

SUPPLEMENTAL BOARD BOOK OF NOVEMBER 9, 2017



J. B. Goodwin, Chair

Leslie Bingham Escareño, Vice-Chair

Paul Braden, Member

Asusena Reséndiz, Member

Sharon Thomason, Member

Leo Vasquez, III, Member

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

**A G E N D A
8:00 AM
November 9, 2017**

**John H. Reagan Building
JHR 140, 105 W 15th Street
Austin, Texas 78701**

CALL TO ORDER

ROLL CALL

J.B. Goodwin, Chair

CERTIFICATION OF QUORUM

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

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

CONSENT AGENDA

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

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

EXECUTIVE

- a) Presentation, discussion, and possible action on Board meeting minutes summary for July 27, 2017

J. Beau Eccles
General Counsel

POLICY AND PUBLIC AFFAIRS

- b) Presentation, discussion, and ratification of programmatic, contractual, and other actions taken by the Executive Director with respect to the use of state or federal funds for disaster response and recovery efforts related to Hurricane Harvey

Michael Lyttle
Chief

MULTIFAMILY FINANCE

- c) Presentation, discussion, and possible action on a waiver relating to 10 TAC §10.101(b)(2) of the Uniform Multifamily Rules concerning Development Size Limitations

Marni Holloway
Director

17623 LIV at Boerne

Boerne

17625 The Preserve at Hunters Crossing

Bastrop

- d) Presentation, discussion and possible action on Inducement Resolution No. 18-010 for Multifamily Housing Revenue Bonds Regarding Authorization for Filing Applications for Private Activity Bond Authority on the 2017 Waiting List

17625 The Preserve at Hunters Crossing

Bastrop

HOUSING RESOURCE CENTER

- e) Presentation, discussion, and possible action on a final amendment of the 2017 State of Texas Consolidated Plan: One-Year Action Plan

Elizabeth Yevich
Director

FINANCIAL SERVICES

- f) Presentation, discussion, and possible action to adopt a resolution regarding designating signature authority and superseding previous resolutions in this regard

David Cervantes
Chief Financial Officer

ASSET MANAGEMENT

- g) Presentation, discussion and possible action regarding a Material Amendments to the Housing Tax Credit Land Use Restriction Agreement
 98009 Terrell Senior Terraces Terrell
 02034 Terrell Senior Terraces II Terrell
- h) Presentation, discussion and possible action regarding a Change in Ownership Structure Prior to Issuance of IRS Forms 8609 and Amendments to Developer and Guarantor
 14402 Bruton Apartments Dallas

Raquel Morales
Director

HOME AND HOMELESSNESS PROGRAMS

- i) Presentation, discussion, and possible action on awards for the 2017 HOME Investment Partnerships Program (“HOME”) Single Family Programs Homebuyer Assistance (“HBA”) and Tenant-Based Rental Assistance (“TBRA”) Open Cycle Notice of Funding Availability (“NOFA”)
- j) Presentation and discussion and possible action on a Policy Relating to the Initial Implementation of the Ending Homelessness Fund

Abigail Versyp
Acting Director

RULES

- k) Presentation, discussion, and possible action on Orders adopting amendments to 10 TAC Chapter 23, Single Family HOME Program Rules Subchapter B, Availability of Funds, Application Requirements, Review And Award Procedures, General Administrative Requirements, and Resale and Recapture of Funds, §23.25 concerning General Threshold and Selection Criteria; and Subchapter F, Tenant-Based Rental Assistance Program, §23.61 concerning Tenant-Based Rental Assistance (“TBRA”) General Requirements, and directing their publication in the *Texas Register*
- l) Presentation, discussion, and possible action on an order proposing actions to 10 TAC Chapter 10, Uniform Multifamily Rules including the: 1) proposed amendment in Subchapter H, Income and Rent Limits, of §10.1002, Definitions, 2) proposed amendment in Subchapter H, Income and Rent Limits, of §10.1005, HOME and NSP, and 3) an order proposing a new §10.1006 to Subchapter H concerning National Housing Trust Fund (NHTF), and directing its publication for public comment in the *Texas Register*
- m) Presentation, discussion, and possible action on an order adopting new 10 TAC Chapter 8, Section 811 Project Rental Assistance Program Rule, and directing that it be published for adoption in the *Texas Register*

Abigail Versyp
Acting Director,
HOME and
Homelessness
Programs

Patricia Murphy
Chief of Compliance

Brooke Boston
Deputy Executive
Director

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

- a) TDHCA Outreach Activities, (October-November)
- b) Report on the Department’s 4th Quarter Investment Report in accordance with the Public Funds Investment Act (“PFIA”)
- c) Report on the Department’s SFY 2017 draft Balance Sheet/Statement of Net Position for the year ended August 31, 2017
- d) Report on the Department’s 4th Quarter Investment Report relating to funds held under Bond Trust Indentures
- e) Report on the Department’s 2018 Multifamily Programs Application Manual

Michael Lyttle
Chief of External
Affairs

David Cervantes
Chief Financial Officer

Monica Galuski
Director, Bond Finance

Marni Holloway
Director, MF Finance

ACTION ITEMS

ITEM 3: HOME AND HOMELESSNESS PROGRAMS

- a) Presentation, discussion, and possible action on an appeal under 10 Texas Administrative Code §1.7, Staff Appeals, in regards to 2017 Emergency Solutions Grants Application Process, The Children's Center, Inc.
- b) Presentation, discussion, and possible action on an appeal under 10 Texas Administrative Code §1.7, Staff Appeals, in regards to 2017 Emergency Solutions Grants Application Process, Family Violence Prevention Services, Inc

Abigail Versyp
Acting Director

- c) Presentation, discussion, and possible action on Program Year 2017 Emergency Solutions Grants Program Awards and Program Year 2016 Emergency Solutions Grants Program Recaptured Funding Allocation

ITEM 4: MULTIFAMILY FINANCE

- a) Presentation, discussion, and possible action regarding a waiver of the extension prohibition in 10 TAC §10.402(a) and treatment of an extension under 10 TAC §10.405(c) of the Uniform Multifamily Rules
17363 Residences of Long Branch Rowlett
- b) Presentation, discussion and possible action on a Determination regarding Eligibility under 10 TAC §10.101(a)(4) related to Undesirable Neighborhood Characteristics for Villa Americana (#17411) in Houston
- c) Presentation, discussion and possible action on an appeal timely filed
17107 The Residence at Wolfforth Wolfforth

Marni Holloway
Director

ITEM 5: RULES

- a) Presentation, discussion, and possible action on an order adopting the amendment of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and an order directing its publication in the *Texas Register*
- b) Presentation, discussion, and possible action on orders adopting the amendments of 10 TAC Chapter 10 Subchapter A, concerning General Information and Definitions; Subchapter B, concerning Site and Development Requirements and Restrictions; Subchapter C, concerning Application Submission Requirements, Ineligibility Criteria, Board Decisions, and Waiver of Rules; and Subchapter G, concerning Fee Schedule, Appeals, and Other Provisions; and directing their publication in the *Texas Register*

Marni Holloway
Director, MF Finance

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

EXECUTIVE SESSION

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

1. The Board may go into Executive Session Pursuant to Tex. Gov't Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee;
2. Pursuant to Tex. Gov't Code §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a settlement offer;
3. Pursuant to Tex. Gov't Code §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Tex. Gov't Code Chapter 551; including seeking legal advice in connection with a posted agenda item;
4. Pursuant to Tex. Gov't Code §551.072 to deliberate the possible purchase, sale, exchange, or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person; and/or
5. Pursuant to Tex. Gov't Code §2306.039(c) the Department's internal auditor, fraud prevention coordinator or ethics advisor may meet in an executive session of the Board to discuss issues related to fraud, waste or abuse.

J.B. Goodwin
Chair

OPEN SESSION

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

ADJOURN

To access this agenda and details on each agenda item in the board book, please visit our website at www.tdhca.state.tx.us or contact Michael Lyttle, 512-475-4542, TDHCA, 221 East 11th Street, Austin, Texas 78701, and request the information.

If you would like to follow actions taken by the Governing Board during this meeting, please follow TDHCA account (@tdhca) on Twitter.

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Terri Roeber, ADA Responsible Employee, at 512-475-3959 or Relay Texas at 1-800-735-2989, at least three (3) days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Elena Peinado, 512-475-3814, at least three (3) days before the meeting so that appropriate arrangements can be made.

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

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

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

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

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

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

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

3a

ORAL PRESENTATION

3b

BOARD ACTION REQUEST

HOME AND HOMELESS PROGRAMS DIVISION

NOVEMBER 9, 2017

Presentation, discussion, and possible action on an appeal under 10 Texas Administrative Code §1.7, Staff Appeals, in regards to 2017 Emergency Solutions Grants Application Process, Family Violence Prevention Services, Inc

RECOMMENDED ACTION

WHEREAS, the Emergency Solutions Grants (“ESG”) Program is funded by the U.S. Department of Housing and Urban Development (“HUD”);

WHEREAS, the Department released a Notice of Funding Availability (“NOFA”) in January 2017 to identify successful applicants to be awarded funding for Program Years (“PY”) 2017 and, if 2018 funds are awarded to the State and there are no previous participation or performance concerns, for 2018;

WHEREAS, during the 2017 ESG application process, Family Violence Prevention Services, Inc, (“FVPS”) received notices on two scoring items on September 18, 2017, and did not file an appeal of the staff decision to deduct points on their application within seven days of receiving the score notification as prescribed by 10 TAC §1.7(c);

WHEREAS, FVPS has indicated that their decision not to appeal the scoring notification was based on a verbal conversation with staff regarding the status of their potential award and a belief at the time that there would be no change in staff’s recommendation as a result of the loss of score;

WHEREAS, staff has since determined that the change in score has changed the ultimate award recommendation for the San Antonio region and asked at the Board meeting on October 12, 2017, that the awards for the San Antonio region be suspended until the interested parties could fully articulate their concerns;

WHEREAS, FVPS has now appealed their score and the Board is now being asked to consider the appeal the Executive Director has found good cause for the Board to hear;

WHEREAS, Staff now believes there was a procedural error in its determination that the response to the original deficiency notice about scoring was erroneous; and

WHEREAS, FVPS has provided additional clarification to evidence that the calculations which caused the scoring issue were consistent with the other information contained in the application and should have resulted in a reinstatement of their self score for that item;

NOW, therefore, it is hereby

RESOLVED, that the Board finds that there was a procedural error processing the original deficiency notice about scoring, it has demonstrated that the Applicant was entitled to the points in question, the appeal is granted and the points for the contested item are reinstated.

Background

The ESG Program is funded by HUD. The ESG Program's focus is to assist people to regain stability in permanent housing quickly after experiencing a housing crisis and/or homelessness.

On January 9, 2017, the Department released a NOFA notifying prospective applicants of the availability of ESG funds for PY 2017. Funds were allocated to the State's 11 Continuum of Care ("CoC") regions based on criteria indicated in the NOFA, including the CoC regions' proportionate share of the State's homeless population as reported in the annual point in time count, persons living in poverty, renter cost burden, and 2016 ESG funding. Applicants could apply for funds either through the Department or through the locally-designated competitions, as indicated in the NOFA. Applications for the Department's portion of the competition were due on July 28, 2017.

The Department received 25 applications requesting more than \$8.9 million for the approximately \$5.1 million available to be awarded in the CoC regions submitting applications to the Department. In the CoC region TX-500 which encompasses San Antonio, three applications were received:

1. San Antonio Metropolitan Ministries, Inc (SAMM)
2. FVPS
3. The Salvation Army of San Antonio

During the application process, applicants were required to submit a self score for their own applications. On August 9, 2017, the Department posted an application log listing the self scores, in which FVPS had a score of 630, and SAMM had a score of 560.

On September 1, Department staff issued a deficiency notice to FVPS, asking for clarification on the methods of calculation used to substantiate two proposed performance measures: Part III, Question U5 and Part III, Question U6. On September 8, 2017, FVPS responded to the deficiency notice by proposing a new performance measure for Part III, U5, and clarifying the method of calculation for Part III, U6. On September 18, 2017, FVPS was notified that Part III, U5, consisted of a new performance measure that could not be considered because it was new information which was not originally submitted in the application. Additionally, on September 18, 2017, FVPS was notified that Part III, U6's method of calculation did not accurately calculate to the performance measure originally provided, and no points were awarded because staff was unable to determine whether the method of calculation or the performance measure was to be scored. Staff score reflected a reduction of 50 points for Part III, U5, and a reduction of 50 points for Part III, U6.

After the deficiency notice was sent on September 18, 2017, a phone conversation took place between FVPS and Department Staff in which FVPS has alleged they were given the impression that the result of the score change would not impact staff's ultimate positive funding recommendation for them. On September 20, 2017, FVPS indicated that they understood the rationale for the score as a result of errors in their deficiency response.

On October 2, 2017, TDHCA posted the scoring log in which FVPS had a score of 530 and SAMM had a score of 560. On October 9, 2017, an email from FVPS to the Department indicated that they were requesting an opportunity to appeal Part III, U6, which, if corrected, would result in additional 50 points. The Executive Director has determined that good cause exists for the Board to hear the appeal.

Staff has reviewed the basis for the underlying appeal and it involves the mathematical calculation provided for Part II, U6. Staff agrees with the applicant's assertion that the scoring inconsistency can be explained by rounding utilized in the other parts of the application. The application requests an explanation of the method of calculation used to estimate the number of people exiting from emergency shelter to permanent housing, and then divides the clients exiting to permanent housing by total clients served to obtain the percentage. In this case, the Applicant's explanation had provided a mathematical formula that resulted in approximately three additional persons exiting to permanent housing than indicated the application. However, the mathematical formula outcome was subject to rounding.

The scoring for this region has an impact on this San Antonio region and the outcome of the Balance of State awards. If the appeal is granted, then the FVPS would be the highest score in the region but the remaining funds in the region would be insufficient to fund SAMM; therefore the remaining funding would be combined with the remaining funds in all other regions, and then allocating the collapse of regional funding pursuant to the NOFA. The next step would be to fund the most underserved CoC region. If FVPS were awarded, then San Antonio CoC instead of the Balance of State CoC would be the most underfunded region. This means that SAMM would receive funds during the collapse of funding and less funding would be available in the Balance of the State CoC. If FVPS is not granted the appeal, then they would no longer be the highest scoring in the region and SAMM would be fully funded. The San Antonio region would no longer be the most underserved because SAMM's request for funding is larger than FVPS. Under this scenario, FVPS would not be recommended for funding during the collapse of regional funding, but the next application in the Balance of State CoC would be recommended for funding, since the Balance of State CoC would again be the most underfunded region.



**Family
Violence
Prevention
Services, Inc.**

The Battered Women
and Children's Shelter

Nancy Wagner
Chair

Marta B. Peláez, MA
President/CEO

Wayne D. Terry
Chair-Elect

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Thomas J. Smith, J.D.

AnaPaula Watson

Debra J. Williams, MD

October 19, 2017

Tim Irvine

Executive Director

Texas Department of Housing and Community Affairs

221 E. 11th Street | Austin, TX 78701

Office: 512.475.3800

Fax: 512.475.9606

Dear Mr. Irvine:

This letter serves to notify the Texas Department of Housing and Community Affairs (Department) that Family Violence Prevention Services, Inc. (FVPS) is requesting the right to appeal the final score of its 2017/2018 Emergency Solutions Grant (ESG) application in accordance with Texas Administrative Code Title 10, Section 1.7, particularly "(b)(1)(B) Mathematical error where in rating an Application, the score on any selection criteria is incorrectly computed by the Department due to human or computer error" and "(b)(1)(C) Procedural error where the Application was not processed by Department staff in accordance with the Application and selection rules in effect for the current application cycle".

FVPS is appealing its application's final score on the grounds that the agency did in fact adhere to the instructions within the deficiency notice regarding 17500FVPS application *Part 3. Performance* items *U5: ES Temporary Housing Destination* and *U6: ES Permanent Housing Destination Performance*. The deficiency notice read, "*The Method of Calculation field does not match the proposed performance measures. Proposed performance measures must include an accurate Method of Calculation.*" FVPS addresses specific factors identified in the Sept 18 email notification regarding how the application updates submitted by FVPS on Sept 8 "did not clear the deficiency", and therefore remained unscored, below:

- I. *"Specifically, the deficiency response provided new performance measures where only the Method of Calculation needed to be clarified to fit the performance measures provided..."*
 - A. The performance measure for Item U6 remained unchanged at 945 in the updated Item U6 submitted on Sept. 8.
 - B. While the performance measure for U5 was changed, this was done in order to match the Method of Calculation to the proposed

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performance measures. Nothing in the initial deficiency notice advised against this, instructing FVPS only to match the two.

- C. The updated Method of Calculation submitted on Sept. 8 was indeed expanded in both items, following the wording given in the example provided in the deficiency notice.

II ...in one instance, the Method of Calculation did not match the performance measures submitted.

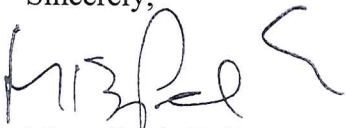
- A. In Item U6, the proposed performance measure was 945 per year of the two-year grant period. The ESG application form *Part 3. Performance*, tab *Emergency Shelter* has embedded in the *Percent Outcomes* column the formula “=ROUND(F7/F2, 2)” which rounded the manual calculation of $1890/3216 = .5877$ to “59%” for us. Per year, 945 is 59% of 1608. Given this, the Method of Calculation then matches the performance measure of 945 per year.
- B. In an effort to maintain consistency with the 59% calculated by the ESG form, FVPS used the same rounded calculation and applied it to the sample wording and formula provided in the deficiency notice for the Method of Calculation.

Based on the above grounds, in which the 0 (zero) scoring for Items U5 and U6 is an inaccurate scoring which seems to be due to the human error or oversight by the Department, we respectfully request rescoring.

If our appeal results in a favorable decision for FVPS but causes our region to lose all remaining funds that can be allocated to other organizations within our region, then we respectfully withdraw our appeal.

Thank you for your thoughtful consideration of this appeal. Without this funding, FVPS’s Battered Women and Children Shelter would not be able to provide services at full capacity in its role as the only shelter with comprehensive services exclusively dedicated to domestic violence in Bexar County.

Sincerely,



Marta Prada Peláez
President, C.E.O.

Family Violence Prevention Services, Inc.

4c

PULLED FROM THE AGENDA