TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD OF DIRECTORS

MEETING

Capitol Extension, E1.028
1500 Congress Avenue
Austin, Texas

Thursday,
March 11, 2010
8:35 a.m.

BOARD MEMBERS:

C. KENT CONINE, Chair
GLORIA RAY, Vice-Chair
LESLIE BINGHAM-ESCARENO, Member
TOM GANN, Member
LOWELL KEIG, Member
JUAN MUNOZ, Member

STAFF:

MICHAEL GERBER, Executive Director

I N D E X

P R O C E E D I N G S

MR. CONINE: Good morning. Welcome to the March Board meeting of the Texas Department of Housing and Community Affairs.

We will call the roll here and just see who's here. Leslie Bingham?

MS. BINGHAM: Here.

MR. CONINE: Kent Conine is here.

Tom Gann?

MR. GANN: Here.

MR. CONINE: Lowell Keig?

MR. KEIG: Here.

MR. CONINE: Juan Munoz?

DR. MUNOZ: Here.

MR. CONINE: Gloria Ray?

MS. RAY: Here.

MR. CONINE: Everybody is here, glad to see everybody. Hope everybody is ready for a good Bluebonnet season; I hear it's going to be great.

All right. As customary, we have a period of public comment at the beginning of the meeting which we'll do, and if you want to speak before the Board for any particular reason, make sure you fill out a witness affirmation form. You can either speak now at the public comment period or you can wait till the particular agenda item as we get to it today.

Moving on to the public comment, the first speaker will be Rick

Dale.

MR. DALE: I'll pass at this time.

MR. CONINE: All right, that's a good way to start.

(General laughter.)

MR. CONINE: Mike Sugrue. I knew he wasn't going to pass.

MR. SUGRUE: No, I'm not going to pass, I'm sorry.

MR. GERBER: Mr. Chairman, as Mike is coming up, I would just mention to everybody that we are broadcasting live over the World Wide Web.

MR. SUGRUE: Good morning, Mr. Chair, board members, Mr. Gerber. My name is Mike Sugrue, Solutions Plus. I'm here today just to make a plea to Theresa and the agency to see if we can squeak out a closing date for Stoneleaf of Dalhart. If we don't close by the end of this month, we'll lose $100,000 of in-kind contribution from the Dalhart EDC which is like losing a unit. We don't want to see the deal suffer that, so I'd like to see if we can find a way to get us in there. That's all I have. Thanks.

MR. CONINE: All right, we'll see if we can make that happen. I'm sure there will be others through the course of the day that want to talk about closing transactions.

MR. SUGRUE: But I've got cheese.

MR. CONINE: You do have a lot of cheese. Thank you.

(General laughter.)

MR. CONINE: Walter Moreau. I'm sure this is another closing conversation.

MR. MOREAU: Well, real quick, just wanted to thank you last year for awarding tax credits to M Station. We're getting ready to break ground, we're having a groundbreaking ceremony May 12 and we'll send more information to save the date. It will be the traditional ceremony, but then the Austin Heights Neighborhood wanted to throw a block party and have music and food and kid-friendly stuff, and it's right before you next board meeting so if you're in town early and have the opportunity to come by, it would be great to see you. Thank you, that's it.

MR. CONINE: I guess you're confident that you're going to get closed.

MR. MOREAU: Yes.

MR. CONINE: Or are you closed yet?

MR. MOREAU: Almost, not quite but almost.

MR. CONINE: The answer is no.

(General laughter.)

MR. CONINE: Granger McDonald.

MR. McDONALD: Good morning. I do have two deals that are closed and am encountering a problem that I think is only going to get worse. There's 20 deals closed right now in Exchange, on our way to 80, and the staff is completely covered up with work right now to the point that they're working Saturdays, Sundays, Texas Independence Day was supposed to have been a holiday, I had e-mail or conversation with four different staff members. This staff can't keep up with that workload as we have more and more closings.

The processing time on getting funding on my last Exchange deal took 20 days to fund, and it's just a matter that there's not enough folks in the administration side to process all of these draws. And I don't know how that can be changed without appropriations and all the other problems that occur in state government, but there's some folks that are doing a tremendous amount of work but they still don't have enough folks to get it done, and I don't know how we're going to address that, but it's only going to get worse as more deals get closed.

MR. CONINE: Any questions of the witness? Do you want to address that?

MR. GERBER: It's a point well taken, we're working through it as best we can. We have made clear at the national level that if there's another round of Exchange, we clearly need to have admin funds attached to it, or additional TCAP funds, that those have to come with admin. I think many other states are struggling with this as well. It's proving to be a lot more complex than, obviously, we all thought.

MR. CONINE: Has there been an analysis done on the potential of outside contract help on that particular issue, either from a fund standpoint or just a logistics standpoint?

MR. GERBER: We've done some. Funds availability is a big issue and also the time for contracting. The state procurement issues are significant and we have a significant lag time.

Tim, anything you want to add to that? I guess I would say bear with us, we are trying to prioritize applications as best we can, but we are hitting close to deadlines more than we like. For example, the 75 percent commitment deadline for TCAP, we hit with 78 percent but we did it a week before the deadline. So it's happening, it's just happening more slowly than we wish, but a lot of credit goes to the staff, led by Tom Gouris in this regard, and they are working those extra hours. I appreciate folks noticing that.

MR. CONINE: We do have a report item, I think, later on in the Board so we can kind of toss some of this out later on specifically, but I just want to make sure you guys at least take a look at it.

MR. GERBER: I think it's important also to note, Mr. Chair, that this program is huge, it's $148 million on TCAP, it's $500-plus million on Exchange. Covering that admin makes the need for additional staff that we're going to be proposing to you on those programs that do have admin, like we're asking for five weatherization positions, all ARRA-funded. It just underscores that we just don't have as much cushion to feed those things that are not funded as we have before.

MR. CONINE: Next time you speak to a member of Congress, make sure and tell them we need a little admin next time so you can get your deal closed and funded.

All right, that concludes the witness affirmation forms that I have during the public comment period; the rest of these that I have will go during a specific agenda item.

We'll move to the Consent Agenda, Item 1.

MR. GERBER: I think there is some public comment on Item 1, Mr. Chair.

MR. CONINE: Yes, I do have some. One if needed, if needed, and one other. Okay, Cyrus Reid is going to come talk to us about 1(m).

MR. GERBER: 1(m) is the Department of Energy Draft Plan.

MR. CONINE: Good morning.

MR. REID: Yes. For the record, my name is Cyrus Reid and I'm the conservation director with the Lone Star Chapter of the Sierra Club. I was here maybe 18 months ago telling you to make sure that you asked for money from the legislature for weatherization. Of course, I was suggesting you ask for $10 million extra from the System Benefit Fund, but that was before a lot of events happened.

MR. CONINE: How good a job did we do?

(General laughter.)

MR. REID: I just attribute it to myself, but $327 million is a lot more than $10 million. I maybe would have suggested maybe $80 million and maybe a little slower process, but I did want to say, I don't have too many specific comments on the plan and obviously I can make those in writing, but I did want to make one suggestion just as a member of the public and I know there's been a lot of press about the slow-going nature of getting the weatherization money out, and I was thinking it might be possible in the plan or in rules to have some requirements that the receivers of the weatherization money have some centralized website or some centralized information where people can actually learn how they can access the money.

Because I know I work for an organization and I get e-mails about I live in this county, where do I go to get information, and I have to say the TDHCA website, while it has the general plan, it doesn't necessarily have good information about who should want to contact if you live in this county, where do you get information, and I just think maybe the plan is the place to add some requirements, both on yourself but also on the folks who are actually going to receive, the community action agencies and we can work on the cities separately because the cities have their own problems, I think, letting people know.

And so I'll do some specific written comments, but it's just I think you guys have taken some hits in the press and I know it's been complicated, but I think a lot of those hits would be helped just by having better information from your own end but also from those receiving the money. And I also did note in the plan there is still at space on the advisory board for a community person which I don't want because I'm not an expert on weatherization, but I think it would also help you to have a person who's active on low income advocacy on the advisory council that's required that hasn't been filled so that you can get good advice on how to do a better job of really just having information out there for the public.

So those are my comments and I'll put some comments in writing as well.

MR. CONINE: Any questions of the witness?

MR. GERBER: Mr. Chair, I would just note there is some information on the website where you can enter in by zip code, I believe, where you can find the community action agency that's tasked with actually doing the weatherization work. It's not as clear as it could be and I agree with you. We do also have some requirements in each of these weatherization plans that have been submitted by the various agencies and cities and would love to maybe work with you to help get that word out. I think we can do a stronger job of marketing, you're absolutely right, we need to make more folks aware of the benefits that are out there.

MR. REID: Okay, sounds great. Thank you.

MR. CONINE: Are you done? Okay, that's all of the witness affirmation forms, I think the rest of them are questions if needed on Item 1.

MS. RAY: Mr. Chairman?

MR. CONINE: Ms. Ray.

MS. RAY: I move approval of the Consent Agenda.

MR. CONINE: Items 1(a) through (q), it looks like. Do I hear a second?

MR. GANN: Second.

MR. CONINE: Second by Mr. Gann. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

Moving on to Item 2.

MR. GERBER: Mr. Chair, Item 2 is a request to have the Board elect Brooke Boston as Board secretary and Michelle Atkins as assistant secretary. Tim Irvine has been doing that job for the last year and we think, from a staff management standpoint and to better serve the Board, that Brooke would be able to best serve that and be supported by Michelle Atkins, who you all know well. So we'd ask for a motion to elect Brooke as Board secretary and Michelle as assistant secretary.

MR. CONINE: Do I hear a motion?

MS. BINGHAM: Motion to approve.

MR. CONINE: Ms. Bingham makes a motion.

MS. RAY: Second.

MR. CONINE: Seconded by Ms. Ray. I would comment that it's a heck of an upgrade from where we've been.

(General laughter.)

MR. CONINE: All those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Congratulations, Brooke and Michelle. Thank you very much.

MR. GERBER: Mr. Chair, Item 3 is the Audit Committee report, and Sandy Donoho will provide support to Ms. Ray, who is our Audit Committee chair.

MR. CONINE: Ms. Ray.

MS. RAY: Mr. Chairman, the Audit Committee wishes to report to the full Board that we had a very successful and comprehensive, I might add, Audit Committee meeting yesterday evening at the Department headquarters. We looked at several items that Ms. Donoho will clarify not only for the full Board but certainly in attendance, and I'd like to recognize Ms. Sandy Donoho, who is the director of Internal Audit, to bring us up to speed on the Audit Committee report.

MR. CONINE: Great. Good morning, Sandy.

MS. DONOHO: Good morning. Thank you.

The Audit Committee met last night to discuss issues related to internal and external audits and the functions of the Internal Audit Division. We discussed the recent Internal Audit Peer Review which was conducted in December. The Internal Audit Division received a score of fully complies which is the highest possible rating. In addition, there were no areas noted for improvement and many areas they noted that were best practices.

We talked about the Internal Audit Division's charter and the Board resolutions for Internal Audit. These didn't change from last year but our standards require that they be approved annually. They were on the Consent Agenda.

Deloitte and Touche presented their annual audit reports. Julia Petty from Deloitte is here and she was going to give us a brief update.

MR. CONINE: Great. If you wouldn't mind, when you get done just fill out a witness affirmation form for me, that would be great.

MS. PETTY: Sure will.

MR. CONINE: Thank you.

MS. PETTY: Hello. I'm Julia Petty, director with Deloitte and Touche, and I was in charge of the external audit of the organization this year. You have those reports in your package. In a nutshell, the Department received an unqualified opinion, so a passing grade on all of the financial statements that we reviewed. Additionally, we do an assessment of internal controls, although we don't issue an opinion on internal controls in the way that public companies now get, however, as we did that assessment of internal controls, we did not find any instances of material weaknesses or significant deficiencies in internal controls, nor any non-compliance that we would report to the Board.

And with that, I wanted to just say thank you to management and staff. We get outstanding cooperation and we really appreciate the opportunity to work with the Department. I'll be happy to answer any questions.

MR. CONINE: Any questions of the witness? We're appreciative for all your hard work and thanks for giving us a passing grade, those are nice to get.

MS. DONOHO: We also talked about the State Auditor's Office statewide audit report which is done by KPMG or the work is done by KPMG. This year they covered the Disaster Recovery Program and the LIHEAP program. There were three findings for the Department: one was an issue regarding the posting of quarterly reports and that issue has been corrected; the other two were IT issues, one at the Department and one at the ACS contractor.

There are six external audits that are currently underway or will be starting soon. They include an audit of ARRA Weatherization funds by the Government Accountability Office and audit of Disaster Recovery by HUD OIG, a post-payment of ARRA funds for the Comptroller, and three monitoring visits from the Department of Energy and HUD, one from Department of Energy, two from HUD. One of those will be covering Davis Bacon. So we have a lot of external auditors at the Department this year, as usual.

Internal Audit released one audit report which was an audit of the 4 Percent Tax Credit Program. We didn't identify any significant issues and all of the prior audit issues related to the QAP were implemented. We completed an audit of the Manufactured Housing Division which is a workload issue since they have a different board, and we're currently writing the report on the audit of Weatherization monitoring, so you should see that one in April. In prior audit issues we have 108 issues we're tracking; 54 have been verified by Internal Audit and closed, and I'm happy to report that all of the open OCI issues were verified as implemented and closed.

We also talked about Fraud Hotline calls and fraud complaints. We had a discussion on Davis Bacon and its impact on the Department's programs.

Are there any questions regarding the Audit Committee meeting?

MR. CONINE: Sounds like it was full, shall we say.

MS. RAY: Full and very comprehensive, and we had a lot of discussion, as you heard Ms. Donoho allude to on Davis Bacon and how that's going to impact our ARRA programs and our deadlines, and staff helped to allay our concerns that the Department has training in place to work with not only sub-recipients but the sub-recipients with the providers to work us through so that we can successfully execute our $327 million program as we progress through 2012.

MR. CONINE: Thank you.

MS. RAY: Very good meeting. I'd like to commend Ms. Donoho as well as her staff, and the entire staff of the Department for support of our Audit Committee meeting. It was very informative and very well managed.

MR. CONINE: Well, I'm at least happy to hear from not only our internal auditor but our external auditor that their relationship with management and staff has been exemplary and fairly supportive. That's a good sign.

MS. RAY: Fairly supportive, I'd like you to understand that we do maintain our independence and we don't always agree with management but we always come to solution, and we thank Ms. Donoho for her leadership, and Mr. Gerber for the leadership in making that relationship work successfully.

MS. DONOHO: Thank you.

MR. GERBER: Mr. Chairman, and I'd just like to interject that when we did the report also on the hotline, we have seen an up-tick since to 2009 to this year, as would be expected with the increase in funds that the Department has received, of fraud complaints coming in, and Ms. Donoho's division has been working to investigate those and there have been some referrals. I think the Department has continued to take the very high standard that we will fully report any instances of fraud, waste or abuse to the appropriate authorities and we take those issues very seriously, and we're working to make sure that all of our sub-recipients are appropriately trained in those to try to minimize those.

We know that they happen but we're doing our level best to make sure that Texas sets the standard for trying to minimize and hopefully eliminate it. So just to make you aware that we have seen some up-ticks and there's some discomfort among staff as we try to figure out better ways that we can support ourselves to try to root it out.

MR. CONINE: Any other questions of either Mike or Sandy?

(No response.)

MR. CONINE: Okay, thank you very much, Sandy.

MR. IRVINE: Mr. Chairman, I would request that the Board formally accept the report of the Audit Committee and thereby also acknowledge the continuing effect of the standing resolutions and charter.

MR. CONINE: This is your last job as secretary, is that right?

(General laughter.)

MR. CONINE: Do I hear a motion to that effect?

MS. RAY: I'll so move.

DR. MUNOZ: Second.

MR. CONINE: Mr. Gann, seconded by Dr. Munoz. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Thank you very much, Sandy. Appreciate your hard work.

Item 4, Bond Finance, Mr. Gerber.

MR. GERBER: Mr. Chairman, Item 4(a) is discussion and possible approval of one or more firms to provide financial advisory services to the Single Family and Multifamily Mortgage Revenue Bond Programs.

On October 15, 2009, the Board approved an RFP to select one or more firms to provide financial advisory services to TDHCA for its Single Family Mortgage Revenue Bond issues or Multifamily Mortgage Revenue Bond issues. Three firms were scored and ranked for the position of financial advisor based on criteria that included their experience, their quantitative capabilities, variable rate bond and derivative experience and compensation. Staff recommends selecting Raymond James & Associates as financial advisor for the Department. Additionally, given the enhanced scope of work over the next year, staff also recommends RBC Capital Markets to serve as a structuring agent on a limited basis to the Department to assist with cash flows and yield maintenance calculations.

Staff is recommending the Board's approval and asks for a motion to that effect.

MR. CONINE: Mr. Nelson, would you like to address us?

MR. NELSON: Thank you, Mr. Chairman and members of the Board.

I think that everyone is aware that a financial advisor is a very key member of our working group, we, along with bond counsel and our underwriters. We consult with these individuals on a daily basis on a wide variety of topics that concern not only upcoming bond issues but questions that come up on prior bond issues and so we believe that staff, in consultation with the Board, has given this question an extensive amount of review and are happy to report the recommendation that we've made.

One item of note that people might have a question on is the fact that we have added this structuring agent aspect which you probably haven't seen before, but again, I think staff felt that that was important. We have, over the last four or five months, transitioned from the underwriting group a wide variety of structuring and other analytical items to the financial advisor, and in light of that, felt like in transitioning all of these items over, and in light of the fact that we have our NIBP program and warehousing which we'll talk about in a bit, that basically we have a lot of sort of items on our plate, a lot of resources that we feel like we need to have available to us.

And so we feel like having these additional resources available for a temporary period of time allowing us to more effectively and efficiently sort of transition those, we do believe that over the course of the next year that the financial advisor will be able to pick all of those up, and based upon all the discussions that we've had with them that they have the capability to do that, we just felt like again to sort of say hey, you guys have been doing all of this and as of five o'clock today you guys stop, you guys start would have just created a fair amount of disruption in terms of all the programs that we're working on.

But I'd be happy to address any and all questions that you have.

MR. CONINE: Any questions?

MR. NELSON: There would be no additional cost to the Department. Basically, we would be taking the costs associated with that function and basically parsing it out to two different firms rather than paying it over to one.

MR. CONINE: Anything, Mr. Dally?

MR. DALLY: No.

MR. CONINE: Tim, I want to say that I appreciate your thoroughness and going through the RFP process and appreciate your addition to the team, so to speak, at this point.

I think I'd like to call on Gary Machak, if you don't mind, and let him come address the Board on behalf of Raymond James and give him a chance to speak to the Board. Since the rest of the Board members didn't get a chance to be at the interview, I'd like for Gary just to have a chance to say whatever he'd like to say.

MR. MACHAK: Thank you, Mr. Chairman, Board members, Executive Director and staff. I appreciate being recognized. It's been a while since I've been on the podium after a brief hiatus, and I thank you for allowing me to come back.

I guess what I'd like to say is that we're in a new decade for the Texas Department of Housing and there will be new challenges that this decade will bring. We saw some from the last decade. I appreciate it and I'm honored to be selected as your partner and advocate in the capital markets, and we at Raymond James are committed to providing the staff with the high level of service that it deserves and needs to help you serve the citizens of Texas.

We will demonstrate careful judgment and keep TDHCA and the State of Texas financially safe and secure as we consider these solutions to the challenges of the new decade. So we thank you for the appointment, we're ready to go.

MR. CONINE: Thank you, Gary. Do you want to introduce David?

MR. MACHAK: I would like to introduce David Sutton. David Sutton is the manager of our structured finance group and public finance, and he's with us from our headquarters in St. Pete, Florida.

MR. CONINE: Good to have you with us, David; thank you for coming.

MR. Machak: Also with me today are Barton Withrow and Robin Redford, also on our service team, along with others that are in different offices but did not attend today.

MR. CONINE: Any questions of the witness? Gary, if you would fill out a witness affirmation form, I'd appreciate it. Any questions of Gary?

(No response.)

MR. CONINE: We're glad to have you back on the team and appreciative of RBC Dain Rauscher and what they've done and will continue to do for the Department as well. Appreciate everybody's working through that particular process.

If there are no other questions, I'd be glad to entertain a motion.

DR. MUNOZ: I'll move.

MR. CONINE: Move for approval by Dr. Munoz. Is there a second?

MS. BINGHAM: Second.

MR. CONINE: Second by Ms. Bingham. Is there any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion signify by saying aye.

(No response.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Thank you, Gary.

MR. MACHAK: Thank you, sir.

MR. CONINE: Item 4(b), I guess.

MR. GERBER: Mr. Chairman, Item 4(b) was the selection to provide reinvestment services for the Single Family Bond Program. Staff submitted an RFP for firms interested in providing investment services from time to time for one or more of its Single Family Mortgage Revenue Bond issuances on February 12 this year. Firms were scored and ranked based on criteria including experience, capabilities and compensation, and after reviewing and scoring RFPs from seven firms, the staff is recommending hiring Grant Street as reinvestment agent, and we ask for a motion to that effect. Anything you want to add to that, Tim?

MR. NELSON: Well, I would say one thing again, similar to the last item that I think in the past the Board has had sort of a group of firms that you would rotate through, and I think it was staff's view that this area has been increasingly coming under scrutiny and that the reinvestment of proceeds is much more challenging in today's market, and so we felt that the Board and staff would be better served having one firm that you could develop a relationship rather than rotating several firms through. So I would just make that note for your information.

MR. CONINE: Thank you, Tim. Any further questions of the witness? If not, I'll entertain a motion.

MS. BINGHAM: Move staff's recommendation.

MR. CONINE: Move approval of item 4(b) by Ms. Bingham. Do I hear a second?

MR. GANN: Second.

MR. CONINE: Second by Mr. Gann. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MR. GERBER: Mr. Chairman, Item 4(c) is the presentation, discussion and hopefully approval of Resolution Number 10-018, authorizing the extension of the certificate purchase period for Residential Mortgage Revenue Bonds 2009 Series A and Series B, Program 74, and authorization of an additional grant equal to 3 percent of the original principal balance of each eligible mortgagor's mortgage loan. Staff is requesting approval of the extension of the certificate purchase period and the authorization to add a 3 percent down payment assistance grant for Residential Mortgage Revenue Bonds, 2009 Series A and Series B, or Program 74.

This program was released in August 2009 at a mortgage rate of 6.25 percent with 4 percent down payment assistance in the form of a zero percent, ten-year, deferred forgivable second lien mortgage loan. The demand for Program 74 funds has still remained lackluster and staff is coming to the Board today to request a 3 percent grant in order to further incentivize mortgagors. The end result should be to move these loan funds through the mortgage pipeline more quickly, and due to the proposed extension, the impact of negative arbitrage on the indenture will be lessened to the extent that mortgage loans are committed, closed and pooled more quickly.

Accordingly, we're asking the Board's approval of that resolution 10-018.

Tim, anything you want to add to that?

MR. NELSON: No. I'll address any questions.

MR. CONINE: Finally get to do a deal done.

MR. NELSON: Well, sort of a deal.

(General laughter.)

MR. CONINE: Kind of a deal. Any questions of the witness?

(No response.)

MR. CONINE: I would entertain a motion for approval.

MR. GANN: Mr. Chairman, I'd like to make that motion to approve staff's recommendation.

MS. BINGHAM: Second.

MR. CONINE: Mr. Gann makes a motion, seconded by Mr. Keig to approve Resolution 10-018. Do I hear any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MR. GERBER: Mr. Chairman, we'll skip Item 4(d) and move to Item 4(e) which is the presentation, discussion and possible approval of Resolution 10-016 authorizing the issuance of Residential Mortgage Revenue

Bonds, Series 2010A and conversion of first tranche of 2009C, Program 77.

At the November 9, 2009 Board meeting, Resolution 10-016 was approved authorizing the issuance of $300 million in principal amount, new money, taxable Residential Mortgage Revenue Bonds that were placed with Fannie Mae and Freddie Mac under the New Issue Bond Program, the NIBP program that Tim referred to a moment ago. The NIBP bonds were settled on December 23, 2009 with temporary variable interest rates that may be converted in tranches, at the Department's election, up to three times in 2010. Upon conversion of a tranche of NIBP bonds, the portion of the bonds that are converted become tax-exempt bonds and a mortgage rate that is competitive to conventional mortgage rates will be set.

At the time of each conversion, TDHCA is required to sell to the public or private market an amount of new money, tax-exempt bonds in a ratio equal to 40 percent of aggregate bond proceeds with the other 60 percent of bonds represented by bonds purchased through the New Issue Bond Program.

On January 20, 2010, TDHCA's Board approved an application to the Bond Review Board to draw down $120 million of 2009 volume cap, along with $30 million of volume cap for our Residential Mortgage Revenue Bond Program 77. Today staff is seeking final approval of the first conversion of $90 million of the NIBP bonds to tax-exempt bonds that will bear an interest rate at 3.81 percent and issuance of $60 million of the shorter term private market bonds for a total of $150 million of funds for mortgage loans. Staff is recommending the approval of Resolution 10-016 which is in your book.

Tim, anything you want to highlight? There's quite a bit of material, I know, in the Board book on it.

MR. NELSON: Well, I would just point out that, again, especially in light of the last item that you just approved, you might be wondering we've already got money out there, why are you guys looking to get approval to convert the first tranche. We do need to go through a process where we get BRB approval in working with the working group and we still do need to talk about the warehouse, so this might make a little bit more sense when we get into the warehouse discussion.

But in essence, staff wants to be all ready to go so that we can release an official statement and go out and price this bond issue when we get to the appropriate time, so we certainly don't think that with your approval and we move forward and get BRB approval we'd be looking to price and close a transaction say within the next three or four weeks, but we want to position ourselves so that when that transaction needs to be priced and closed, be that in May, June or July, that we have all the various approvals in place, both with this Board as well as with BRB and are prepared to move forward in a swift fashion when we get to that point.

MR. CONINE: Would you mind highlighting the underwriting team again, just for the Board.

MR. NELSON: We have with us a number of those firms, and the Board did approve four senior managers that would operate on a rotating basis, and then a group of eight co-managers, and with the Board's approval we have: Morgan Keegan & Company acting as book-running senior manager; J.P. Morgan as our co-senior; George K. Baum and Morgan Stanley, the other two seniors. And then among the eight co-managers, again with the Board approval, we've got Fidelity Capital Markets, First Southwest, and Piper Jaffray, who will be assisting us with this first transaction.

MR. CONINE: Okay, great. Thank you, Tim.

Any other questions of the staff? If not, I'll entertain a motion.

DR. MUNOZ: So move.

MR. CONINE: Motion to approve by Dr. Munoz. Do I hear a second?

MS. RAY: Second.

MR. CONINE: Second by Ms. Ray. Any further discussion?

(No response.)

MR. CONINE: All those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MR. GERBER: Mr. Chairman, we'll return now to Item 4(d).

MR. CONINE: I need to recuse myself, and I'm going to let Ms. Ray take care of this one.

MR. GERBER: Madame Chairman.

MS. RAY: Mr. Gerber.

MR. GERBER: Item 4(d) is the presentation, discussion and possible approval of Resolution Number 10-019, a warehouse facility and interest rate setting mechanism primarily to be used in conjunction with the Department's First-Time Homebuyer Program, and I'll let Tim Nelson, our director of Bond Finance, walk you through that one.

MR. NELSON: Thank you, Mr. Gerber.

I think that the best way to probably take a look at and view a warehouse facility is in what it provides us. The way that this Board has traditionally done their transactions is that you would authorize the sale of bonds, we would go out and sell those bonds, close them, place the proceeds into an investment, and co-terminus with that we would go ahead and release the mortgage side of that program, go out and try to get lenders to commit those funds, close on those mortgage loans, deliver those into our master servicer, the master servicer would then pool those, and it's only at that time that they're pooled and delivered into the trust estate that they actually become an asset that helps us pay off our bonds.

During that time period, we have to still make payments on our bonds and we use the investment earnings that we earn on these proceeds in order to do that. Well, in the more recent past, rates have dropped precipitously, and you may recall on your August transaction that we funded a little under $3 million for negative arbitrage, so that's what you have to do when you put your transaction together in that fashion.

You don't have to put your transaction together in that fashion. The other thing that you can do is to line up a third party who would agree with you that you could go ahead and release your bond program or release the mortgage side of your bond program, if you will, and then you give your lenders a rate, that rate is determined or you try to set that based upon what you think your cost of fund is going to be on your bonds, so that will give you some guidance. Fortunately, on our deal we've already locked 60 percent of our financing with Treasury so that gives us a fair amount of guidance in terms of what we would need to do in terms of setting rates.

And you would then move forward with the lending community, get them to go through the same process that they've done before, and then once you have created that pool, rather than selling it into your trust estate -- which, remember, you haven't priced and sold your bonds yet -- you would then sell that to this warehouse provider who would hold that security until such time as you moved ahead and did your bond deal. At that point in time you would price, close your bonds. Rather than taking those proceeds and going out and investing them at 15 basis points in a guaranteed investment contract, you would take your proceeds at that point and come buy all of those certificates that you've just spend the last two or three or four months gathering up in this warehouse facility, so the end result is you have a bond issue with little or no negative arbitrage, and so that is what we have been working on really since we closed the NIBP program in December.

I remember one of my first comments to Bill was the good news is we've got $300 million kind of on the shelf, the bad news is we have $300 million on the shelf that we can't really access without putting another mechanism in place, and so it is this mechanism that we are recommending to the Board that you enter into this.

So that's sort of the background in terms of maybe the why, why would you want to do this, as opposed to let's just keep doing business as usual. So again, that's the why.

Then the who sort of comes about in terms of there's a number of different ways that you can do this. You can to virtually any financial institution and say: Okay, I've got Ginnie Mae's that I'm creating here and I would like you to basically set up a margin account for me which anyone who has got a brokerage account is probably familiar with that, that if you've got a security, the other entity will allow you to borrow a certain amount against that security. The negative part about that, though, is as market rates go up and down, you may get a call from your broker saying you need to post some more collateral to your account.

And so staff felt like that was probably not the kind of business that the Department wanted to get into, so we wanted to work with a group that would basically come in and say: Look, we'll provide the financing for your securities and you're not going to have to worry about having to post what's called the haircut, the initial 4 to 7 percent that they don't allow you to borrow 100 percent against that security. That means you're not going to have to worry about us calling you on a daily basis and potentially saying post some more collateral.

So we went through a survey, probably ended up ultimately talking to eight to ten different firms that were interested in providing this type of warehousing facility on our terms, and that was sort of the other aspect of this that you could talk to any number of people who would say I'd love to do that with you as long as you provide me with a general obligation pledge on the other side that if we end up with a problem with this, I just send you guys a bill and irrespective of how much that bill is, you'll just send me the money.

So we could not and did not want to put our arrangement together that way, and after having gone through this survey of firms, we ended up with, I'd say, probably two or three that met all of the various requirements that staff felt like was important in terms of not making overly onerous demands and being able to offer a lot of flexibility within the agreement, have it operate for the dollar amount that we felt was sufficient for what we were trying to do.

And the dollar amount that we sort of settled on, remember, again, we've got a $500 million potential program, the $300 million of NIBP plus the 40 percent that we have to match with market bonds, but we felt like $100 million warehouse facility would give us the ability to create a certain amount of critical mass to go into each one of these bond deals, while at the same time not creating something that was too large and would expose us to too much financial risk.

And so again, having gone through that survey, the party that we are recommending is Plains Capital and one of their subsidiary companies, First Southwest, are standing at the ready to enter into this agreement with us. And this is, again, going to be important in that obviously we've just extended the prior program. Once that program gets fully committed, which we hope is going to be in the next three to four weeks, we will then be in a position at that point in time with the warehouse facility in place to go ahead and announce the Program 77 mortgage program and allow lenders to start originating and delivering those loans in.

And again, I know that's a little bit different concept than what the Board is used to, so maybe I'll stop at this point and allow people maybe to ask questions.

MS. RAY: Thank you very much, Tim.

Board members, do you have any questions of staff on this subject?

DR. MUNOZ: Ms. Ray, I've got a question.

Tim, you laid out the why and possibly the who and you explained about not exceeding $100 million in the warehouse so as not to expose us inordinately. Beyond that, are there any other potential liabilities or exposures that we're doing this for the first time?

MR. NELSON: Well, we've got a couple of things. First of all, in order to give the --

DR. MUNOZ: I'm asking like is there any other significant down-sides.

MR. NELSON: Well, there's a couple of things that we have to do. In order to have a firm established short of comfort level that they could take on this $100 million obligation, we do have to set aside a certain amount of capital so that if we don't fulfill our end of the bargain -- which is basically when you get to $100 million the party will then get ahold of us and say: Okay, you guys need to go do a bond deal; ergo the reason why we wanted to get the approval to move forward with the first rollout of the NIBP in the 2010A --

so when you get to the maximum under your agreement or we get to the end of this year which is when the NIBP all has to be done, you have to go do a bond deal and buy whatever Ginnie Mae's, if it's $50 million or $100 million, whatever is in there at that point in time, you have to take those securities out.

If you don't, then we as the warehouse provider have to exercise our options and their only option really is to go liquidate those securities in the open market, and if they end up losing money on that liquidation process, they would come back against us and say you need to make up the difference. And so we have proposed setting aside this $5 million in order to cover that eventuality. Obviously, our intent is to do a bond deal, so therefore, that eventuality would not come about.

Obviously, we all lived through September of '08 so there are times when as much as you want to do a bond deal, the market can be broken and you're not able to do a bond deal, so that's one exposure that you have, but again, I think that needs to be viewed in light of the discussion we had about negative arbitrage, that if we didn't enter into this transaction, if you were going out to do a $150 million bond deal today, you would probably have to fund $5- to $6 million worth of negative arbitrage, and that's money that you don't set aside, you put into the bond deal and that ends up getting spent. So in relation to what your alternative would be, again, staff believes that's a fair tradeoff, and again, managed properly, we believe that that $5 million, again, will just have to be set aside, not actually tapped for any purpose.

The other risk that you take is that you're subject to movements in interest rates, so that if for some reason market rates were to rise during this time period, then obviously the cost of selling your bonds is going to increase. Now, again, the benefit that we have is we've already locked with the Treasury 60 percent of our bonds, so as rates rise, it's only impacting 40 percent of our financing structure.

The other sort of piece of this warehousing structure is that you do have the ability over time to adjust your interest rates, so as opposed to, again, your prior bond issues where you sold your bonds, kind of set a rate and then just let it go and you didn't really have sort of a management aspect where you could change the rates, staff would propose under this, and I believe under the terms of the resolution, that you would give staff the flexibility to set rates anywhere between 4.99 and 6-1/4, and obviously staff would look to consult with the Board on a monthly basis and would report back to the Board activity in that warehouse facility in the prior month.

But again, the very key element of this versus, again, what I would say a standard bond issue is that there is a certain amount of management that you could apply to that agreement to a positive end. Again, if rates were to go up 25 to 50 basis points, you don't have to just sit there with the rate that you've got, you can go ahead and adjust your rates to be more in line with what's occurring in the marketplace. Because remember, as rates go up, the value of the securities that are in your warehouse line are going to be affected negatively, so you want to have that flexibility to adjust those accordingly.

MS. RAY: What I've heard you say, Tim, then is the advantages in moving to this form of warehousing, it helps us to reduce or eliminate negative arbitrage and it also gives us an opportunity to set an interest rate setting mechanism to control interest rates.

MR. NELSON: That's correct.

MS. RAY: Okay.

MR. NELSON: When you sell your bonds, you've obviously locked your bond rate and you hope that it all works out for you. This way you're gathering up your basket ahead of time but you're allowed to kind of change your rates around.

MS. RAY: Within a certain range.

MR. NELSON: Yes, within a certain range. You wouldn't do that over several hundred basis points, but I think staff's thought was that, again, we're offering rates on 74 up to 6-1/4 right now, and if for some reason rates were to drop, or I think the other thing that we're looking at under the mortgage program is there could be flexibility to offer different types of down payment assistance. You might offer a note-assisted loan at 5 percent while at the same time maybe have a five-point assisted loan being offered at 5-3/4.

So there's a real benefit to having that range of different rates that you can offer and a range of different down payment assistance options that you can offer over the course of the program, because, remember, you're rolling out a $500 million mortgage program, we're just looking at the financing on the first piece of it which is the $150 million. But the program is expected to be in place for a longer period of time than just the first bond deal.

MS. RAY: Thank you very much. Any other questions?

(No response.)

MS. RAY: Then the Chair would entertain a motion on the staff recommendation.

MS. BINGHAM: I'll move staff's recommendation for the warehousing institution and the resolution.

DR. MUNOZ: Second.

MS. RAY: It has been moved by Ms. Bingham and seconded by Dr. Munoz to authorize the Department to enter into a warehouse agreement and interest rate setting mechanism to be used in conjunction with the Department's First-Time Homebuyer Program. All those in favor please say aye.

(A chorus of ayes.)

MS. RAY: All those opposed, no.

(No response.)

MS. RAY: The ayes have it and we have approved staff's recommendation. Thank you.

MR. NELSON: Thank you.

MR. GERBER: Madame Chair, moving on to Item 5(a), which is the presentation, discussion and possible approval of the 2010 State of Texas Low Income Housing Plan and Annual Report, also known as the SLIHP. The SLIHP is required to be submitted annually to the Governor, Lieutenant Governor, Speaker of the House and Legislative Oversight Committee members not later than 30 days after the TDHCA Board receives the final SLIHP. The document offers a comprehensive reference on statewide housing needs, housing resources and strategies for funding allocations, it reviews TDHCA's housing programs, current and future policies, resource allocation plans to meet state housing needs, and reports on 2009 performance during the preceding fiscal year.

According to TDHCA statute, the Board must approve the final SLIHP by March 18 of this year in accordance with the Texas Government Code, and it is recommended that the Board order that the SLIHP be adopted as presented and that staff be authorized and directed to cause the order of adoption to be published in accordance with the requirements of the *Texas Register*.

There are several updated sections including updated housing analysis, an updated annual report dealing with specific program performance by region, an updated action plan to reflect programmatic changes including new programs such as those within the Community Affairs Division and the Housing Trust Fund Division. There's an added Recovery chapter reflecting new Department programs created as a result of ARRA. There's also an updated Regional Allocation Formula reflecting updated data as well as an updated Colonia action plan.

The SLIHP was made available for public comment on January 4 and was available for public comment through February 2. There were clarifications made to program descriptions and policy priorities, as well as general formatting and editing that was done for clarity. The Department received eight public comments and responded to those comments where appropriate. No substantive policy changes were made based on comments. We were generally very pleased with the comment and it helped to confirm in many respects that we were getting the information right. We appreciate all those members of the public and our partners in other agencies who worked with us to produce the SLIHP. It's quite an undertaking and we want to take Elizabeth Yevich from the Housing Resource Center and her team for pulling it together.

And with that said, we'll certainly open it up for questions, but the Board would ask for your final approval of the SLIHP.

MR. CONINE: Staff would ask the Board.

MR. GERBER: We'd ask the Board for your approval.

MR. CONINE: Didn't want you to get too comfortable.

(General laughter.)

MR. CONINE: Any questions? No public comment?

(No response.)

MR. CONINE: I'd entertain a motion.

MS. BINGHAM: Move to approve.

MR. CONINE: Motion to approve by Ms. Bingham. Is there a second?

MR. GANN: Second.

MR. CONINE: Second by Mr. Gann. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MR. GERBER: Mr. Chairman, Item 6 are the rules, and I'm going to have a logistical issue at this point, and I'm going to step away to go to the Governor's Office, and Tim Irvine is going to take my spot and work with Brooke Boston to get through the rules.

We're going to hold off on the rule dealing with the Department of Energy until around 10:15. We have some folks from the Department of Energy who are here and can add some texture to the weatherization discussion, and frankly, I also want to be here for it.

There is a rule that we're going to do first, Rule 6(a), which is one that I'm very excited about and I apologize to those of you in the public who may speak about this rule. It's an important one; it comes out of legislation that was passed last session to create a service-enriched housing council, and I have the privilege of serving as the chair of that council and there are many, many state agencies that are part of it and many folks who come from various walks of life and professions and backgrounds who are lending their help to try to work to figure out how we better integrate housing with essential services to meet the needs of folks who are living in those communities.

The creation of this council was recommended by the Legislative Budget Board in its 2009 Government Effectiveness and Efficiency Report, and we've held many meetings, we held four forums around the state to get input and heard from literally scores of individuals who are on the front lines of trying to meet the challenge of providing critical services and providing safeties and affordable housing and trying to marry them up, in many cases doing very innovative things, and it's been a real privilege to hear from them as we've done those workshops.

According to the law that created the council, it is required that with the advice and assistance of the council, TDHCA by rule shall define service-enriched housing for the purposes of that chapter of the law. The draft definition proposed was approved by the Housing and Health Services Coordination Council at our March 2, 2010 council meeting. The rule will be made available on the *Texas Register* for public comment from March 26 through April 24, and the Board will address the final rule after public comment is received and compiled for presentation. But we've taken in already quite a bit of public comment and we think we got it right.

I don't think Jonas Schwartz is here today; unfortunately, I don't think he could make it. He's our partner at the Texas Health and Human Services Commission. But Brooke, would you like to read the definition, because I think it's important for the Board to hear what that definition is. We think, again, that we took into account a wide variety of views and it's something that the Board has had to struggle and grapple with at different points over the years. Brooke, why don't you go ahead and read it.

MS. BOSTON: Sure. Brooke Boston with the agency.

"For the purpose of directing the work of the Housing and Health Services Coordination Council and its work products including the Biennial Plan, service-enriched housing is defined as integrated, affordable and accessible housing that provides residents with the opportunity to receive onside or offsite health-related and other services and supports that foster independence in living and decision-making for individuals with disabilities and persons who are elderly." And that would go out for comment.

MR. GERBER: So with the understanding of that definition, we would ask the Board's approval and allow us to publish it in the *Texas Register* to solicit more public comment and then bring it back to you for your final adoption.

MR. CONINE: Any questions of either Mike or Brooke?

(No response.)

MS. RAY: Is there any public comment?

MR. CONINE: No public comment.

MS. RAY: Mr. Chairman, I move approval of staff's recommendation.

MR. CONINE: Motion to approve by Ms. Ray. Do I hear a second?

MR. KEIG: Second.

MR. CONINE: Second by Lowell Keig. Any further discussion?

(No response.)

MR. CONINE: Good work on this. Seeing no further discussion, all those in favor signify by saying aye.

(A chorus of ayes.)

MR. CONINE: Those opposed?

(No response.)

MR. CONINE: Motion carries.

Why don't we take a five-minute break, let you go, let you come up, and we'll be back in just a few minutes.

(Whereupon, a brief recess was taken.)

MR. CONINE: Okay, back in session.

I want to acknowledge both Brian Owens from the Governor's Office -- I don't think he's here right this very minute -- and Julie Frank is here from the Senate IGR Office. Julie, thanks for being with us. Wave to me, Julie. Thank you. Appreciate you loaning us your room.

(General laughter.)

MR. CONINE: Okay, Item 6(b), Tim.

MR. IRVINE: Thank you, Mr. Chairman.

Item 6(b) is a recommendation from staff to propose rules for public comment, and these relate to programs administered in the Community Affairs Division. The rules are in your materials, and in the interest of expediting this, I'd like to propose to just offer if there are any questions.

MR. CONINE: Any questions of Tim at this point or the rules? Michael DeYoung is probably around somewhere, I don't know that I see him.

MR. IRVINE: these are routine rules just being proposed for public comment.

MR. CONINE: I don't have any witness affirmation forms on this, so I'll entertain a motion.

MS. BINGHAM: Move staff's recommendation.

MR. CONINE: Moved staff's recommendation to approve by

Ms. Bingham. Do I hear a second?

MS. RAY: Second.

MR. CONINE: Second by Ms. Ray. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

Let's skip (c) so Mike can get back and hear that, I think, and go to 6(d).

MR. IRVINE: Item 6(d) is a proposal to publish for public comment rules regarding promulgation of forms for Disaster Recovery. These relate chiefly to the implementation of House Bill 2450 from the last legislative session providing for alternative means of establishing ownership to qualify for Disaster Recovery assistance. Staff recommends that the Board authorize publication of these proposed rules.

MR. CONINE: I don't have one on that either, so any questions?

(No response.)

MR. CONINE: If not, I'll entertain a motion to approve 6(d).

DR. MUNOZ: So move.

MR. CONINE: So moved by Dr. Munoz.

MS. RAY: Second.

MR. CONINE: Second by Ms. Ray. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Moving on to (e)

MR. IRVINE: Mr. Chairman, Item 6(e) is a little bit unusual because it is primarily a discussion item to enable staff to solicit Board input and direction as we move forward with more comprehensive revisions to our HOME Rules. As we have moved forward with various aspects of our HOME Program, we have had extensive dialogue with the consultants who participate in advising local recipients, we've had the ongoing dialogue intention on the grants versus on the loans issues, documenting record ownership via tittle policy versus just providing some other evidence of ownership such as a deed, there are a variety of issues.

And I think at the heart of it, it really ultimately comes down to a balancing act, trying to make sure that we minimize administrative burdens on the administration of this program to the fullest extent possible while still meeting fundamental requirements that we be able to ensure that these homes are being used for the intended purpose by persons who meet the definitions of the communities to be served.

Coincidentally, we're also looking at the issues of consistency from program to program, looking at, for example, eligibility requirements and the length of restrictions or other use requirements in the HOME Program as compared with the Trust Fund Program or the Down Payment Assistance Program and so forth. And I certainly invite Tom Gouris, our deputy executive director for Housing Programs who has been leading this effort, to come and provide additional comment.

MR. GOURIS: Tom Gouris, deputy executive director for Housing Programs.

In your packet you'll see that there is a chart that explains what programs and products are available through the Department today and how they compare, and the reason we put the chart in is so we can see what that continuum looks like today and how we can perhaps maintain or manage that continuum in the future.

The hot issue has always been loans versus grants, and I think you're going to hear in a few minutes some comments about how that might play into it. We've had a couple of roundtable discussions on it and believe that we needed to get some of your input at this point before we come back to you next month with a draft rule so we can get a sense from the Board of how to proceed on that issue.

Jeannie and I are here to answer any questions; we can walk you through the chart if you'd like, or we can let some other folks speak to issues that they're concerned with.

MR. CONINE: Why don't we do the public comment at this point and then we'll get back to the chart and questions for you guys right after public comment.

MR. GOURIS: Great, thanks.

MR. CONINE: The first witness I have is Donna Chatham, and she's got extra folks so it will be five minutes. We'll have three speakers. Go right ahead.

MS. CHATHAM: Thank you, Mr. Chairman. It's nice to see you again.

MR. CONINE: Good to see you.

MS. CHATHAM: I'm Donna Chatham with the Association of Rural Communities in Texas. Our association represents rural cities 50,000 and under and counties 200,000 and under. I'm not going to go over word by word from my testimony, but the number one thing I wanted to share with you today is maybe a little bit more of a feeling of what rural Texas looks like.

If you look down at the very bottom of the first page, it begins to talk to you a little bit about the demographics in rural Texas, and this is so key when we talk about developing policy and programs. Texas rural communities currently have a population of 15 percent of the population in Texas, the largest rural population in the nation. Over 723 make up 89 percent of Texas rural cities which have a population of less than 10,000, and here's the key, with an average population of 2,190. As you see that chart again, it specifically shows you that there are 630 cities in Texas that are under 5,000 and then there's 93 more between 5- and 10,000, so that's 89 percent of the rural cities that are under 10,000.

Remembering there are only 723 rural cities with a population of 2,190, what policies and programs should you think about, and it should always be about capacity. Rural Texas doesn't have the capacity with those average of 2,190 to have a big old housing development program. We would love it individually, but they don't, so extension of their arm is the consultants or the programs or the developers that come in and help, that is their capacity and that's what we're here for.

Throughout the years I've had the privilege of working with Chairman Carter and Ms. Carrington, and then we're very thankful to work with Mr. Gerber, and all the time Mr. Conine has been there.

MR. CONINE: We can fix that problem.

(General laughter.)

MS. CHATHAM: No, sir, we like that, it's not problem. We have had some differences of opinion but that's what makes good policy sometimes, right, Mr. Conine, and that's what it's all about.

Consensus-building takes a lot of effort on everyone's part, and this has been a long road for over ten years that I personally have been working with the issue, working to establish a simple, effective HOME Program that is cost-effective for both the State and these small rural cities and their administrators. Many changes have come to the HOME Program, both positive and negative, over these last ten years I've worked with ARCIT and Chairman Carter and Mr. Conine and Ms. Carrington and Mr. Gerber. I'll step out in front and be willing to take the bullet to say that after ten years of working on the rules and regs of the HOME Program, the program has continually made major changes. The back and forth of rule changing continues to concern and frustrate the administrators, and we are hoping that with the staff looking at the rule changes, we can reach a true, compromise solution that we all can live with and leave it at that.

As we know, we are all in agreement with that, it is all about the low to moderate income households in rural Texas that we're all willing to serve, and what we've got here that I'll also pass out that you might be able to look at, after the City of West Tawakoni and the City of Mart talk about, is some suggested recommendations. We are also very, very thankful for Mr. Gerber's output on very different things, very thankful he was willing to do a very extensive rural study that we hope to identify capacity. In fact, that's what I was doing up in the cafeteria with Kate Moore, one of your staffers, in helping her develop that RFP.

TDHCA continues to walk on that path of educating themselves -- which we're very thankful -- to understand what's really happening out in rural Texas, and we're very thankful for, along with the Rural Advisory Group, and that's where these recommendations have come from. And I just got through sharing with Tom, these recommendations that you're looking at after the cities of Mart and West Tawakoni speak, are nothing new, we've already talked about all of these at the Rural Advisory Committee. We want to advocate again the most simplest way and we do believe we've all reached an understanding of how it can go back to a grant or at least with some type of assurance that will continue to be the easiest to administrate.

There is no flipping of homes. Statistically I think that's been proven out now that the majority, a high majority of the homes stay with the original homeowner until they pass away, and the majority of the ones out in rural Texas are, what, surprise, they're for elderly housing. And so that's just an ongoing concern that we have, we need it to be simple and we're very thankful that the TDHCA staff wants to help to make the program easy.

And this also is a list of cities that have also sent in letters talking about wanting, again, to take the HOME Program back to a grant program. That's the most simplest way. And remember, again, Texas has the largest rural population in the nation, and yep, because it is, it's somewhat difficult to reach because, again, how many cities do we have with a population 2,190, but 723 infrastructure cities that need our help. Thank you very much.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you, Ms. Chatham.

Rhonda Dietrich.

MS. CHATHAM: Mr. Conine, can I also share with you that if you have any questions specifically about the recommendations, Trace Davis or Robin Cisco is here to be able to answer any more specific questions regarding those.

MR. CONINE: Great.

MS. DIETRICH: Mr. Chairman and members of the Board, my name is Rhonda Dietrich, and I am the city secretary for the City of Mart.

Mart is currently trying to implement a HOME Program, and as the city secretary, I'm intimately aware of the progress -- or should I say lack of progress with the HOME Program, and believe me, it's not from lack of trying. We have done extensive community outreach, including door-to-door flyers, newspaper advertising, radio broadcasting. So far we've had four scheduled application intakes. Mart is a very small place and I think it's safe to say everybody in town knows bout the program.

Mart is a town with a population of around 2,000 and our housing stock is in very bad condition. The closest major shopping is 30 minutes away, most of the people in the town were born and raised there. Our HOME Program is to assist families who are 60 percent or below the median income. To help put this in perspective, a one-person family must have an income that is less than $21,720 per year, or $1,810 per month. At present we have two households that are willing to participate.

One of the homeowners receives only Social Security and her income is $1,501 per month or $18,022 per year. Her income is $7,100 over the 30 percent income which means this woman must agree to a 15-year forgivable loan. Please keep in mind the actual check this homeowner receives is not $1,500; the Medicare withholding is considered income and the actual real dollars this homeowner gets is closer to $1,400 a month. People who receive Social Security as their sole source of income make too much money to qualify for the five-year deferred loan. A five-year deferred loan is an easier pill to swallow than 15 years when you're 65 years old.

We scheduled our first homeowner application intake back in the fall and we had a pretty good turnout of homeowners. However, once the homeowners learned a 15-year forgivable lien would be placed on their home and required affordability period of their heirs, the majority of the applicants got up and left. The homeowners, being good parents, didn't want to burden their children or run the risk of losing their most valuable possession. As one of the homeoweners said when leaving: It may leak, it may be rotted, but it's mine and nobody can take it away from me and my family.

This is my city's first HOME experience, and I must tell you it's not been very pleasant so far. We're quickly running out of time to meet the state required benchmark for committing funds. In truth, we will be de-obligating more than half the funds as we have only two qualified that are wiling to participate at this time. As I said, this is our first HOME Program and I don't have years of experience to share with you, all I'm asking is that you figure out how to make it easier. Changing it to a grant and getting rid of the affordability period is a good starting place, and at the very least, make all the loans five years and simplify the process.

Thank you for your time.

MR. CONINE: Thank you. Any questions of the witness?

MS. RAY: I have a question.

MR. CONINE: Ms. Ray.

MS. RAY: Thank you. Where is Mart geographically located in the State of Texas?

MS. DIETRICH: Approximately 25 miles east-southeast of Waco.

MS. RAY: Thank you.

MS. DIETRICH: Is that it?

MS. RAY: Yes.

MR. GANN: I've actually been through there hundreds of times on my way to Waco.

(General laughter.)

MR. CONINE: Okay. Cloy Richards, is that right?

MR. RICHARDS: Yes, sir. Good morning.

MR. CONINE: Good morning.

MR. RICHARDS: I believe you recognize me, I've been at your house talking about this issue before.

MR. CONINE: Yes, you have.

MR. RICHARDS: You were sporting a pretty large cast on your leg at that time.

MR. CONINE: Yes, sir.

MR. RICHARDS: Greetings, Mr. Chairman and Board members. My name is Cloy Richards, I work for the City of West Tawakoni and I'm also a board member of the Association of Rural Communities in Texas.

It did my heart good late last week to hear that TDHCA staff wanted to talk about grants versus loans and some other changes in rules in the HOME Program. My City of West Tawakoni and my former City of Merkel have done four projects. I still maintain this program is the only out there in rural Texas that addresses the most basic need: a safe, affordable place to live. I've seen, during all four of the projects, recipients filled with joy and city staff, mayors, council members filled with pride for being able to help.

Last year, West Tawakoni was awarded a five-home project, yet we could only get two to go through the entire qualification process. I know you've heard all this before, but the common negative response from the applicants centered around the loan requirements and the income levels. We can't do anything about the income levels. We did manage finally to get two applicants to closing, tons of paperwork, last minute faxes, you know, it's that process you go through when you're trying to do anything. If you've not dealt with mortgage companies since the great real estate bust, those documentation rules have been ratcheted tighter as well.

This is a program that five years ago basically asked us to demolish the old house, haul off the dilapidated structure, and make the foundation site ready, make the lot flat, waive the water/sewer tap fees, waive the building permits, and with all that, we pretty much got close to our match, it didn't really cost us that much additional cash, and that's a far cry from where we are today. The program worked well and served a lot of people as a grant program. I believe TDHCA has real hard numbers that show the loan programs put far fewer people in homes and fewer cities are actually seeking the funds to even try a project.

I'm not an expert in finance or housing, a lot of you are, I'm just a guy in a small town trying to do what we can do to help improve the lives of those we serve. In rural Texas, the HOME Program is real economic development, a boost in appraised values comes with it, it cleans up dilapidated housing, and in three projects in Merkel, we put more houses on the ground through the HOME Program, there weren't 15 other homes built in Merkel during those three periods.

The additional burdens of loan paperwork, finance documentation required under the TDHCA rules has had a net effect of fewer people actually applying in fewer cities. I'll leave those numbers to the people who know those numbers. The numbers I know are these: we had enough money to build five homes and we built two; we had 31 came in for our first application intake, 14 actually filled out paperwork; we were standing at the exit doors asking why are you leaving and that sort of thing because, frankly, we knew that some people would get up and leave when the real rules were explained.

Most of the people that we do serve are elderly and their single largest source of income is Social Security. If those numbers are repeated statewide, the Board needs to take a long hard look at the loan-to-grant program. At a time when our economy, especially the housing market, was in the toilet, fewer people in fewer cities participated in HOME, if that's true that ought to tell us that something is wrong.

We need to figure out a way to make HOME work again. We already know the grant program worked better than the loan program, but I believe you have the numbers that will back up those statements. I'm glad to answer any questions, and I appreciate the opportunity to talk.

MR. CONINE: Good to see you again. Any questions of the witness?

(No response.)

MR. RICHARDS: Thank you.

MR. CONINE: Thank you very much.

Do you want to go through this chart right quick and just give me the Cliff Notes version?

MR. GOURIS: Well, it's broken down into different types of product: homebuyer assistance rehabilitation only, homebuyer assistance with rehabilitation, and acquisition and/or rehabilitation construction or new construction in an acquisition function. And then it has each of the different types of funding that we use so each one will have, if we have a Housing Trust Fund or HOME, CDBG, have what their program provides.

In a nutshell, it sort of shows that there's a wide variety of things that we do, a wide variety of programs and activity levels and it's a continuum but it's a continuum that I think we need to spend a little bit more time on making a flowing continuum versus a silo continuum, I guess is what it looks like to us today, and so that's one of our objectives is to try to get a sense of how we might do that. Another thing to note is that there are only a couple of areas now where a grant is provided, and that's with the accessibility and modifications through the Housing Trust Fund Program, and the CDBG Disaster Program. Other than that, most of the transactions would be in the form of a deferred forgivable loan.

Some of the questions we have at the end of this writeup are some brainstorming that we've done internally and during the roundtables, and again, we were hoping to get some of the Board's sentiment on this issue.

MR. CONINE: Just to give the Board some perspective here, and Ms. Chatham brought up I've been around far too long, and a lot of this -- well, this chart, I certainly didn't organize this chart, I'm going to blame this one on Gouris and the rest of the staff.

(General laughter.)

MR. CONINE: But the concept was that we take HOME Fund dollars and instead of granting them and just getting a one-time shot out of it, you put a forgivable loan or a loan structure in place, and if for some reason the person sells the home or whatever, the money would be recycled back to us so we could help the second Texan and the third Texan, and over a period of time, as the federal government would keep sending us HOME dollars, we'd build up a sizable pot of money that we could recycle and help a lot more Texans.

Ms. Chatham, in her testimony, alluded to the fact that we're the largest state as far as rural population is concerned, so our concern or the Board's concern years ago was to try to recycle as much of it as possible and see if we could help more folks along the way.

You can see by this chart, though, that it probably got more complicated than even I envisioned back in those days, and it's a good time now to sit down and think through it, figure out statistically -- we've heard from two other witnesses who obviously would prefer a grant program to a loan program -- but it would be interesting for me to see some data on how much of the money has been recycled, how much of the money has not been used or we had to de-obligate and take from one city and go to another, some of those sorts of issues.

MR. GOURIS: I think I can kind of jumpstart a couple of those issues for you. First on the chart, those are different funding sources so those aren't all HOME funding sources, some are the Trust Fund, some are CDBG, so they're various funding sources that the Department has programs that use those funds. The HOME funds for this purpose, as long as it's not relocating a new construction, if it's reconstruction in the same site, by and large the HOME funds, from a federal perspective, are intended to be a grant and not necessary to be recycled.

Our other HOME funds for other activities, like our multifamily activity or when we construct a new home someplace on a new site, those federally have to have an affordability period. They can be brought in as a grant but they have to have an affordability period which then lends itself well to a loan structure so that we can have some recycle-ability potential. These also have some recycle-ability potential but what the Board has done, we moved from grants to loans but we moved to a deferred forgivable loan, and so that deferred forgivable loan meant that in most cases the period of forgiveness runs and the loan is forgiven, so the recyclable-ness of it -- if that's even a word -- the recycling of those funds, the intent is there if someone were to try to get the benefit of this and then quick turn around and sell it, then we should get the ability to recycle it. That's where the deferred forgivable piece comes in.

One of the things we've tried to suggest here is that we can work from -- this is all nomenclature, I guess -- from a deferred forgivable loan to a conditional grant which effectively does the same thing: it provides an ability to reach out and get some of that benefit if somebody tries to get this benefit and flip it right away which is a concern. So as far as how much we've got from this part of the program, it's been very, very little as far as recycled funds.

We've been trying to do a study of how these specific kinds of transactions do turn over, both before the deferred forgivable loan program was put into place and since then, and it's very difficult to measure when you have a grant program to measure what turns over, you have to look at the tax records and you have to make certain assumptions. And a study was done a couple of years ago when we looked at this in a bigger study, and it was really difficult to get good data then and there were some communities that had a really high rate of turnover of things that seemed to turn over, and then the vast majority of the communities, vast majority of the projects had a very, very low turnover.

We think the number is somewhere around 10 percent which in the first five or ten years that's not a bad number, that's not a significant number. So that's really the risk of someone coming in and flipping it. Historically, if we had to make a gap space in the data we've seen so far, we think it's around 10 percent. I don't know if that's helpful in the thought process, but that's what we're trying to protect, I think, against more than anything else.

MR. IRVINE: Mr. Chairman, if I might.

MR. CONINE: Sure.

MR. IRVINE: I think it's largely an issue on the grant versus loan, when you're talking about a deferred forgivable loan, it's really a matter of how do you present a product so that it has wide acceptance, and we would certainly offer that exploring the concept of structuring as a conditional grant might enhance acceptance. I think that there are other issues, though, on the back end that really are a little more difficult.

First of all, under the HOME Program, we have to establish fee ownership or a qualifying 99-year lease, and traditionally the loan structure and the title insurance has been the way to verify fee ownership. I believe staff is pretty strongly supportive of the concept that we would require a title policy. We think that that provides benefit to the homeowner to show that they've got something that they really own and they can exercise and realize the true benefits of home ownership by having that.

With respect to the triggering of events that would cause an obligation to repay or perhaps more likely an obligation to qualify the new occupant or whatever, we certainly are a lot more comfortable working with the loan structure because obviously a default is secured by a deed of trust and we can go and make sure that the new owner is income-qualified and that the property continues to be used for the same purposes. But I think based on the information Tom is seeing here, that's just not a huge issue.

Logistically, we really think that it's worthwhile exploring the concept of a conditional grant accompanied by title policy and some sort of recorded document that gives us, perhaps, a right of first refusal or other ability to ensure that we do get notice if there is ever an intent to transfer.

MR. GOURIS: Title is a huge issue and difficulty in some of these small communities in getting title, and I think, by and large, that's been the crux of the issue. It gets confused with whether it's a loan or a grant sometimes, but it's really a matter of having marketable title as required under the HUD guidance. That's why we think that getting a title policy would solve that.

MR. IRVINE: And we did attempt to get into dialogue with HUD and see if they would be even willing to entertain something along the lines of what we use under the Disaster Recovery Program, the alternative ways of proving ownership that were created in House Bill 2450 last session, and HUD said emphatically, with respect to the HOME Program, no, we have to have fee title.

MR. CONINE: What are some of the issues in getting fee title, just to make sure I'm aware? They're living in grandma's house and it wasn't passed down.

MR. GOURIS: Yes, it was passed down but they never recorded it, or to the extent that it was recorded, there are other heirs that have rights to the house, and they're in parts afar, what-have-you, and so finding, tracking those folks down. Down the road, finding a way to help with that is something we should contemplate and see how we can help with that. We can't do that with HOME funds, we know that we can't do that with HOME funds because we've asked HUD on several occasions and it's pretty clear. What we can do with HOME funds is document the title exists, fund the existence of a policy; if it's part of the financing of the transaction it requires a title policy. If there are issues, though, those issues have to get resolved before we can close, and the cost of doing that is something that is a big challenge.

MR. IRVINE: And I would also point out that this is an item of interest to the Senate Intergovernmental Relations Committee that Senator West and his committee have really been digging into and will continue to dig into this issue to try to find ways to address larger legal structure issues so that so many Texans who do not have clear and documented title can realize the benefits of their home ownership.

MR. GOURIS: One other option that we neglected to put on our list of options of things we might be able to do, but that I think is referenced in the ARCIT document material, is trying to close eminently, and we're still researching that but we don't think that that's going to give us the security and the future potential that we would need because we think it ends shortly after completion of construction.

MR. CONINE: I appreciate the way you've framed it and put it in front of us. I think it's too large to eat right here in one session, and Ms. Chatham produced a lot of information here that I personally would like to go over and take a look at it, and I'm sure other Board members would like to do the same. So I guess my question would be can we table this particular for today and then between now and the next Board meeting take a hard look at this information, maybe have some discussion internally between some Board members and staff, and then come back next month with a more definitive thought process.

MR. GOURIS: Sure. Would that include even a draft of a rule, or we're going to have more of a discussion piece again?

MR. CONINE: I think if we're going to go these radical changes in the program, we want to make sure that the draft rule gets done and circulated, we want to have the discussion before the draft rule goes out.

MR. GOURIS: Very good.

MR. CONINE: Because I don't want to get into the legal hassle of Mr. Irvine telling me I can't make that change once it's been circulated, and so I think buying a little time might be appropriate here.

Any other thoughts from any of the Board members?

MS. BINGHAM: I think that's a good idea, too, and I just wanted to echo Chairman Conine. You know, we hear the frustration and it's important to us, and I'm actually encouraged that there's all these discussions going on, and I'm assuming that the Rural Advisory Committee will still be active in looking at whatever options we can brainstorm. And I guess I would be curious about the amount of de-obligated from those rural communities too, like Mr. Richards said, so that we can just get a feel for how much are our rural partners losing because they can't make that money work in their areas.

MR. CONINE: And again, for Board members, the way we structured this thing years ago was let's try it and see what happens, let's get some statistical information in and see what happens. If we can change the syntax or the words to accomplish the same goal but yet not have the bad word "loan" in there, then I'm all for taking a look at that. I am curious about the enforcement provision of being able to do something, but again, the concept of taking taxpayer money and fixing up or creating a brand new home for someone to live in, and to have that opportunity then generate to the heirs of that particular person, let's say, or individuals when we have a chance to recycle some of it and help a second Texan, that was where we started from

And we may have gotten a little complicated in the way we implement the program and the words may be scaring off some of the elderly rural residents around the state, and if they are, that's what we needed to hear, that's why we've gone through this process, and I, for one, am willing to take a hard look at it and see if we can make some changes to make it a little more effective and a little more palatable to our citizens.

Any other comments?

MS. BINGHAM: Do you want a motion to table?

MR. CONINE: That would be great.

MS. BINGHAM: Move to table item 6(e).

MR. CONINE: Is there a second?

MR. GANN: Second.

MR. CONINE: No discussion. All those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

Back to 6(c), I believe, Mr. Gerber.

MR. GERBER: Mr. Chairman, Item 6(c) is an emergency rule allowing the Department the ability to de-obligate and re-obligate

Weatherization Assistance Program funds made available under ARRA. It is a necessary tool, we believe, to help us meet the objective of timely expenditure of these funds, and because of the urgency in the matter and the impact to the welfare of Texans, we are bringing this both, again, as an emergency rule which will take immediate effect, and also as a proposed permanent rule which would undergo the regular notice and comment process.

The rule provides ARRA WAP recipients clear guidance on when and how a de-obligation of funds may occur. The rule was released a week in advance of the Board book being released to give additional time for input, and based on comment that was received at that time from the Texas Association of Community Action Agencies and others, several revisions were made and are now reflected in the proposed rule that's in your Board book, both the emergency rule and for permanent adoption.

Brooke, do you want to walk through some of the specifics of when a de-obligation gets triggered, tell us what that process looks like?

MS. BOSTON: Sure. The approach we took for this was that we wanted to be sure that the focus was on the unit production in terms of units being weatherized, as well as an expenditure of funds, because for sub-recipients, if they focus only on units, they could not achieve full expenditure, or if they focus only on money, they may not achieve their unit production. And so the rule is focused around it lays out both the criteria by which we would de-obligate funds, as well as provides a really good due process for the sub-recipient to make sure that we aren't being hasty at all about that.

So for instance, if you look at page 7 of the rule under Section

5.902, this begins to lay out what some of the criteria would be for de-obligation. It starts as early as April 15, so just a few weeks away. They have to have done at least one unit by that date. As of today, there are more than a handful who are not there yet, so they're very aware of this and they've seen the rule already, and I think almost all of them will accomplish it.

It then goes on through looking at both quarterly at different periods, they have certain percentage benchmarks at each of those dates, again for unit production as well as expenditure. And then if you look at 8 and 9, it also gets to that every month when we look at their updated production schedule which they'll be required to produce and provide updated based on actuals that they have produced the prior month. We'll, again, look to see how far off they are, and if they have too much variance, then we will trigger a de-obligation.

I'd like to point out that for us the initial purpose of this is not the hope of de-obligating because I don't think that's a win for us or for them, the hope is that it's a very strong motivator and that we will see people meet these benchmarks. One of the processes that's laid out in here in Section 5.903 is a notification process, and this says that early on we'll tell them that it looks like you're about to miss, and then as they miss they get a chance -- they being the sub-recipient -- they get a chance to tell us here's what was happening, here's why I missed and here's everything I'm going to do to fix it.

Now, if that plan that they turn in seems reasonable and understandable and our staff with expertise in this believes that that will be achievable, then the executive director can provide a forbearance on that particular requirement, and then, of course, we'd start watching them again for the very next benchmark. So if it looked like maybe we granted it on one but then they failed again, then obviously their plan that they would turn in in that case would have to be far more compelling and really provide some very unique reason why Mr. Gerber would be in the position of wanting to grant that.

It does provide if they get to a point of full de-obligation that there will be an opportunity for appeal to Mike, there will be an opportunity for appeal to the Board, there will also be a public hearing. And actually, I want to mention a clarification as I close out, there's a clarification to the rule we need to add.

I would say also one of the things that we've put in here is the opportunity for a partial de-obligation. One of the things that we think may occur, and we don't know this to be the case, but in the event that it does occur, we want to have kind of planned for is that because the vast increase in volume for these sub-recipients is the biggest challenge, it may be that we have some sub-recipients who are able to get up to maybe 50 percent of their production goal which is probably eight or ten times what they're used to doing anyway but that may only be half of what we needed them to do under our production schedule, and if they can consistently hit 50 percent, then we don't want to take away 100 percent, we want to see them produce that 50 percent in their part of the state and for their current waiting list and their recipients.

So we have an opportunity for partial de-obligation that could either be based on percentage trends on unit production or percentage trends based on expenditure rates. So we really are doing what we can to keep the current network providing the highest capacity that they can but making sure there's an avenue so that in the off-chance that they can't, we are able to move the funds.

One of the other things in here, we're very committed to wanting to continue to serve that geographic area, and to the extent that we can, we will. If, however -- and this has been a past concern with weatherization providers -- there aren't a lot of these non-profit weatherization experienced entities just running around the state, and so it could occur that we are not able to find an experienced non-profit replacement provider in the event that an agency gets de-obligated, in which case we may move out of that geographic area to make sure the dollars aren't lost to Texas. If that's the case, it will be temporary, just for the period of the ARRA funds, and then when non-ARRA weatherization kicks back in, we'll make sure, of course, that we're continuing to serve that area of the state. That's not our ideal preference but that is what we will make sure that we do before we see any dollars lost to the State.

MR. CONINE: Do we have any of our non-profit weatherization providers that are agreeable to go statewide, or is it just region by region?

MS. BOSTON: Right now it's region by region, but we are actually planning on releasing what we're calling an RFA, request for applications, that we'll look for someone who could do statewide. Right now we have 45 providers, we have twelve cities, and then our original network of 33 providers. The 33 providers cover all 254 counties so we do have full coverage, but obviously on an agency by agency basis, and then we have the additional cities overlapping.

Our original intent as we release this RFA, one of the things we're going to be looking for is someone who either on a regional or statewide basis could potentially help out with multifamily activities so that a local provider who has outstanding expertise in single family can put their focus on that and we can still increase the unit production by doing some multifamily with the statewide provider. It's not the type of entity that there are a lot of, but we do expect to see some response to that.

MR. CONINE: I know that, as a for instance, the Builders Association has recently become interested in this topic. Obviously they've got folks that can be easily trained in this particular area and since they all have local associations around the state, they could easily provide relief in certain areas but maybe coordinated at the statewide level. So I know they'll be talking to you shortly about doing some of that.

MS. BOSTON: At the contractor level?

MR. CONINE: Yes, and there may be others out there that would want to do the same thing.

MS. BOSTON: Yes, great.

The clarification that I would like to read into the record is that we're proposing an amendment that would be to the ARRA rule that is being approved today to be released for public comment, so not the emergency version but the other version. We would recommend that Section 5.903(l) which would drop in at the bottom of page 10, and this is the series of eight sections where we're talking about notification, that we add "Prior to full de-obligation of a contract or fund award, a public hearing will be held. To the extent an appeal is filed and heard by the Board under Subsection (j) of this section, this public hearing requirement will be satisfied by publicly posted Board meeting for which the appeal appears on the agenda."

MR. CONINE: I do have some public comment we need to get to and then we can open it up for questions. Stella Rodriguez.

MS. RODRIGUEZ: Good morning, Mr. Chairman, members of the Board and Mr. Gerber. I am Stella Rodriguez with the Texas Association of Community Action Agencies, and with me this morning is Tama Shaw, our board president, Rhoda Gersch, our second vice president, and I think in the back Brad Manning is here from Mineral Wells.

On behalf of the membership of our organization, I wish to express our appreciation to Mr. Gerber, Brooke Boston and Michael DeYoung for the opportunity to provide comments regarding the WAP ARRA de-obligation rules as originally published on February 24. Subsequent to the release of the rules, we had a conversation with Ms. Boston and Mr. DeYoung in which our issues were heard, clarified and addressed. We concur with the set of rules as published in the Board book and as amended by Ms. Boston.

Again, we thank the staff for promoting an open line of communication and giving us the opportunity to provide input. Like you, we want this program to succeed for the benefit for the thousands of families needing weatherization services for their homes. Thank you.

MR. CONINE: Great. Thank you. Any questions of the witness?

(No response.)

MR. CONINE: And I've got Cyrus Reid if questions, I think. Okay. That's all the witness affirmation forms I have. Any other comments by Ms. Boston, any questions?

MS. RAY: I have a comment.

MR. CONINE: Yes, Ms. Ray.

MS. RAY: I want to commend Ms. Boston and Ms. Rodriguez for working in such a collaborative effort. We heard everything Ms. Boston said but we were waiting to see what you said.

(General laughter.)

MS. RAY: We appreciate that we've come together for the benefit, bottom line, of the citizens of the State of Texas. We thank you for your work, we thank you for your collaborative process in this regard.

With that, Mr. Chairman, I move staff's recommendation on these rules, as amended.

MR. CONINE: Motion by Ms. Ray to move approval as amended. Do I hear a second?

MS. BINGHAM: Second.

MR. CONINE: Second by Ms. Bingham. Any further discussion? Yes, Mr. Keig?

MR. KEIG: Can we take both of them together or does it need to be two different motions.

MR. IRVINE: It was drafted as a single recommended set of resolutions.

MR. CONINE: Okay, so I think we can take them both together; if that's all right with you the group, we'll just anticipate that. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MR. GERBER: Mr. Chairman, a new face that I want to introduce to you is Joel Pardue, who is with the Governor's Office. Joel is covering ARRA issues for Governor Perry and has been working with us on these rules and providing some very helpful guidance to us on weatherization and other programs that are funded by ARRA, so we're glad he's here as well.

MR. CONINE: Glad you're here.

Item 7(a), Mr. Gerber.

MR. GERBER: I'll ask Robbye Meyer and Tom Gouris to come forward and work through the items of appeals. I believe Burkburnett has been withdrawn which is the first appeal under Item 7(a), so we'll move to Suncrest Apartments which is the second appeal.

MS. MEYER: Correct. Ms. Conine, Board, this appeal on Suncrest Apartments deals with a transfer of ownership before the issuance of

8609s. In accordance with our rules with Section 50.17 of the Qualified Allocation Plan, a transfer of ownership prior to he issuance of 8609s is prohibited unless the development owner can provide evidence that there is a hardship creating the need for a transfer.

The main hardship that's stated by this applicant is the issuance of non-compliance with HUD and this issue cannot be corrected before the closing time for this transaction. The Department determined that the underlying non-compliance was already present at the time the application was submitted to the Department, and staff believes that Mr. Orehek, who was the applicant, knew or should have known that the non-compliance issue that he had with another HUD property but may not have known that HUD would prevent him from applying for other developments including the subject development. The Department recognized that Mr. Orehek was anticipating relief of that from HUD for the material non-compliance issues that existed when the credit application was submitted.

After the submission of the credit application, Mr. Orehek entered into an agreement with HUD in which he effectively agreed to be prevented from acquiring any additional HUD developments for a period of 15 months. By entering into this agreement, Mr. Orehek was in control of his decision to entering into the agreement with HUD which results in his no longer being eligible for completing this proposed transaction. As a result, the request to change in ownership is necessary in order for him to garner the HUD approval to close the construction and financing for this development. We understand that the parties involved may return the property to Mr. Orehek once the HUD ineligibility period has been completed.

The Department staff discussed this issue of changing the ownership with HUD staff responsible for monitoring and compliance and negotiating the settlement. Department staff described the plan for temporarily excluding Mr. Orehek to allow the development to close and then return him to the ownership after that lockout period of time, and the HUD staff indicated that they believe that that would circumvent their settlement agreement.

Staff believes that the hardship described in the request was not outside of Mr. Orehek's control, that there has been no indication that the delay in the proposed rehabilitation would be a threat to the health and safety of the residents of the development, and they could reapply in 2011.

This development has returned their credits and requested an award of Exchange funds. Denial of the ownership transfer would likely result in the return of the Exchange funds for the use of another development.

MR. CONINE: I've got a couple of witness affirmation forms here on this particular item, Bryon Gongaware, I believe, and Jason McAlees.

MR. McALEES: Good morning. Thank you for the opportunity to speak. I'm Jason McAlees, this is Bryon Gongaware. We are here on behalf of the proposed owner and developer of Suncrest Apartments. Suncrest is a 100-unit community, it's a senior community in El Paso, it has 83 of the 100 supported by project-based Section 8. As Ms. Meyer mentioned, we have returned our credits, requested an award of Exchange funds which we believe was approved in December of 2009. Among other things, we are proposing $23,000 per unit in rehab which, while there is no imminent life and safety issue, it would help a property that is 37 years old freshen up.

I'm briefly going to go through the time line that was presented in the memo that we submitted because I realize that the memo was lengthy and it would be helpful, and Bryon is going to tell you about the framework for the time line of the events that bring us here.

Our application originally was submitted in February of 2008 and approved in August of 2008 in the first round with Mr. Orehek who is the CEO of Security Properties that's the guarantor for the transaction. He was the proposed owner of the development and the developer. In April of 2008, he submitted an application on a different development to HUD to become the owner, it was the first time he had submitted to HUD to be approved for new business. That application was denied in December of 2008 which is after Suncrest received its original award tax credits and the application was made after we submitted our original tax credit application in February of 2008.

He appealed his decision to HUD, there was seven months of negotiation, he signed the settlement agreement that was mentioned in July 2009 which would preclude him closing under the restrictions that are imposed by the ARRA Exchange funds due to the 15-month period that Ms. Meyer mentioned. So in July, the same month, we applied for an ownership transfer to Mr. Gongaware. We've been in discussions with TDHCA staff since then and the formal denial was issued in March, a week or so ago, for the reasons that Ms. Meyer mentioned.

Bryon is going to talk about some of the issues that we have discussed with the staff and kind of our perspective on the issues and why we think the transfer is reasonable and should be approved. Thank you.

MR. GONGAWARE: Good morning, Bryon Gongaware, BG Housing and Security Properties. As Ms. Meyer has outlined for you already, there are a few particular items that the agency had particular concerns with with regard to our GP transfer request and ultimate denial.

The first one is with regards to the circumventing the HUD settlement that Mr. Orehek has with HUD. Keep in mind that the initial GP transfer request that we submitted was for transfer from Mr. Orehek to myself through BG Housing. That never contemplated an option agreement going back to Mr. Orehek, it was purely to me.

The reason the agency had expressed to us was that they had a concern that there was a secondary market that could be created by allowing this transfer to occur, and so we came up with an option agreement or a proposal for an option agreement that would allow for the property to be transferred back to Mr. Orehek which is what was originally intended under the original application immediately upon 8609 completion in order to satisfy the agency's concerns. Hence, the agency is now indicating that that transfer back to Mr. Orehek which was an option agreement is now going to violate the HUD settlement agreement that is in place with HUD.

So that was an option, that was not our original intent, but it has now come up as a concern with the agency, so we want to make sure we address the fact that that was not part of what we originally intended as a solution to the issue.

The second item the agency indicated was that Mr. Orehek knew he was in non-compliance at the time of application and should have known that it would have prevented him from closing on this transaction. The key points here are the fact that at that time of application Mr. Orehek had never put together an application to HUD for a new business. Mr. Orehek does not deny that he was not aware of non-compliance. The property that was of issue was a property in Cleveland and HUD deemed that property to be preservation-unworthy, even after Mr. Orehek and his partners had contributed over $800,000 of funds in order to preserve that property, keep it up to date and passed REAC scores.

It is our position that discovering that Mr. Orehek would have been prevented from acquiring the development based on the issues of non-compliance could not have been definitively foreseen prior to application, and certainly was not at the time of application. In discovering this fact after the award of tax credits has been qualified definitely is a hardship.

A key point here also is the fact that we have to be aware that this property is truly an at-risk property. It's a Section 8 project and the problem is we are currently under contract to acquire this project. If we do not get Board approval here for the transfer and allow this project to proceed to closing, then the seller has already indicated that they will take this project to market with the likelihood this project will end up being converted to conventional housing, and that's a real risk to the true affordability of this project and for this local community. The other thing is that the City of El Paso recognizes this and has committed $350,000 of HOME funds to this project to make sure that this stays truly affordable with the Section 8 contract in place.

We also want to make sure that we identify the fact that this transfer, we realize, does not meet the true definition of an affiliate transfer, however, it is an internal transfer between Mr. Orehek and myself, both employees of Security Properties. Security Properties would remain as the guarantor which was originally proposed in the initial application, it will remain the guarantor under BG Housing as well. We feel that this has zero impact to TDHCA in terms of control and/or financing feasibility.

If for some reason the transfer is not approved or does not meet the Board's approval, there are a couple of other options that may be worthwhile for consideration. The first one may be to be able to close this under John Orehek once the settlement agreement is completed with HUD which completion is in October, we could close by year-end and still complete construction in year-end 2011 deadline as mandated by the ARRA Exchange funds.

The other option is to complete the transfer to BG Housing and have a lockout period with an option for the property to go back to Mr. Orehek in order to satisfy the original application requirements that were originally intended as part of the original tax credit application and that lockout period be for several years in order to make sure that the presumption of trying to avoid the settlement agreement which is currently in place, and Mr. Orehek is meeting those outlined obligations.

In closing, we feel that a hardship does exist and that the transfer request is reasonable and it has consistency with regards to ownership. We're prepared to close and we're prepared to preserve this property for affordable housing. Thank you.

MR. CONINE: Can you more expand on the nature of the non-compliance issue, what was wrong with the project in Cleveland that had caused this to begin with?

MR. GONGAWARE: Absolutely. It was a Section 8 project that was split into two parcels, it was a tower and also some low-rise townhouse walk-up type units. The challenge was that this was a very tough neighborhood within Cleveland and so the property had kind of warts, Mr. Orehek and his partners had put in money over a number of years to make sure that this property passed its REACs, but the tenants continued to tear this property apart.

MR. CONINE: Those inspections occur how often?

MR. GONGAWARE: Anywhere between annual and every three years, depending on how the score which you get from physical inspections.

Mr. Orehek had asked to enter that property into OAHP which is a mark-to-market program with HUD in order to get additional funds to preserve that project and to rehab it. After HUD had reviewed the project, they deemed that project to be preservation-unworthy, not because of the tower but because of the walk-up units which consisted of about 44 out of a total of about 160 total units. Once HUD determined that the project was preservation-unworthy, they immediately went to abate the Section 8 contract which effectively removes all subsidy that's being provided to the tenants there, gave them all vouchers and asked the tenants to all move out of the property.

It left the mortgage in place which was a HUD-held mortgage, so Mr. Orehek has no income from the HUD subsidy, you have no tenants unless market-rate tenants want to move into this property which it was not in a condition to be able to do so because he didn't have the appropriate financing. And at that point, Mr. Orehek had to make a decision: do I default on the HUD-held mortgage or do I try and continue to preserve it with no tenants and no support from HUD. The decision at that point, even though he'd already put in $800,000 of cash from him and his partners, was to proceed to let that be a default and allow HUD to foreclose on it. As it stands today, that property still remains vacated and HUD has no plans on what to do with it at this point.

MR. CONINE: Okay. Any other questions of the witness?

MR. GERBER: Mr. Chairman, I would just interject here from the staff's perspective, and I'm sure Robbye and Tom might want to add to it, we certainly have a lot of respect for the hardship and we know we've been working with you to try to address these issues. I think there's a sense that it's a real hardship and I think there's also the sense that the Board and the staff have worked very diligently to address many, many non-compliance issues. Some of the rules are challenging, no doubt about it, and we understand the challenge you are facing, but the ability to come back in 2011.

It's a difficult one because of the investment the Department has made over the years in El Paso and we certainly don't want to lose housing stock. At the same time, we have taken a very strong view when it comes to issues of non-compliance, and we're working through some of those issues within our own program rules to try to make sure they're more flexible and we appreciate that hardships happen. This has been a difficult one but staff will again stand by its recommendation and ask that the Board uphold staff's denial.

MR. CONINE: Robbye, staff has taken the position that even though the time line that was just articulated that Mr. Orehek should have known that HUD was going to ding him later on in the process, and I guess the problem I'm having is I know why we have the rules we have and that's to keep folks from coming in, winning a tax credit award and flipping it out to somebody else, but in this particular case at the time of application he did not know he was in HUD non-compliance. Is that correct?

MS. MEYER: He knew there was a problem; he anticipated that there would be relief of that issue.

MR. CONINE: Right. That's where I'm getting hung up on this one. If there was an actual non-compliance letter issued by HUD prior to the application, I guess I would feel that would be more black-and-white to me, but in this case there was no assurance he was going to get a non-compliance letter, in fact, he probably thought he had a fix for it, and it snapped him in the middle of the process, and it sounds like to me we've got a proposed transfer to another group within the same umbrella that would still deliver the fix to the residents of El Paso that need the fix. And I understand why staff took the position they did, I'm having a little trouble with the time line.

MR. GOURIS: Can I jump in for a second?

MR. CONINE: Sure, Tom

MR. GOURIS: I guess as we kept researching and trying to understand what had happened here, our concern became we recognized that HUD didn't request a new acquisition for HUD to recognize that this other transaction was going to be a problem for them but they knew that that transaction was a problem and they knew that they were returning it or HUD was foreclosing on it and that was all happening at the same time as their application from us was moving through the process. Is that fair?

MR. GONGAWARE: That is fair, however, the default on the mortgage as it relates to the non-compliance was forced by a HUD decision to make sure that that project was preservation-unworthy. That was their own decision so it allowed for that default to occur.

MR. CONINE: What month and year did HUD make the decision to give the Section 8 residents in that project vouchers and have them go?

MR. GOURIS: The foreclosure happened in June of '08?

MR. McALEES: The actual foreclosure sale was June '08.

MR. GOURIS: So it had to be prior to June of '08.

MR. GONGAWARE: It was prior to June of '08; I believe it was in late 2007.

MR. CONINE: That creates a little gap then because if you lose your income, you know that you're headed for trouble.

MR. GONGAWARE: There's no question that Mr. Orehek knew that there was a non-compliance there, I mean, that is definitely out there. Now, the challenge is it was based off of the fact that HUD made the decision that the project was preservation-unworthy which took all control away from Mr. Orehek. And the other fact is that just because there's an issue of non-compliance with HUD doesn't necessarily mean that it stops you or prevents you from doing any future business with HUD, especially when it's a HUD-related decision where they deemed the property to be preservation-unworthy.

It was Mr. Orehek's intent -- he obviously knew that it was going to be a non-compliance issue but he wasn't expecting that it was going to prevent him from doing new transactions which is why he proceeded forward with the application for Suncrest under his name.

MR. CONINE: In your proposed solution or alternative solution that included closing on this transaction post-October when the 15 months runs out, I assume the seller is ready and willing and able to do that.

MR. GONGAWARE: The seller would be willing and able to do that, yes.

MR. CONINE: Do you have any issues with that?

MR. GOURIS: Yes, in that we're right now -- this is an Exchange transaction now and so we've got a March deadline that we're in a later item going to move to a later date and not that late, not all the way to October. But beyond that, it was mentioned earlier that that would still give them time to get done by the federal deadline for placed in service. We have an earlier date of placed in service.

MR. CONINE: I'm intimately familiar with that.

MR. GOURIS: With the volume of transactions we're trying to keep an orderly and reasonably manageable process in the monitoring of these transactions, so we have some real concerns.

MR. CONINE: But on the other hand, six months would still get those people fixed up long before re-application in 2011 would

MR. GOURIS: I just need to say I can appreciate all the things that these guys are doing to try to make this work and I really do appreciate that. I don't know that we can sit in judgment of the agreement they have with HUD to not participate in additional transactions for an 18-month period. Their hand may have been forced to some extent but that was an agreement they made.

MR. CONINE: But on the other hand, Tom, I have an issue with the fact that he was in compliance at the time he applied and that's a gap in our rules and regulations, in my mind. It's an unforeseen circumstance that we didn't necessarily predict.

MR. GOURIS: I'm not sure he was in compliance.

MR. CONINE: He had received no notice at the time that he was out of compliance.

MR. GONGAWARE: That is correct.

MR. GOURIS: They had received no notice that they couldn't participate in another transaction. They certainly knew or should have known that the project that was in question had some issues that was going toward prior to our board approving this new transaction it went into default status and it was foreclosed by HUD, so they did know that. I don't know what that means and I wouldn't sit to judge how HUD applies their compliance issues.

MR. CONINE: I think you putting the status or onus on the developer of being responsible for predicting exactly what HUD is going to do is way too much to ask, that's the last thing I would ask somebody to do.

(General laughter.)

MR. GOURIS: I don't disagree, but I will say that the problem we could face is that someone down the line has a pending issue with HUD, a pending agreement with HUD and they hold off on signing the agreement with them until after they get past the award with us, because then they can say -- I'm not say these gentlemen, that that's what happened here, but I could foresee that being a problem down the road that someone would just hold off on signing some sort of agreement with HUD so that it wouldn't impact their next transaction.

Again, I think they agreed to some kind of a settlement that prevented them from moving forward with traditional transactions. The sentiment we got from HUD, and we didn't get anything from them in writing, we talked to them informally, but the sentiment we got from them was that was an intent to prevent them from doing additional transactions for that period of time. To the extent that the organization or Mr Orehek would guarantee this transaction in some ways is an intent to circumvent that. And I get that we did ask them because we were concerned about the potential flipping and secondary market issues.

MR. CONINE: And I'm unimpressed by the attempt to get it back to him at some future point, I could care less. What I care about is those folks living in a bunch of units in El Paso that need to be fixed up, that's what I care about. And the fact that he did not have an official document from HUD in his hand at the time he applied, to me there's a hold in our process here. If you understand what I'm saying.

MR. GOURIS: I do.

MR. CONINE: Mr. Keig?

MR. KEIG: Aside from the hardship rule, what is you rule at the time of application with regard to compliance? Is it you've got to have your ticket in hand showing you were speeding or is it can you be speeding and know you were out of compliance and you just haven't gotten the ticket yet. What's the rule?

MS. MEYER: We run compliance on our developments, not with HUD.

MR. GOURIS: And we run them again at carryover. But the kicker here isn't necessarily the non-compliance because I don't know that we'd ever check with HUD to see if an applicant is non-compliant with their HUD transactions. The issue here is they informed us that they needed to transfer ownership because the current proposed owner could not move forward because they entered into an agreement with HUD saying they couldn't move forward. And so the non-compliance issue wasn't the issue that triggered the problem for us, it was that this owner could not move forward and they asked for an ownership transfer prior to the issuance of 8609s which we don't allow except for a hardship issue, and so that was where the rest of the conversation comes in.

MS. MEYER: HUD is in the new transaction is part of the issue. In Suncrest there's HUD subsidy.

MR. CONINE: Because they're Section 8 residents, yes, I understand that.

MR. KEIG: That doesn't really answer my question. My question is in the rule at application time what does the rule say about compliance?

MR. IRVINE: Tim Irvine, for the record. Mr. Keig, our rule is you have to have been cited, you have to have a ticket, you have to have a material non-compliant score in order to be ineligible.

MR. KEIG: Okay, thanks.

MR. GOURIS: For us; we don't check HUD's scores.

MR. CONINE: Any other questions of the witnesses?

(No response.)

MR. CONINE: I'll entertain a motion.

DR. MUNOZ: Mr. Chair, can I just ask another question?

MR. CONINE: Sure, Dr. Munoz.

DR. MUNOZ: Tom, so the issue that you have is that this situation doesn't rise to the level of hardship, that this doesn't constitute a hardship because they knew?

MR. GOURIS: Because it was within their control, correct.

DR. MUNOZ: Without something formal in hand but knew that awry was developing, something significant.

MR. GOURIS: Technically speaking, the hardship occurred when they signed the agreement.

DR. MUNOZ: That they created the hardship for themselves.

MR. GOURIS: That's where it comes down for me, that they willingly went into that agreement. That may have been the only thing they could have done with HUD, but they did do that and that's where the hardship occurred. The rest of the story is very compelling.

MR. KEIG: I have another question.

MR. CONINE: Sure.

MR. KEIG: If the appeal was denied and the Exchange funds go back, what's the earliest that work could start with a new group?

MR. GOURIS: We have a number of transactions that had requested Exchange funds that we didn't have enough Exchange funds to meet the need, so there are a number of transactions that are waiting for monies to fall out. In fact, in a little while we'll talk about how that Exchange Program is going, and we last week had enough savings in other transactions to include one more, and we think we'll have enough to do one more after that, and this would give us enough to do a third one.

MR. KEIG: Have any of those indicated about when they could start the work?

MR. GOURIS: As with all the Exchange transactions, they all have indicated an immediate ability to proceed, and our reality is that these things do take time to close, as it would with these folks it would take time to close even if this issue wasn't there. But I would suspect that we would be able to within the next 90 days have somebody there ready to close, ready to start work.

MR. GONGAWARE: The key to this project is the fact that we are ready to close, we have permits in hand ready to go. The only thing that we are waiting for at this point is the final resolution for this GP transfer which will allow HUD to be able to proceed forward with all the paperwork that they have, and once we have that in hand, we are ready and set to close on this transaction. We have all the sources of funds committed and ready to go as well.

Tom, the one question I would have for you is those other projects that are in waiting, how many of those are Section 8 projects really address the deep affordablity of a community that desperately needs affordable housing, as this one does?

MR. GERBER: Let's not get into that. They're all worthy projects, we have a roomful of people with worthy projects, and I'll argue we've done a whole lot more units in the 30 percent category than a whole lot of other states, so wrong argument.

MS. BINGHAM: Mr. Chair.

MR. CONINE: Ms. Bingham.

MS. BINGHAM: You know, I really appreciate all of the background and the work that the staff has done, and my own opinion is that there is a gap and that what we might have looked for concretely in terms of, as Mr. Keig said, kind of a ticket in hand, even though I understand that we don't run compliance on HUD, but I guess my feeling is that this is what you look to the Board for discretion on and that by no way if we decided to allow the change of ownership would that be reflective of the rules not being appropriate. It may be worth going back and looking at that gap and seeing if there's anything we could do to close it.

But I think El Paso needs the Board to use discretion in making this difficult decision. My motion would be to allow the ownership transfer.

MR. CONINE: Motion to accept the appeal. Is there a second?

MS. RAY: Mr. Chairman, I second the motion.

MR. CONINE: Second by Ms. Ray. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MR. GONGAWARE: Thank you, Board members.

MR. CONINE: Thank you. That's what we're here for.

MR. GERBER: Mr. Chairman, there are no appeals under Item 7(b) nor Item 7(c) or 7(d) or 7(e), so we'll move down to Item 7(f) which is a Housing Trust Fund Program appeal, and Sha if you'll come forward. Sharon Gamble is our HTF administrator and she'll present the appeal.

MR. CONINE: Ms. Gamble.

MS. GAMBLE: Hello, Mr. Chairman. I'm Sharon Gamble, the manager of the Housing Trust Fund Program.

MR. CONINE: You're the manager, let me speak to the manager, I've go the manager.

(General laughter.)

MS. GAMBLE: Item 7(f) is an item that's been before the Board before. This appeal has been tabled since October 23, 2009 Board meeting due to the applicant's concern that the recommended interest rate of 5 percent could not be supported by the property's operations. It's a 36-unit multifamily property, a Section 8 mark-to-market transaction with rents and operating expenses approved by HUD. The Board awarded the funds at a 5 percent interest rate and asked that the agenda item be brought back for modification if HUD objected to the terms of the loan. On June 30 of 2009 the Department received a letter from HUD stating that they were unable to approve the level of debt service as approved by the Department.

After evaluating additional information provided by the applicant which included updated cost data, the Department's Real Estate Analysis Division was able to revise the pro forma and provide an updated recommendation. Staff is recommending this loan, including a 2 percent interest at a 30-year amortization and a 26-year term. The terms include a level of debt service that is acceptable to the applicant and to HUD and a debt coverage ratio and an interest rate acceptable to the Department.

MR. CONINE: Let me see if I've got -- I do have a witness affirmation -- no, I don't, not on this one.

MS. RAY: Mr. Chairman?

MR. CONINE: Yes, Ms. Ray.

MS. RAY: I move staff's recommendation to the 2 percent interest rate with a 30-year amortization with a 26-year term.

MR. CONINE: Motion to approve staff recommendation by Ms. Ray. Do I hear a second?

MR. GANN: Second.

MR. CONINE: Second by Mr. Gann. Any further discussion about how Tom Gouris missed this one from 5 percent to 2 percent?

MS. RAY: There's no fun throwing slings when he's not here.

(General laughter.)

MR. CONINE: All those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MR. GERBER: Mr. Chairman, moving on to Item 8.

MR. CONINE: Sorry he missed that shot.

MR. GERBER: He'll be back.

MR. CONINE: He'll be back, yes. Tell him to read the transcript.

(General laughter.)

MR. GERBER: Item 8 are our items under Disaster Recovery. The first is the Disaster Recovery Division status report on CDBG and FEMA alternative housing pilot project contracts that are being administered by the Department. If you turn to the overview in Item 8(a), you'll see they're making strong progress to wrap up our Rita Round I funds. Southeast Texas Regional Planning Commission and the Houston-Galveston Area Council which have the two remaining open contracts have 15 homes to complete.

We think H-GAC is going to be done sooner. We talked to the folks at Southeast Texas Regional Planning Commission actually yesterday, and I think they're probably going to wind up stretching into the May-June time frame to full close out their grant which is a little longer than we had hoped but given some complexities that they're working with there in building stick-built homes as opposed to just manufactured units, the complexity there warrants the additional time.

We're continuing to make strong progress on our Round II Hurricane Rita funds as well. The Housing Assistance Program under Round II has constructed 1,129 homes with more than 50 percent of the funds spent, as we work up to we think will ultimately be, again, about 2,800 homes.

We remain concerned about the eligibility pipeline, that was one issue where concern was expressed by the Board at the Lubbock Board meeting. We're continuing to address that pipeline to make sure that we have adequate numbers of folks working their way through for our homebuilder partners. Right now there are more than 250 units under construction and we believe that we have a sufficient pipeline to continue to feed the number of units to be produced by those homebuilders, at least for the next several months. But the further into this that we get, the harder to get some of those folks at the end of this across, and so many of the remaining cases are very challenging and complex.

And Don Atwell, who is our project manager from ACS is here, and Don, I don't know if there's anything you'd want to add to that mix, but suffice to say, they are complex issues involving a myriad of factors that we can certainly provide more detail to you on. I think that we will be seeing more of those coming to the Board with some more specifics and maybe even asking for some exceptions maybe even being needed as we work to finish out and close out our Homeowner Assistance Program.

The Rental Housing Stock Restoration Program continues strongly. We are on the verge of, we think, completing the two remaining properties and we will be finishing out the use of that $82 million we expect within the next two to three months, closing out that portion of the grant.

The City of Houston is continuing to make strong progress under their programs which are providing, again, support for law enforcement overtime as well as support for a coup-le of properties that are being rehabbed, and we know that the progress continues well there, and we're expecting also in the next two to three months that we'll be closing out the City of Houston's program as well.

Harris County continues to move slow as they still are working to proceed with the rehabs of a couple of properties that they're using their remaining funds with. We have made clear to them our expectation that we want to close out these grants to them in 2010, so we've laid that marker very clearly. The same marker has been laid with ACS. We want to be done with

Hurricane Rita because of the massive work that's coming for Hurricane Ike I 2010.

Our partners at the Texas Department of Rural Affairs continue to make good progress also on critical infrastructure projects. It is likely, though, that there are some projects that we know of that have fallen through and our expectation is that there will be a need probably to go back and continue to keep the grant open just to deal with funds that will be late committed to projects from Hurricane Rita and to make sure that, again, Texas doesn't leave any funds on the table. But the housing side of it, we are shooting to have it completed this year.

With Hurricane Ike, we continue to make progress there as we see several of our sub-recipients starting to draw down funds which is encouraging. More than already over $3 million in draw requests have been made for Ike Round I funds and the program dollars as well as administrative draws have been submitted for payment, so we're working through that.

And Sara Newsom, who is our deputy ED for Disaster Recovery, is there anything you want to add on the pace of Ike funds. Why don't you come forward.

MR. CONINE: We also had Don Atwell signed a witness affirmation form. I don't know whether he would like to speak or not.

MR. ATWELL: (Speaking from audience.) Mr. Gerber did a fine job.

MR. GERBER: Sara, anything you'd want to add with respect to the pace of Ike funds moving, and sort of like Weatherization we're seeing sub-recipients come online slowly but surely.

MS. NEWSOM: You bet. Sara Newsom.

We are moving at a very fast clip to get things into our contract system and draws paid. As Mr. Gerber said, we have a little over $3 million in draws currently in the system ready for approval and we're working on those. So we feel like we're moving forward, expect many more.

MR. GERBER: One item that's been in the newspaper is in the City of Houston, they are using some of their funds for a down payment program that they have temporarily stopped because there's about $9.5 million in setups and draws that we are still working through with them here at the Department, but we expect that that program will reactivate soon, but we're working through the draws for the City of Houston and are in touch with their comptroller's office. But it was a story that made it to the newspaper and it was in the news clips that we forwarded to you.

Also, working we are working intensively with the City of Galveston as well. We believe that the city has adopted a plan that would allow for the restoration of public housing and we are working with them on Round I funds to make sure that some of those funds go, again, to make sure that the most neediest Galvestonians are benefitting from them, and certainly we expect that with Round II funds that those funds will also be used. But Galveston has been an area of special attention to this Board as well as to the Federal Department of Housing and Urban Development. So we'll keep you updated on those.

With respect to Ike Round II funds, that will be an issue that we'll take up in Executive Session because it's the subject of negotiations and some legal issues.

Sara, unless you have anything to add on 8(a), we'll move on to Item 8(b), which is a report on homes considered and reviewed for municipal requirements that exceed the established costs of $10,000. In your Board book there's material there for you with respect to those homes and the exceptions we made and why, again, trying to make sure that costs remain contained and that we're using these dollars prudently, but we are hitting exceptions, particularly with wells and septic systems that we wanted to make you aware of.

For Item 8(c), these are homes that have been considered and reviewed by me for costs exceeding the accessibility cap of $15,000. We at TDHCA and this Board have made a priority of making sure that the homes we produce in disaster-impacted areas are fully accessible and we are not waiving requirements on accessibility nor are we waiving requirements on visit-ability, and so we've laid that expectation out clearly on the Ike programs and we're implementing it on the Rita programs, and in some cases that's cost more and you have a list provided to you as a report item under 8(c) of eight homes where we exceeded that $15,000 cap.

Item 8(d) are four homes where we exceeded the $30,000 elevation cap. In some instances we've just needed more and the costs have been higher because of complexities associated with the elevations in some parts of the areas that we're serving, and wanted to make sure that, again, we had the underpinnings right for a home that's going to hold up well. And so while some of the costs seem high, and even I've been surprised by how much over we've needed to go, $15-, $20,000, we feel good with the elevation systems that are in place and that they're going to hold up well through the next storm, and that's our goal with these systems.

Due to some innovative things actually with steel elevation systems which have been holding up well and certainly held up well when Ike hit. We had a couple of houses that were using those elevation systems which is a little bit non-traditional, usually it's wooden piers

So those are the items we've got with respect to exceptions in Item 8, and if there's any questions, I'll pause there, knowing again that we'll have the discussion about Ike Round II in the executive session.

MS. BINGHAM: And that's a very small fraction. I mean, the exceptions that you have, as a proportion of the numbers that we were talking about a little while ago, it's not a large amount of exceptions.

MR. GERBER: That's right.

MS. BINGHAM: And that's great.

MR. GERBER: With that said, Mr. Chair and Board members, we'll move on to Item 9, which are our Multifamily items, and we'll start with Housing Tax Credit amendments, and I'll ask Robbye Meyer to come forward, and we'll start with Humble Memorial Gardens.

MS. MEYER: The first amendment is Humble Memorial Gardens. This transaction was actually approved in 2002 and they placed in service in 2004. The developer was removed from the transaction in 2005 by the syndicator, Boston Financial, and you approved a GP transfer in 2009.

They're asking an amendment modification for the site plan, five buildings instead of eight, and four of the market-rate units, the two-bedroom units actually had one bathroom instead of two bathrooms. The owner indicated they've had additional landscaping, irrigation, access to a fitness center 24 hours, after-hours access, additional gates and fencing and a gazebo, and staff is recommending approval.

MS. RAY: Mr. Chairman?

MR. CONINE: Yes, ma'am, Ms. Ray.

MS. RAY: Do we have any comments on that one?

MR. CONINE: Let's see. No, we do not.

MS. RAY: I move staff's recommendation.

MR. CONINE: Motion to approve staff recommendation. Do I hear a second?

MR. KEIG: Second.

MR. CONINE: Second by Mr. Keig. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MS. MEYER: Mr. Chairman, the next development is Creekside Village. It was a bond transaction that the Department was the issuer. This development was an acquisition rehab in Dallas, it's also affiliated with another development on the same block just around the corner. With this particular development, they failed to install two threshold items, dishwashers and ceiling fans in all living rooms and bedrooms. Subsequently, to their initial amendment request, they did agree to install ceiling fans in all the living rooms and bedrooms, they've agreed to additional supportive services and wireless internet services for their tenants, but they still have the omission of the dishwashers

The Department rules do not include a provision for substitution of threshold amendments or provide that staff recommend substitutes for those requirements. However, staff does believe that for this development the requirements of dishwashers may be more of a disservice to the tenants because it takes away from the cabinet space in the kitchen.

The additional services and the wireless services will provide an improved quality of life for these tenants. Staff recommends the Board accept the amendment request as presented by staff and allow the replacement of dishwashers with the additional supportive services and wireless internet to the completion of the installation of the ceiling fans.

MR. CONINE: I have one witness affirmation form that's available for questions if the Board needs to; otherwise, I'd entertain a motion.

MR. KEIG: I have questions but I can wait.

MR. CONINE: Oh, no, go ahead and ask your questions.

MR. KEIG: Have we ever approved a development without dishwashers?

MS. MEYER: Has the Board?

MR. KEIG: No, the Department. Have we ever had a development that did not have dishwashers?

MS. MEYER: Yes, sir.

MR. KEIG: And do you recall when that was, roughly, and where it was?

MS. MEYER: It was in the Valley and they had other substitute amenities, but yes, it was in the Valley.

MR. CONINE: My recollection is it was similar to this in that the configuration of the existing unit didn't have enough room and you just wipe out the total cabinet space when you try to put something like that in.

MR. KEIG: It seems to beg the question to say it's a disservice to the residents to put it in, if it was a designed to be thing to begin with and was a threshold item.

MR. GOURIS: This is a rehab.

MR. KEIG: I mean, there's no way to further rehab to gain some space to put those in, I assume.

MR. GOURIS: They're pretty small units, and what we've seen in the past is that sometimes because they're such small units that when we've required it, the tenant has just used it as a counter space or used it as storage space because they have to have it.

MR. KEIG: And they didn't have dishwashers to begin with?

MR. GOURIS: That's correct.

MR. KEIG: Okay, thanks.

MR. CONINE: Any other questions.

MR. GERBER: I would say on this and the other property that this developer, we have worked with them very well and they have stood up. They understood the frustrations we shared, Mr. Keig, not meeting these scheduled items, they stood up on the fans and some of the other supportive services that we felt are key, and that's why we came forward today with the approval. But the point is well taken, we expect those threshold items to be met, and a dishwasher really contributes to the quality of life on the properties.

MR. KEIG: I move we approve staff's recommendation.

MR. CONINE: Motion by Mr. Keig to approve staff recommendation.

MS. RAY: Second.

MR. CONINE: Second by Ms. Ray. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MS. MEYER: The next amendment is Heritage Park Vista, it is a request to reduce the site by 2.6 acres. It is providing access to the development's frontage to a bike trail that runs in the green belt behind the development site, approximately 1,400 feet from the site's frontage property.

The owner of the site stated that the city waived $171,000 in fees in exchange for the dedication of the property. The location of the buildings does not materially change and the overall density does not change since the land in question will be parkland.

A supplementary request to the amendment regarding the financing for the Exchange Program application asked to replace a $325,000 interim loan from the Trinity Victory Family Ministries with other funds. This loan was scored one point for leveraging of private, state and federal resources. The request indicated that the circumstances associated with the Exchange application made the owners unable to close on the loan. Although the application lost one point, it wouldn't have affected the award. Staff is recommending the request.

MR. CONINE: Once again I have a witness affirmation form if needed. Any questions of staff?

MS. RAY: Mr. Chairman?

MR. CONINE: Ms. Ray.

MS. RAY: I move staff's recommendation.

MR. CONINE: Motion to approve staff's recommendation on this one. Do I hear a second?

MS. BINGHAM: Second.

MR. CONINE: Second by Ms. Bingham. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion

signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MS. MEYER: This next amendment is Parkview Terrace. This development was proposed as a demolition and reconstruction of 100 units on three different sites. Two sites were adjacent to each other, these two sites were bisected by a street and the other site was a block away. The request is to eliminate two of the sites and build on one of the sites. The original land area was 12.5 acres and the amended area will be 8.123 acres.

The applicant has returned their credits in order to access the Exchange Program. The Exchange policy in the Board's resolution stipulates that the developments receiving Exchange funds must continue to meet the threshold and scoring requirements as included in the original application or most recent amendment approved by the Board. The applicant's request would significantly change the threshold and scoring of the application.

The original tax credit application called for 94 units on the main site that they're building on and six units on one of the other sites and no units on the third site. This was done in order for the original site to meet the requirements for reconstruction on a scattered site.

The owner states that the loss of points would not have negatively affected the application because all the remaining applications in that region were funded in 2008. However, there were two pre-applications that scored lower than the subject application and did not move forward into full application. Had the subject application not scored all of the pre-application points, the pre-applications that did not choose to move forward may have moved forward had that application scored lower if it had shown the application points that it should have and not had the twelve points.

MR. GERBER: Let's pause there because I think we've got some public comment to hear and then we'll come back.

MR. CONINE: Okay. Do you want to read your letter into the record first?

MR. LYTTLE: This is a letter from Senator Eddie Lucio, Jr. to the Board.

"Dear Members, I am writing to convey my continued support for the Pharr Housing Development Corporation's construction of Parkview Terrace and its submission to TDHCA's Tax Credit Exchange Program.

Having supported PHDC's pre-application in 2008, I am basing my continued support on three factors. First, PHDC has a proven track record with TDHCA having been the recipient of housing tax credits multiple times. Second, I believe that the differences between PHDC's pre-application and its most recent submission exist because of PHDC's differing understanding of TDHCA's new rules. This case does not seem to be the result of a willful misrepresentation of intentions on the part of PHDC in its pre-application. Finally, and perhaps most importantly, I encourage your approval of PHDC's final application because of the area's intense need for affordable, well-constructed housing.

"I appreciate the importance of the decisions made by this Board and I thank you for the thoughtful consideration you and your staff are giving this matter. Please contact me if you have any questions regarding this application that I may answer.

"Respectfully yours, Eddie Lucio, Jr., State Senator District 27."

MR. CONINE: Thank you.

Fernando Lopez.

MR. LOPEZ: Good morning, Mr. Chairman, Board members and Mr. Gerber. Thank you for allowing us to be here.

I think they've basically said what the request is, and before I hand it over to Doak Brown, I just wanted to say we've done a couple of tax credit projects and we want to thank the Board because they've been unbelievable for our community.

I read your mission, and before I turn it over to Doak, it says to help Texans achieve an improved quality of life through the development of better communities, and I think approval of this request would achieve that. So I'm going to hand it over to Doak and I think if there's any questions, he'd be the expert.

MR. CONINE: Doak Brown.

MR. BROWN: Good morning. My name is Doak Brown, I'm with Brownstone Affordable Housing and we're part of the development team for this project. I'm up here today to hopefully convince you their amendment request makes for a better development and provides for additional affordable housing opportunities in Pharr.

I created the handout which you've just received so that you can see exactly what our amendment request involves. It's kind of difficult to understand this unless you can get a picture of what it is that we're talking about. If you go to the first page, this shows the site plan, the existing development as it is today, this is prior to demolition; this is what we plan on demolishing. If you go to the next page, this shows the site plan of what we propose at full out, and you can see that six units are over here on what's Tract B. You can see that there's separation between Tract B and the main development site. And if you flip to the next page, this is what we're now proposing; we're proposing to move that one six-unit building over onto the main development site.

The staff is not supporting our requested amendment because the change we are proposing may have negatively affected the selection of our application, and that if our score had been lower to begin with at the pre-application stage, some of those pre-applicants may have moved forward instead of dropping out. We obviously disagree with staff's opinion for the following reasons.

First let me state that we don't agree with staff's interpretation of the definition of reconstruction. We feel that what we are proposing in our amendment request would still be considered reconstruction. We do not believe that the defined term "rehabilitation" which includes reconstruction, requires the entire development site of the demolished development to be included in the new project development site if you're going to replace every demolished unit on one-for-one replacement.

We are still proposing to demolish 100 old outdated units and rebuild 100 new units. The QAP grants reconstruction projects more points because obviously this is a goal of the State and many cities to remove old developments and replace them with new. And that's exactly what we're doing here. We don't feel that the QAP specifically requires us to include the entire boundaries of the demolished development within the boundaries of the new development.

Now, let's assume that you agree with staff's interpretation of the definition of reconstruction, and what we're proposing with our amendment request results in our score being lower. We feel that this application would have been funded for the following reasons.

First, let me point out that it's somewhat unusual to go back and look at pre-application scores because those have not been verified and no one knows if, in fact, those scores are accurate. The staff, when evaluating amendment requests, has not always going back and looked at the pre-app scoring but rather the final scores to determine whether or not a requested amendment had a bearing on the scoring.

I think I have five minutes. Is that fine?

MR. CONINE: If Mr. Lopez has given you time.

MR. BROWN: He did.

Second, we think it's worth mentioning that we e-mailed staff in December and again in early January, prior to the pre-app filing deadline, a question about their interpretation of the definition of reconstruction. We did not get a response to this question until after the pre-app due date. Had we understood how staff was going to interpret the definition of reconstruction prior to the pre-app due date, we may have chosen to submit it as a new construction project instead of a reconstruction project and then we would not have lost the pre-app points and probably would have ended up in definitely a more competitive position.

Third, in looking at the pre-applications that did not move forward who had a score equal to ours and lower, we are aware that the third place applicant was not going to move forward regardless of their score, and that the last place applicant had other applications in other regions which were scoring higher and so they probably just chose not to move forward on this one because their likelihood of winning in the other regions would have been much better.

Fourth, as you can see, these types of arguments, there's a bunch of speculation, and that's why relying on pre-application scores is not a very strong argument. The fact is that only two applicants moved forward in this region with full applications, one of which was ours. Ultimately, this urban region was underfunded with only two applications. It's very important to point out that regardless of what our score would have been in 2008, had we moved forward with an application and not received an allocation, we still would have received a forward commitment had we wanted one because this is the year that the Board awarded everybody a forward commitment.

We think if you step back and look at the big picture of what we're proposing here, you will agree that by allowing 100 units to be located on the main development site makes more sense. This one building containing six units will now be much closer to the clubhouse where most of the tenant services are provided and it will be within the main development site where there are more amenities.

Additionally, if you approve our amendment request -- I'll be done here in just a sec -- you will be freeing up approximately 4-1/2 acres of land that can be used by the Pharr Housing Authority for future development. For all these reasons, we respectfully request that you approve our amendment and release the excess property and allow us to place all 100 units on the main development site.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: I've got a couple. You pretty much answered all the questions except for why. Why wasn't this thought process done ahead of the application?

MR. BROWN: It was. By the time we got -- we didn't think that there was going to be such a restrictive interpretation of reconstruction. We didn't find out the actual definition of reconstruction and the fact that we could tear down the units and only put them back on a portion of the site. It's not like we're going to a different site, we're only rebuilding on a smaller portion of the site.

MR. CONINE: I know what you're doing, it's painfully obvious what you're doing. I guess the question is the thought process of the efficiencies and so forth and the discussion of whether you can interpret that particular QAP paragraph that you gave us in your little handout. From my perspective, the thought process didn't contemplate multiple sites with public roads in between, so the argument that it makes more sense to do it on one site could have been addressed way ahead of time.

MR. BROWN: Well, we were stuck at the pre-app stage because we had gone with reconstruction at the pre-app stage, so had we lost our pre-app points, we may not have been competitive, but ultimately at the end of the day, not everybody moved forward, and everybody would have gotten a forward commitment had they moved forward.

MR. CONINE: The other thing that occurs to me is that yes, you free up some dirt for some more affordable housing later on but you also take away that dirt from the kids and the folks who would have had it if you built it the way it's currently or originally proposed.

MR. BROWN: My comment to that would be if you look at the first development site, this area right here that has my handwriting in it, that's a gigantic municipal park, and the city is in the process of rebuilding that park right now. This area right here is the first.

MR. CONINE: Got it, okay.

MR. BROWN: So there's plenty of open space there. And it's not like moving these six units onto the main development site really affects the density. I mean, that's just a slight increase in the density. We're only talking about twelve units per acre or approximately, which for a multifamily project is very low.

MR. CONINE: You're making perfect sense. I'm just saying it should have been done ahead of time, that's all I'm saying is to go get credits and then come in thinking oh, my gosh, now we've got them, what do we really want to do with this site. I mean, that's just something that, generally speaking, we don't like to do.

And I do have a problem with density when represented that obviously this is a much less dense development as originally proposed, and I know you've got kids down there and I know they don't like dense projects, and I understand there's public streets that create danger in between. You should have thought about all of that before you submitted all three as the original development; you could have submitted one, tract A, as a for instance, as the project. I just have a problem with reconstructing it after the fact, that's my issue.

Any other questions of the witness from any Board members?

MS. BINGHAM: So you'll tear down, you'll demolish everything on all three tracts

MR. BROWN: Yes. We're still going to demolish everything on all three tracts, and if you don't approve our request here, then that six units will be built over on what's shown on the second page. The problem is that you'll have all these tracts that will sit in about 4-1/2 acres that will sit in perpetuity as undeveloped land because they'll all be underneath the LURA.

MR. CONINE: Right. That's not necessarily a bad thing. Any further questions?

DR. MUNOZ: Explain that last point again.

MR. BROWN: Well, if you look at this first handout --

DR. MUNOZ: The last point about if it weren't granted, then what would remain in perpetuity?

MR. BROWN: Essentially, Tract C will be vacant because it will fall underneath the LURA. Tract C in the way you interpret the rules is part of Tract A because it's across the street, it's considered one site, even though a public street separates it. And so it will remain vacant under the LURA, you're not going to be able to go in and develop another property there unless the LURA is released. And Tract B will have those six units on it, same situation, it will be undevelopable if the LURA is not released in regard to that excess property.

DR. MUNOZ: Well, I tell you, I'm awfully motivated by my colleague Leslie's earlier comments about exercising discretion and judgment and I don't see where the new proposed site plan would compromise the original intent of the proposal, and I'm also challenged to accept the argument, the speculative argument about other applicants and whether or not they may or may not have moved forward, and there's no way to ascertain with certainty. With an investigation of their application, there may have been some items that could have surfaced that may have influenced the points they were subscribed or they subscribed to themselves. So I'm inclined to move support of the request

MS. RAY: I second the motion.

MR. CONINE: A motion to approve the request has been made and seconded. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion

signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed is me. I lose, you win, move forward.

MR. BROWN: Thank you very much.

MR. GERBER: Mr. Chairman, there's nothing under Item 9(b), so we'll move on to Item 9(c), which is a presentation and discussion of the status of applications awarded under the Exchange Program and TCAP program. And Tom, why don't you come forward.

(General talking and laughter.)

MR. GOURIS: At the November 2009 meeting, the Board set all Exchange Program closing deadlines to March 31, 2010, the 10 percent test substantial construction deadlines for 2007-2008 applications were set to May 31, 2010, and 2009 applications would have the usual normal 10 percent test deadlines according to the existing QAP. That's where we've been. We're here today to talk about an extension of those deadlines.

By way of an update, we've closed ten of the 86 original --

MR. CONINE: Have you paid the $2,500 fee?

MR. GOURIS: Have I paid the $2,500?

MR. CONINE: If you're asking for an extension, I just figured -- go ahead. There's some folks in the audience that will appreciate that comment

MR. GOURIS: I got it.

MR. CONINE: Go ahead.

(Go ahead.)

MR. GOURIS: So ten of the 86 original Exchange applications have closed on their financing terms. There are two that are in the process of closing, we've signed documents that are in escrow, and there are 22 more that have indicated an interest and want to try to close by March 31. We think in the next ten days there are seven -- eight more that we'll be able to get done, and we're hoping to keep pushing forward. There are, however, 39 awardees that have already asked for an extension to the deadline and 13 others have neither indicated a request for an extension or requested a closing date.

And just to kind of note, since we started talking about the extension, started talking about the fees and things, we've gotten a lot more input from folks who hadn't previously given us direction on where they were with their transactions

I think there's a list of the Exchange Program applicants attached to your write-up. We have one additional, as I mentioned earlier, transaction that is in the process of being added with the savings and adjustments from underwriting and reconciliation of credits returned. We believe we have -- well, we know we have enough to do this one, we believe have enough to do one more and we'll be notifying them shortly. So it's likely that we'll end up with 88 transactions. Of course, all of these are subject to still falling on the new ones coming in.

Staff is proposing that only applicants that request the extension and pay the fee, $2,500 fee, prior to March 31 be granted a 60-day extension of the closing deadline and the 10 percent test, substantial construction and placed in service deadlines, so that they all will be extended 60 days.

We have heard quite a bit of comment about the fee, and we're open to suggestions on how to manage that and mitigate that if you all would want to create some structure where they pay the fee to get the extension, if they close by April 30 or even May 30, that the fee could be reimbursed. It's kind of a hassle but we're glad to monitor that and do it because our intent here is --

MR. CONINE: Kind of a hassle -- this whole thing is a hassle.

(General laughter.)

MR. GOURIS: Our goal is to keep moving these as fast and as hard and provide incentives -- or sticks, I guess is the word -- to try to keep them moving forward. Obviously -- or maybe not so obviously, you may have heard there's legislation pending to come out with another round of Exchange which we're glad to manage through and work through. The size of that program is likely to be very comparable to the size of this program because the most recent editions suggest that the Disaster credits that previously were not eligible for Exchange may now be eligible for Exchange. If that happens, that's a large volume of transactions. So we want to get these, obviously for lots of reasons we want to get these moving through the pipeline as quickly as we can.

There's a likelihood that some of these transactions may need another extension beyond this one. We're trying to keep it kind of close and near so that instead of granting one off transactions an October date, a September date, whatever, that we keep coming back to you all so you can see the progress and so that keeps that pressure on these transactions and on us to keep the process moving.

I did want to make one other comment, and I don't know if we've introduced Theresa Shell previously, our Exchange administrator. She and Lisa Fair are just doing extraordinary work moving a tremendous volume of activity, and I know ten out of 86 is just a small part but we made a lot of progress and I think we're at the cusp of making a lot more and we just want to keep that pressure on.

MR. CONINE: Okay. I have some witness affirmation forms for this particular agenda item. Jeff Crozier.

MR. CROZIER: Good morning, Mr. Chairman, Board.

MR. CONINE: Good morning.

MR. CROZIER: My name is Jeff Crozier and I'm the executive director of the Rural Rental Housing Association.

I'm here today to kind of take this one step further. I appreciate Tom's comments about wanting to move these deals forward and I certainly the people that are part of my membership and other parts of rural Texas, they're doing the same thing, but as we've heard all up and down the line from the beginning of time how difficult it is to do deals in rural Texas, and especially throwing one other kicker in there when you're dealing with other governmental agencies. The majority of the guys that won deals in the at-risk set-aside last year have to go through the Rural Development Department,

Department of Agriculture. The applications have been in with them for months.

I heard this morning there were other people that were dealing with HUD that were running into the same problem, they've had applications in for a long period of time, and even though they're moving forward and everybody is doing whatever they're doing, it's still these governmental agencies don't seem to be on the same time line that TDHCA is trying to get these deals closed and worried about whether there's another Exchange Program coming down.

My thought process along this line is I understand none of the people I've talked to have a problem with either putting up money, getting it back at some point in time, or exempting properties that are dealing with governmental agencies if they can show proof that they're moving forward with those governmental agencies, whatever it may be, but they're just caught between a rock and a hard place.

And Tom mentioned a second ago about having a 60-day deadline. Well, that may work on about 80 percent of the deals that come through, but there's still going to be these deals -- you know, Mr. Hoover is sitting over here that have applications into the Rural Development, he doesn't know when that's going to happen. I'm still trying to get information out of them, I'm trying to get them to return a phone call for four weeks.

You just don't know when things are going to pop out of these agencies, and so to say 60 days from today we're back here fighting this same battle again, I'd like to see some leeway in either deals with government agencies or exempt those people out of this Exchange Program -- not exempt out of the Exchange Program, but exempt them out of this fee unless they have to show some effort that they're making some effort with these agencies and they've applied and they're working and it's in the process.

So I'd like to see us accept some type of either the $2,500 fee and have it given back at some point in time or exempt the people, especially Rural Development. I'm more concerned with Rural Development than I am HUD, but I'm hearing that HUD has got the same problem so maybe we can look at something on a governmental agency if they show evidence that they're moving forward with those governmental agencies.

And that's all I have.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you, sir.

Dennis, I assume you just yielded your time to him. Is that correct?

MALE SPEAKER: My voice is too loud.

(General laughter.)

MR. CONINE: Keith Perry.

MR. PERRY: Thank you, Mr. Chairman. I'm Keith Perry, the president of Sears Methodist Retirement System and we own the Canyons Retirement Community in Amarillo, Texas, a project that this board I think is familiar with. We've been working together now since 2007 to try to get this project closed.

For the Board's memory, this is an old public hospital that we took over and converted into affordable housing in 1996. We've been operating that as affordable housing on an unsubsidized basis since '96. The building is very old, it needs substantial renovation, and without these Exchange funds and the gap funding that we're having to work on, we can't continue to operate and support that building with our foundation.

Just by way of information, that facility today is 92 percent occupied, we have 16 individuals on a waiting list, those individuals are all income-qualified for this project. We have our G&P ready to go; we're doing a HUD loan for gap funding; HUD requested that we go back to our engineers and have them revise some of the drawings for these plans. In order to do that, we can't close this project by the end of April, we need an extension to the end of August in order to meet HUD's guidelines and to go through the process of getting the project funded.

We have about a twelve-month construction process after that. We will be able to place this project back in service in the fall of 2011. Again, because we are working with our residents that we already have in the building, we don't foresee any problem having this problem filled up by the end of 2011. So we're just simply talking a timing issue here. We need the Board to recognize that while we appreciate the staff's willingness to give us two months, that doesn't help us go forward.

From my position as CEO, I have a volunteer board of directors that I have to go back to now every two months and continue to get an extension from them to keep putting more money into this project with the hope that we can actually close this to get this project done. So we're simply asking the Board to recognize that some of us will not be able to do this within the 60 days, but if we're given the amount of time, HUD has indicated they will give us the gap funding, we can get this closed and still place this in service well within the guidelines that the Department has established.

MR. CONINE: Thank you. Any questions of the witness?

(No response.)

MR. CONINE: Certainly appreciate your place.

That's all the witness affirmation forms that I have on this particular item. Whenever Tom gets finished talking to Mike, we'll finish it up.

(General laughter.)

MR. GERBER: Sorry, Mr. Chairman. We're trying to think what's manageable from a staff perspective, and really appreciating what our development partners are having to deal with.

MR. CONINE: The two of you trying to think scares me to death.

MR. GOURIS: I think it was more like what we're going to do for lunch.

(General laughter.)

MR. CONINE: I am sympathetic of the fee, as you might suspect, since I started this whole thing off with that, and so do you have a revised thought on what staff is proposing here?

MR. GOURIS: As far as requiring the fee to keep folks in place but being able to return that fee?

MR. CONINE: Well, I don't think that was in the written staff recommendation.

MR. GOURIS: It was not.

MR. CONINE: So tell me again what staff is proposing the Board to do.

MR. GOURIS: Requiring that they make the request and provide the fee and that if they close by a date certain, at your discretion what that would be, that that fee would be reimbursed. For those that still need a further extension, we would come back in May and discuss those and hopefully those would be considerably shorter. So we can either make that reimbursable in April or make that reimbursable May 31.

MR. CONINE: Yes, it needs to be May because we don't another Board meeting until May.

MR. GOURIS: I'm sorry, the reimbursable part?

MR. CONINE: No, the close part.

MR. GOURIS: Yes, the close part is May. We would definitely want to give them 60 days because we think that gives everybody some time, but require the fee. The question is is the fee reimbursable all the way through May 31. That's fine.

MR. CONINE: And what about the prospect of dealing with the Department of Agriculture and Department of Housing relative to the construction loans or the underlying debt on these. Do you have any solution to their problem?

MR. GOURIS: We certainly have been in contact with them and have been in dialogue with particularly USDA to try to help them along. They're looking at what they'll allow for subordination, what-have-you, on transactions so they are just now kind of getting to that process that a lot of folks, thankfully, worked through back in November and December.

MR. CONINE: So would you be opposed to an exemption from the May deadline on those projects who are dealing with USDA or HUD for their construction loans, so that the concept here -- or maybe we just push it out till some further date for those particular projects. We heard one gentleman say it's going to be August before he can get a HUD loan closed.

MR. GOURIS: Yes, that's an issue specific to that transaction, though, and the re-engineering that needs to be done.

MR. CONINE: I know you want them closed, but I'm trying to keep from revisiting this thing time and time and time again. If that's the way you want to do it, then that's the way we'll have to do it. But I'm asking if staff has an opinion on those particular transactions, and I don't know how many there are. Do you know how many there are?

MR. GOURIS: A dozen, I would bet, in that neighborhood.

MR. CONINE: I mean, we can revisit the thing in May

MR. GOURIS: I came with the thought process that we'd revisit it in May either way, whether we're coming with a formal approval or not, we'd still want to give you an update on where we were, so for staff, we're going to be giving you that update. If you want to be able to do something then with the extensions based on where things are, that's up to you.

MR. CONINE: Well, I think if we give them the rebate of the

$2,500 once they close, they're going to be okay. I, for one, would like to hear some progress update on specifically the hospital loan and how it's going with HUD in May so we can determine if it's appropriate to give them an extension or not. On the other hand, they are spending money in the meantime and without the assurance that they can get to the finish line from what they know right now, it's not really fair to ask them to keep spending money in some respects.

MR. GOURIS: Our concern is that there may be a handful of transactions that because of lack of being able to find a lender, they may be spending time and energy doing that, but they may not be able to come to fruition, and if that happens, we want that to happen sooner rather than later.

MR. CONINE: Right, so that you can make a switch.

MR. GOURIS: Right.

MR. CONINE: Any other questions of staff?

(No response.)

MR. CONINE: I guess we'll take a motion.

MS. BINGHAM: Mr. Chair, I'll move staff's recommendation with the addition that the fee be reimbursable for closings that happen up through May 31.

MR. CONINE: Okay.

DR. MUNOZ: Second.

MR. CONINE: Second by Dr. Munoz. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion,

signify by saying aye.

(A chorus of ayes.)

MR. CONINE: Those opposed?

(No response.)

MR. CONINE: Motion carries. And I would just say parenthetically I think the sense of the Board would probably be to work with those folks that are dealing with government agencies, come back and tell us about where you are in May, and we'll get you down the road.

MR. GERBER: Item 9(d).

MR. GOURIS: The other half of our Tax Credit ARRA Program is the TCAP program. On February 25, 2009, Texas was allocated $148 million in TCAP funds, by February 25 of this year, we had to have committed, and that meant executed an agreement and had in our systems, 75 percent of that had to be committed and we met that deadline, as Mr. Gerber indicated earlier.

Two separate application cycles were held to allow priority allocations to developments with 2007 and 2008 tax credit awards. Both Round I and Round II second application cycles for 2009 awards, both cycles were oversubscribed. We had something, I think it was 103 applications originally. A lot of those transactions applied also for Exchange or had other issues and for various reasons, have fallen out or have withdrawn their application. We're down to 51 applications and have about $8.8 million right now, and with the return of one more deal that's going to exchange, it will probably be more like $10 million.

We are requesting that we a third round but to expedite the delivery of this third round, we're maintain the same rules that we have in place, the same policy we have in place for Rounds I and II, and allow transactions that previously did not receive TCAP or Exchange that thought they were going to be able to afford with regular credits without assistance and may not be able to do that or may be struggling to do that, give them an opportunity to come back and make an application as priority.

There's been some discussion about crafting a new policy or a new practice for this $10 million. That will take some time to do and it will delay our meeting the expenditure deadlines that are coming up. Seventy-five percent has to be expended by next February and by the following February 100 percent has to be expended. So we want to try, first, to find the easiest, quickest way to help rural units move forward and that's why we've recommended this Round III. It would be open for about a month and then we'd again come back if there were still funds left over with something else.

And Lisa Vechetti is our Tax Credit Assistance Program administrator and she and Laura Devalles have been working diligently.

I meant to give you an update on where we were: we had 51 applications; 45 have fully written executed agreements; 33 have passed environmental clearance; 19 have completed their due diligence packages; six have closed; one has drawn. So some of this, and I think this is sort of the same situation with Exchange, while a lot of them are in and are still moving forward, getting their due diligence packages in to us, getting that completed, it falls off considerably and so we're waiting on folks to move forward and we're pushing on them as much as we can. But that's just a status update on the TCAP program.

MR. CONINE: I have one witness affirmation form on this item, David Marquez.

MS. RAY: Everybody is happy except you.

(General laughter.)

MR. MARQUEZ: Well, somebody asked me if I wore the red shirt to be on TV; I didn't know we were on TV today. Thank you, Board, Mr. Chairman. As you said earlier, I'm hoping that you use your discretion.

As reading the Board book and TCAP in creating the Round III, I've read it and it says October 1, '06 transactions through 2009. We happen to have two '06 transactions that were granted a FEMA extension so they were placed in service as of December '09. One of them is LULAC Amistad in Sinton, which is 48 units, it's a project base Section 8, and it is in a rural area. That was very difficult to put together and to do a major rehab, a gut rehab which is all the AC, electrical plumbing storm water, sewer, the whole bit.

Also, we have LULAC West Park in Corpus Christi which was also granted an extension. We had that Ike, Dolly, we started work, we stopped work, so forth, so the Department did give us an extension. We presently are 100 percent occupied at West Park with a 250-name waiting list. We are 100 percent occupied at Amistad which is 48 units.

But we have just now begun to go through our cost certification, and so we feel that the overruns that we've had on these projects due to Ike and Dolly and so forth and the fact that we did deliver 100 percent of what we said to our residents because they're all very happy right now -- you can tell that by the waiting list -- is that we ask that you extend that October 1 to more like July or August of '06. As staff is creating the Round III, it seems like it's kind of open to what the Board would like to do as well.

So with that, I ask you for those three months of discretion, four months of discretion. Thank you very much.

MR. CONINE: Thank you. Any questions of the witness? No questions. Thank you. We'll get staff to comment on it here in just a second.

I also have a witness affirmation form from a Gil Piette.

MR. PIETTE: (Speaking from audience.) That was on item 7.

MR. CONINE: It says 9(f) here, and I apologize. Did you get what you wanted or not?

MR. PIETTE: (Speaking from audience.) I did, thank you.

MR. CONINE: You don't want to speak to the Board at this point?

MR. PIETTE: (Speaking from audience.) Discretion was the better part of valor.

(General laughter.)

MR. CONINE: Didn't mean to pass you up. I looked down there and I saw 9(f) and I looked over at my agenda and there wasn't a 9(f), so I knew I had issues. Thank you very much.

Okay, back to Mr. Marquez's request. What's your thoughts on that?

MR. GOURIS: The original statute had dates specific of when awards needed to have been made. We had to define what we meant by an award in our plan to HUD to go back to capture transactions that had happened earlier. It probably wouldn't be allowed in the first place but it would definitely require us to go back and amend our plan to HUD.

MR. CONINE: I thought there was a statute involved there as well.

Any other questions? We just need to vote on whether we want a third round or not. Right?

MR. GOURIS: That's correct, authorizing us to do that.

MR. CONINE: Do I hear a motion?

MS. BINGHAM: Move staff's recommendation.

MR. CONINE: There's a motion by Ms. Bingham to go forward with a third round.

MS. RAY: Second.

MR. CONINE: Second by Ms. Ray. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Item 10.

MR. GERBER: Mr. Chairman, Item 10 is the staff's report on the implementation of ARRA. As you know, the Department created the Office of Recovery Act Accountability and Oversight which is led by Brenda Hull. I'm going to ask Brenda and Brooke Boston to come forward and walk us through the update. And it may be helpful for you to open up your books to that section where there's a chart that I think they'll refer to pretty much through their presentation. Brooke, Brenda.

MS. BOSTON: Thank you. I'll get us started and Brenda can follow up with some of the more detailed conversation as to current numbers that you requested about jobs.

In your Board write-up you'll notice we have put together a presentation that will cover giving you an ARRA update. Our intent is to begin to provide this for you each time you have a Board meeting, and so I would just ask that as you're looking at it this time and even next time we present it, if thee's ways that you prefer to see the layout or the data represented to you, we're happy to continue to tweak this to make it a good tool for you.

On the first page we just reiterated again for you some of these programs that you don't see before you that often anymore. We had a lot of information for you on ARRA when it first hit. So the first page just lays out for you each of the programs, what the activity is and how much money we received and what's been expended to date. On the second page you'll note it's just interesting to kind of see the actual breakout percentage-wise of the programs. Tax Credit Exchange is by far the 100-pound gorilla, and then WAP is not far behind. I think in terms of some of the day-in/day-out federal oversight and everything, I think WAP is the bigger draw, but in terms of just dollars, the Exchange is the biggest.

And then looking on page 3, we've again laid out for you the program name, how much was funded. Since we posted your book, I have a little bit of updated information for the HPRP program which is that first row. We've actually expended $6.4-, and so we're at 15.6 percent. The WAP program went up to $11.4 million, the percentage change is incremental. And CSBG went up to $13.3 million which is now at 27.6 percent.

Another change on this report for this particular table for Weatherization is we get new updated data every Monday that's current through the previous Friday, and that's just based on calls to all of our subs asking them how many units did you do last week. So based on those calls that occurred this Monday and Tuesday, our unit production for Weatherization is 1,623, they did an additional 200 units. And we actually have 45 sub-recipients. That's a correction and that will be corrected permanently.

So what I'd like to do is on page 4 just point out to you a couple kind of where we are status-wise with some of the programs. I think you already got a pretty thorough briefing from Tom on TCAP and Exchange through both of his last two items, but I would like to update you on the remaining three. For Weatherization, we submitted an amended to DOE actually just a couple of days ago, and so that's in and they'll be reviewing that. It's reflective of Board actions that you guys had taken through the fall and for a variety of just administrative reasons it was not submitted until just now, but it didn't reflect anything you guys hadn't already approved through your Board agenda items in the fall.

The rule you approved earlier today is a big accomplishment for us and I think will help in terms of getting the subs to move and us make sure that we can take full accountability of the dollars as we need to. Right now the contracts are executed for 49 percent of the funds. The reason for that is that we only have access to the first 50 percent of funds from Department of Energy. We won't be released the second 50 percent until we hit 30 percent of our unit production target for DOE. And so that rule that you guys approved was centered around us trying to achieve that by August 31. That's not a federal deadline, but we've shot for that being our target.

Also Davis Bacon is something that the Audit Committee got briefed on last night a little bit, and I just wanted to mention that we just hit 66 percent of our sub-recipients are fully cleared for Davis Bacon which means they're cleared to be doing units. We're getting an additional three or four a week, so we should be finishing up those last few subs. Kind of the holdout group is the cities because their procurement processes tend to be far more onerous in terms of changing contracts and getting amendments done through their bid process.

The first deadline requirement for WAP was that we have all of our obligations by September 30 of 2010, and while that's still a ways out, that's considered to have been met because through our plan we have obligated the funds to the sub-recipients and that was the test for that.

And I would also mention Department of Energy is here right now doing a monitoring visit and GAO is here doing a monitoring visit, both on WAP, so we have a lot of good oversight. And we recently have had some really good conversations with DOE headquarters specifically about kind of where we are and what's going on with that.

The inspector general within Department of Energy had done an internal report on Weatherization that talked about that while there is a lot of just lack of speed with getting the funds out, that that's pretty uniform across all the states, with one or two anomalies that actually they even held out as outliers. I'm proud to be able to tell you, while I'm not thrilled that we aren't moving faster, I'm comfortable that we are consistent with the other states in that we're all facing a lot of the same challenges.

HPRP, we are rocking on that. We actually have several years to execute all of HPRP and we're already 15 percent expended, so we actually anticipate HPRP will be finished up well before its federal deadlines. And then Community Services Block Grant which we have $48 million for that, that we have to have finished by September 30 of 2010, it was only a one-year program, and we're at 27 percent, and for agencies who weren't showing pretty high expenditures, we've required a plan to be submitted and our staff has looked at those and on one or two we've tweaked their plans, for the remainder we believe that their plan has them set to meet that year-end align.

And with that, I know, Mr. Conine, you'd asked to have some more information about exactly how the job reporting part of this was handled because we are required every quarter to do 1512 reporting to the Recovery Act, and so Brenda is our guru on that.

MS. HULL: I'm Brenda Hull with the Office of Recovery Act Accountability and Oversight. Pages 5 and 6 include a summary of the methodology for jobs reporting and page 6 includes the total number of jobs created reported for each one of our programs that are required to submit 1512 reporting. This is through the end of the last reporting cycle which was at the end of December 2009.

Four of our programs are required to submit 1512 reporting, that's Homelessness Prevention, Weatherization, Community Services Block Grant, and TCAP. The Housing Tax Credit Exchange Program is not required to submit 1512 reporting, although Treasury does require jobs reporting directly to them.

The Office of Management and Budget has defined jobs created and retained. A job created is a new position that is created and filled or an existing unfilled position that is filled that is funded by the Recovery Act, and a job retained is an existing position that is now funded by the Recovery Act. The number of jobs reported by the Department includes Department jobs and sub-recipients jobs both. The data for the Department jobs comes from our in-house time sheet reporting system which is Genesis, and then for our sub-recipient job reporting we've developed a quarterly ARRA reporting system. It's similar to the online monthly reporting system that the sub-recipients currently utilize.

The total number of jobs created and retained is expressed as full-time equivalents and there's a calculation that's been outlined by the OMB. For example, you take the total number of hours worked by all your employees that are funded by the Recovery Act in the quarter, and then you divide that by the total number of work hours in a quarter. And there's a sample of that calculation at the bottom of page 5.

In addition to providing the number of jobs created and retained, we're also required to submit a narrative that describes the employment impact. The narratives that we've submitted for the last reporting cycle again are summarized on the back of page 6, and this includes just the types of jobs that were created or retained.

We are now required to report on jobs that are indirect or induced jobs. This might be, for example, if somebody that's funded through the Weatherization Program and they weatherize a house and they go to the gas station and spend money, then it has an employment impact on the gas station employee, but we don't report on those types of impacts.

The next reporting cycle is through the end of March and the report is due April 10, for your information.

MR. CONINE: Thank you, Brenda. Any questions?

DR. MUNOZ: Mr. Chair?

MR. CONINE: Dr. Munoz, yes.

DR. MUNOZ: Brooke, I don't recall when these awards were made to all the different municipalities and if there was any stipulations related to marketing and communication. There was a comment earlier about being able to locate information about this on the website and Michael indicated that there is on our website, but I'm also concerned about sort of these cities and agencies that have been allocated these dollars, do we require them to do anything?

I also think about the migrant family that spoke to us in Lubbock, you know, they're not going to go on a website. The wireless in the house, it's just non-existent. Right? And there are families along the Border and in West Texas and in rural communities, I'm just curious, is there any sort of conventional mechanisms of communication other than sort of reliance on wireless services?

MS. BOSTON: Definitely there is, and it's not a requirement in our plan of each sub-recipient, but when we monitor, we do go out and check to be sure that they are doing some type of marketing and outreach. Kind of one of the beauties of the Weatherization Program is --

DR. MUNOZ: Define that for me, what does that mean, some kind of? In our Tax Credit we require signage. Right?

MS. BOSTON: Sure.

DR. MUNOZ: So what exactly does that mean?

MS. BOSTON: And I was about to explain that. One of the good things about the Weatherization Program is in most cases or in many cases the Weatherization Program is located inside of the community action agencies, they are our recipients who handle a lot of the basic service poverty-level programs, they have Head Start and Meals on Wheels and food service programs. And so people who tend to potentially not have a lot of access through the internet are coming through these agencies anyway to access these other services and that's one of the main ways that we're able to access and find them and find out what is your income, does it look like you might need either of our programs.

Because often one of the ways that we find people for the Weatherization Program is they come to us first for utility assistance, their bills are too high and they don't know how to cope with that, and so we're able to, through our CEAP program which is not an ARRA program but is an agency-funded program through the Department of Health and Human Services, we are able to pay their three highest bills a year. And when we do that, most or all of our Weatherization providers then look to check and see is that a house or a unit that we could also go in and weatherize, and if so, then we're able to have a longer term impact on that household instead of just the three highest months.

So we market to those populations and provide materials. Separately, TDHCA also, through our DOE plan, provides a lot of marketing and information. We order mass numbers of calendars that have all sorts of energy assistance hints on things that the household can do, we have little temperature strips that we give out to households, and all of those can be handed out through our community action agencies so they hit that group.

DR. MUNOZ: You know, if it wouldn't be too much trouble, sometime in the future when we have this kind of report again, I'd like to see some low tech expressions of advertising like flyers and maybe an ad in a local newspaper, a free newspaper, you know, all these communities have sort of publications that you can pick up at the grocery store. I just think that a lot people, I think sometimes, particularly with low income families, we exaggerate our sense of their access to technology.

MS. BOSTON: So you'd like to see some samples of what our agencies are doing?

DR. MUNOZ: I suspect they have a bulletin board

MS. BOSTON: Sure, we can definitely do that. We have some good innovative providers out there who are doing a lot to make sure they network. I was just going to say one of them in particular has a van and she drives actually all over her multi-county district to make sure she sees people.

DR. MUNOZ: I'd like to see examples of that and I suspect some of it will be in English and in Spanish.

MS. BOSTON: Sure, of course.

MR. GERBER: And even some in Vietnamese because there's a large Vietnamese community as well. And actually there's a strong provider that serves the Vietnamese community in Houston that does a lot of outreach with Shelter Arms, so it's been an important partnership, and sometimes we forget about that.

We'll provide you with a compendium.

DR. MUNOZ: Just a few examples. I don't want it to be onerous.

MR. GERBER: We'll definitely do that.

Anything else on ARRA?

MS. BOSTON: No. Any other questions?

MR. CONINE: Brenda, I notice we're using the word or we're asked to use the word "retained job" versus what I hear on television is a "saved job." The two are not the same, are they?

MS. HULL: The only definition I'm familiar with is jobs retained, and actually when we report jobs created and retained, we report one number, we don't have to report them separately, thank goodness.

MR. CONINE: So they make you combine them together.

MS. HULL: Yes.

MR. CONINE: That's very helpful and thanks for doing that. And Brooke, same for you, the report is very concise and you can go pick out exactly what information we need and I appreciate you putting that together for the Board.

MR. GERBER: I think we're done with Item 10, and we now go to the Executive Director items. And I'm going to ask Patricia Murphy to come forward, and some of you saw in the news clips some information about Parkside Village in Waco. Patricia was there last week, and some of you have asked about that development, and let Patricia give us an overview.

MS. MURPHY: Patricia Murphy, chief of Compliance and Asset Oversight.

Parkside Village was allocated 4 Percent Housing Tax Credits from our agency in 2000, they also have some funding from HUD, and they have local tax-exempt bonds. Our agency did a uniform physical condition standards inspection of the property last spring, some pretty serious physical deficiencies were noted in our report. The notice of non-compliance went out, provided the 90-day corrective action period. We did get a response to the report but staff did not accept the response because what they sent in we were not able to confirm corrections.

The 8823s were issued to the Internal Revenue Service last October and we sent the notice saying we did not accept your response and gave a little grace period for them to send new information in. We did not get a response, so in December staff referred the property to the Department's Enforcement and Administrative Penalties Committee, and their informal conference is tomorrow afternoon.

The *Waco Tribune* picked up a story about this property and it was a couple of weeks ago I did go down and met with the reporter and with local code enforcement -- we have a strong relationship there with the local code enforcement -- to take a look because they have started to send in some corrective actions and I kind of wanted to get a feel for are the items corrected or not, and no, they're not corrected, so we're meeting with them tomorrow.

Any other questions about this one?

MR. CONINE: The gestapo is in town.

(General laughter.)

MR. KEIG: Are any of the items of non-compliance, are they matters for health and safety that are emergent?

MS. MURPHY: Yes, they are.

MR. KEIG: And aside from potentially assessing penalties, what can we do to help those residents?

MS. MURPHY: There's not much that our agency can do. Local code enforcement is there and it's issuing citations, so 24-hour notices. In addition, HUD is involved in this property and there may be some things that they can do, and I have a call scheduled with HUD for the morning.

MR. GERBER: We'll keep you apprised on this project. The enforcement tools that we have certainly have been enhanced, but this is a case where it's hard to shut down a property and where do those folks go. At the same time, the health and safety issues are extreme.

MS. MURPHY: This Department does not have the authority to condemn or force them to close.

MR. GERBER: We have worked, though, very closely with code enforcement folks -- Waco is a good example; I know you've been very active in Fort Worth as well -- to really try to get them to take strong action. We had a property in San Antonio as well that sometimes getting those local folks to take action. One of the things that was impressive about the former mayor of Houston is that he really put an emphasis on code enforcement and he Department did work very effectively with the city's code enforcement folks to shut down some of those problem properties in our stock and in theirs, or to address the issues that were present in our stock.

MR. IRVINE: If I might. Tim Irvine, for the record. There are a range of issues that constitute health and safety issues. I mean, a rucked carpet is something you can trip over, so I guess that's a threat to my safety. And then there are things that present truly imminent threats to life or well-being, and there's certainly the avenue of working with local code enforcement and/or the attorney general to pursue injunctive relief if we see an uncured condition that is truly an imminent and serious threat.

MR. CONINE: Would you mind updating us on this at the next Board meeting?

MS. MURPHY: Sure.

MR. CONINE: Anything else from your Executive Director report?

MR. GERBER: That's all I've got. I know there's a listing of our outreach activities for the last couple of months that are in your Board book, and I think the other things I have to say we'll take to Executive Session.

MR. CONINE: All right, we're going to go into Executive Session now. For those of you that are still left in the audience, we probably won't do anything else, we'll come out of Executive Session and end the meeting, so we'll go into Executive Session now.

MR. GERBER: On this day, march 11, 2010, at a regular meeting of the Governing Board of TDHCA held in Austin, Texas, the Board of Directors went into a closed Executive Session as evidenced by the following:

The opening announcement by the presiding officer's designee that the Board will begin its Executive Session, today, March 11, 2010, at 12:30 p.m.

The subject matter of this Executive Session deliberation is as follows:

a) The Board may go into Executive Session on any agenda item appropriate under the Open Meetings Act, Texas Government Code, Chapter 551;

b) The Board may go into Executive Session pursuant to Texas Government §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; or

c) Pursuant to Texas Government Code §551.071 to seek the advice of its attorney about pending or contemplated litigation or a settlement offer, including:

1) The Inclusive Communities Project v. TDHCA, et al filed in federal district court,

2) M.G. Valdez, Ltd. v. TDHCA filed in District Court, Hidalgo County, and

3) The EEOC Claim of Don Duru,

d) Pursuant to Texas Government 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 this Texas Government Code, Chapter 551.

e) Pursuant to Texas Government 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.

(Whereupon, at 12:27 p.m., the meeting was recessed, to reconvene this same day, Thursday, March 11, 2010, following conclusion of the Executive Session.)

MR. GERBER: Mr. Chairman, the Board has concluded its Executive Session of the TDHCA Governing Board on March 11, 2010 at 1:45 p.m.

MR. CONINE: Thank you. Is there any other business to come before the Board?

(No response.)

MR. CONINE: If not, we stand adjourned. Thank you.

(Whereupon, at 1:47 p.m., the meeting was concluded.)

CERTIFICATE

MEETING OF: TDHCA Board

LOCATION: Austin, Texas

DATE: March 11, 2010

I do hereby certify that the foregoing pages, numbers 1 through 144, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Housing & Community Affairs.

03/18/2010
(Transcriber) (Date)

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