visit on May 30, 2014. The challenge contended that the site should be found ineligible pursuant to §10.101(a)(4) of the Rules (among other specific challenges to the application), and the applicant's response to the challenge only provided limited information with respect to crime issues. Staff visited the site, and ultimately deemed the site ineligible. The application was terminated on June 12, 2014, and was then appealed by the Applicant. On July 31, 2014, the Board reinstated the Application and conditioned its award on upon the Applicant obtaining a letter from the appropriate officials at HUD with authority to speak for Fair Housing and Equal Opportunity stating that this specific proposed transaction complies fully with the Fair Housing Act. This condition was to be met by Carryover on November 3, 2014. The Applicant has been unable to obtain such a letter and has requested an extension of the requirement.

Staff recommends granting the extension to December 10, 2014, so that the credit could still be allocated in 2014 in the event that the condition cannot be met.

# COATS | ROSE

*A Professional Corporation*

SCOTT A. MARKS

smarks@coatsrose.com  
Direct Dial  
(512) 684-3843  
Fax  
(713) 890-3911

October 30, 2014

Mr. Cameron Dorsey  
Chief of Staff  
TDHCA  
221 East 11<sup>th</sup> Street  
Suite 201  
Austin, Texas 78701

Re: TDHCA No. 14130 Tays Apartments (“Tays”)

Dear Cameron:

Please accept this letter as our request for an extension of the deadline for the condition contained in the tax credit commitment notice for Tays regarding submission of a letter from HUD stating that the Tays 9% development in El Paso affirmatively furthers fair housing. The deadline in the commitment notice for this condition is the carryover deadline of November 3, 2014. The carryover submission package is being submitted timely and all conditions will be satisfied for carryover except this letter from HUD.

We have been working hard with HUD headquarters and the Fort Worth office to obtain the letter, but need more time. In August we began working with Larry Freeman, on the RAD staff at HUD headquarters, requesting a fair housing letter. We submitted a draft of the letter to TDHCA staff and incorporated your comments. We also reached out to Debra Loya, chief counsel at HUD’s San Antonio field office, the office that has historically overseen El Paso public housing. Ms Loya advised us that Garry Sweeney in Fort Worth is more of an appropriate person to contact because of his fair housing expertise.

We have had several productive conversations with Mr. Sweeney. We sent him our proposed letter. At first, Mr. Sweeney pointed out that there is no HUD regulation or guidance authorizing the agency to provide a letter that a RAD site affirmatively furthers fair housing. We countered that because HUD previously provided a letter for Galveston, the agency should be willing to do so for El Paso. Mr. Sweeney requested the Galveston HUD letter, and we sent it to

Barton Oaks Plaza, 901 South MoPac Expressway, Building 1 Suite 500, Austin, Texas 78746

Phone: 512-469-7987 Fax: 512-469-9408

Web: [www.coatsrose.com](http://www.coatsrose.com)

HOUSTON | AUSTIN | DALLAS | SAN ANTONIO | NEW ORLEANS

4845-9692-0096.v1

October 30, 2014

Page 2

him. HUD has offered to assist us, but has not provided us with a timeline for providing the letter.

The housing authority has also reached out to HUD headquarters. HACEP Chief Executive Officer Gerry Cichon traveled to Washington to meet with HUD staff regarding this issue in September and met with Greg Bryne and Larry Freeman. In addition, our Washington based counsel, Reno & Cavanaugh, and our consultant Scott Jepsen have had discussions with Sue Wilson, the Director of Urban Revitalization at HUD headquarters. She has been very supportive, and is working with Mr. Sweeney to address Fair Housing and Equal Opportunity (FHEO) questions, with the goal of providing a letter based on the draft we have provided the agency. Ms. Wilson has outlined a path for us to obtain a letter on the Fair Housing issue but it is a process that will take a little more time.

At the same time that we are requesting HUD to provide a letter that is not part of their standard operating procedure, the agency is undergoing a massive transformation that involves closing 16 offices, reassigning staff, and shifting lines of authority. The agency also has a new Secretary. Given this transformation of HUD and the necessary involvement of both field office and headquarters staff in drafting this letter, we request a 90-day extension, until February 4, 2015, to provide the letter to TDHCA.

If you would like to discuss the Tays fair housing letter, please contact us at (512) 684-3843.

Sincerely,



Scott A. Marks

6



**BOARD ACTION REQUEST**  
**EXECUTIVE**  
**NOVEMBER 13, 2014**

Appeal of a denial recommendation for a HOME reservation participation agreement for Starr County

**RECOMMENDED ACTION**

**WHEREAS**, on November 5, 2014, the Executive Award Review Advisory Committee (“EARAC”) met to discuss the compliance history of Starr County in connection with accessing the Department’s HOME funds through a Reservation System Participant Agreement;

**WHEREAS**, EARAC did not recommend approval of the County’s request to become an approved reservation system participant because Starr County had not provided a satisfactory response to a previous participation review, namely it had not addressed the findings in Starr County’s Single Audit which appear to have a significant bearing on the applicant’s ability to perform in a compliant manner; and,

**WHEREAS**, EARAC was not able to make the findings necessary to recommend approval despite such issues, to wit that:

- It is in the best interests of the state to proceed with the award;
- The award will not present undue increased program risk or financial risk to the Department or the state;
- The applicant is not acting in bad faith; and
- The applicant has taken reasonable measures within it power to remedy the issue.

**NOW, therefore, it is hereby**

**RESOLVED**, that Starr County’s request to access HOME funds through a Reservation System Participant Agreement is denied. This resolution does not prohibit Starr County from reapplying should circumstances warrant.

**BACKGROUND**

As part of the Department’s Previous Participation Rule and in accordance with federal requirements for overseeing grantees, findings identified through a single audit are taken into consideration when evaluating an applicant’s compliance history. Starr County’s single audit contained several findings. The current single audit findings indicated that:

- The County does not prepare quarterly investment reports in accordance with the Public Funds Investment Act,

- The monies reported per the Tax Office Reports were greater than the amounts deposited per bank statements,
- A significant amount of time lapsed after year-end before the financial statements were properly closed out, and
- The county has several funds on their books of accounts with interfund activity that continues to escalate and build up from year to year.

In addition, the current single audit found that several prior year findings had not been corrected, including:

- State agency funds reported within the County's annual financial report do not prepare bank reconciliations on a monthly basis for their bank accounts,
- The procurement of goods/services did not include competitive quotes or sealed bids, when required,
- Agency fund trial balances prepared for each fiscal year end are not compiled from individual transactions in a general ledger or compiled from cash receipts and disbursements, and
- The procurement of goods/services did not document the County's procedures that provide for full and open competition

Based on these findings EARAC was unable to recommend Starr County as a HOME Program Reservation System Participant. Starr County has been provided with notice of these issues and an opportunity to respond. Staff continues to work with the applicant to see if satisfactory responses can be provided such that EARAC can recommend approval.