TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD MEETING

9:00 a.m.
Thursday,
December 15, 2011

Capitol Extension
Room E 1.028
1500 N. Congress Avenue
Austin, Texas

COMMITTEE MEMBERS:

J. PAUL OXER, Chairman
TOM H. GANN
LOWELL KEIG
KENT CONINE
LESLIE BINGHAM ESCAREÑO

STAFF:

TIMOTHY K. IRVINE, Executive Director

A G E N D A

ITEM PAGE:

P R O C E E D I N G S

MR. OXER: Good morning, everyone. I'd like to welcome you to the December 15 meeting of the Governing Board from Texas Department of Housing and Community Affairs.

I think first what we'll do is certify the quorum. So we'll have roll call. Ms. Bingham.

MS. BINGHAM ESCAREÑO: Here.

MR. OXER: Mr. Conine.

MR. CONINE: Here.

MR. OXER: Mr. Gann.

MR. GANN: Here.

MR. OXER: Mr. Keig.

MR. KEIG: Here.

MR. OXER: Dr. Muñoz is not here.

I'm J. Paul Oxer. We have a quorum.

All right. First, please everyone stand. We'll pledge allegiance to the flag.

(Pledge of allegiance.)

MR. OXER: To Texas, please.

(Texas pledge of allegiance.)

MR. OXER: Thank you. Okay. Michael, do we have any legislators present -- which we always appreciate having?

MR. LYTTLE: No, sir, not at the moment.

MR. OXER: Great. All right. We're also -- just for a note we're anticipating Julie Frank from Senator West's office. And as soon as she gets here we'll recognize her.

Okay. Anything to add up front, Mr. E.D.?

MR. IRVINE: No, sir.

MR. OXER: Okay. Regarding the consent agenda --

MR. IRVINE: We have two presentations first.

MR. OXER: All right. Let's do the presentation by BBC. Brenda?

MS. IGLER: Good morning, I'm Heidi Igler with BBC Research and Consulting. I'm here for Jennifer Garner, also BBC Research and Consulting. And we are here before you to give a brief presentation on the Analysis of Impediments to Fair Housing Choice which we have been awarded.

I'd also like to acknowledge Sherry Holland from Morningside Research and Consulting, an Austin-based consulting business, and Paula Harper from College Station, Texas. She runs Community Solutions. They are on our team as well.

Happy to be here to talk very briefly about the Analysis of Impediments to Fair Housing Choice, also referred to as an AI. BBC has done a number of statewide AIs, including most recently in Nevada and Idaho. We've done a lot of work in Texas -- HUD-related work. Our subcontractors have done a good deal of work with state agencies as well as consolidated plans and AIs for Texas communities as well.

Yesterday we spent a good part of the day working with staff and had a meeting with stakeholder’s yesterday afternoon. We had members from the legislative staff attend. We had members from Texas Appleseed, as well as the Low Income Housing Service Coalition, and members from HUD who drove down from Fort Worth to talk to us about their expectations of the AI.

We invited them to be involved through the process -- walked through the scope. You all have a brief -- a condensed version of our scope with our time line and how we will achieve the various tasks in front of you.

Very briefly, we have a number of items that are written to achieve HUD's expectations for what the fair housing document needs to contain, as well as what the advocates would like to see as part of our process. Jen Garner here is going to be managing the public outreach process, which is very comprehensive.

And I also am here to assure you we've got a very, very tight time line, but which we feel like we will be able to accomplish without any problem. Our goal is to have a draft document available to the Department by October 31 of next year and a submission to HUD by December 31.

We have a number of opportunities for public input along the way, number of public hearings, and a substantial emphasis on public involvement by residents, as well as stakeholders statewide. With that, I'll take any questions.

MR. OXER: Any questions? Tim?

MR. IRVINE: I would just like to offer a couple of comments. I'm very excited about the team and the activity on which we're embarking.

MR. OXER: And you are?

MR. IRVINE: And -- pardon?

MR. OXER: And you are for the record?

MR. IRVINE: Oh, I'm Tim Irvine, executive director. Sorry. Good morning, Penny.

MR. OXER: Just respecting Ms. Penny over here.

MR. IRVINE: Yes. Gotta get the recorder on notice.

An analysis of impediments is something which we are each and all stakeholders. And I hope that every voice in Texas will feel welcome in this process. This is not something where we want small interests, no matter how noble, to drive or have disproportionate voices. We want all voices to be brought into this.

We want this to be a document that is actually useful in helping staff make recommendations to this Board and then for them to make good policy decisions that take Texas from being the great place it is to being an even better place for every single one of us.

And this is a really important process. It's not simply an event or milestone. It's something we're always engaged in -- we're always engaged in getting better. But this is a critical document to inform that process.

And I really look forward to working with you guys and really look forward to every single person in this room and every Texan you know being engaged. So thanks.

MS. IGLER: We look forward to working with the Department as well.

MR. OXER: You said you had an aggressive schedule that you felt like you'd meet. What are the things that would keep you from meeting it?

MS. IGLER: That's a good question. You know, we're comfortable with the availability of the data in a timely fashion, and the secondary data won't be a problem.

MR. OXER: Secondary data meaning what?

MS. IGLER: Census data, we'll do a home mortgage disclosure --

MR. OXER: Uh-huh.

MS. IGLER: -- a HMDA data analysis, that data we are in the process of obtaining. We have -- you know, I think the only event that I can think of that may cause us to delay would be a surprise in the public outreach process -- something that we find in the data and in our review of data.

We've got a land use and zoning analysis as well. If we uncovered barriers that we felt like needed a deeper look and that were substantially serious and something that we'd want to talk to the Department about and perhaps redirect our scope, that may delay some of the tasks.

But at this point we were very, very careful in putting together a scope that we felt like was achievable. And the Department was very thoughtful in terms of the time line that it granted to its contractor to complete this study.

MR. OXER: If you encountered any of these sorts of -- the term we use in meetings is quirks -- everybody here knows what quirks are. So have you bumped into any of these quirks before that you could identify --

MS. IGLER: Not to --

MR. OXER: -- as opposed to generic?

MS. IGLER: -- delay the time line substantially. When you do this kind of a process there's always -- especially with the emphasis on public outreach that we have and the size of your state quite honestly -- there are things that could arise that we don't -- you know, it's an investigative process partially. And there are barriers that -- we don't go into this with any preconceived notions. There are barriers we may find along the way that we need to look a little closer at.

MR. OXER: You don't really know what you're going to find until --

MS. IGLER: Exactly. Uh-huh.

MR. OXER: -- you start digging, but the idea is you've got a pretty good sense of what you'll --

MS. IGLER: Exactly. Unlike some studies though we have -- we know -- we've done this a lot. We know what kind of scope we need to satisfy HUD and to be compliant with HUD's request for what should be done in the Phase 2 AI. And we understand the data that we need to use to get there so there aren't any surprises.

When our projects are delayed it's typically related to data that we need to get that we are getting from a third party that we don't have yet.

MR. OXER: So it's a delay on their part. So in the event that there was an event it would be a matter of acquisition of the data, not the digestion of the data.

MS. IGLER: Right.

MR. OXER: That's something that even if you fell behind with brute force application of manpower you could still power through it.

MS. IGLER: Exactly.

MR. OXER: Good. That's on the record.

MR. CONINE: Mr. Chairman, I think if she gets a little behind in her work when she gets to the zoning analysis in Houston she can make up a lot of time.

MR. OXER: Just say not applicable and go to the next paragraph. Okay?

MS. IGLER: We have a subcontractor that's doing the zoning analysis out of El Paso.

MR. CONINE: Where is home for you?

MS. IGLER: Excuse me?

MR. CONINE: Where's home for you? Where's home for BBC?

MS. IGLER: We're from Denver.

MR. CONINE: In Denver?

MS. IGLER: Our sole office is in Denver.

MR. OXER: It's a little warmer down here than it is up in Denver.

MS. IGLER: It is. It's very nice.

MR. OXER: Little steamier down here too by the way. Are there any more questions?

(Pause.)

MR. OXER: Okay. We have a couple of --

MS. IGLER: Thank you.

MR. CONINE: Thank you.

MR. OXER: Hold on just a second.

(All talking at once.)

MR. OXER: Okay. All right. Cameron? Cameron's going to give us a report on the recently completed and posted QAP. So --

MR. DORSEY: Yes.

MR. OXER: -- have at it.

MR. DORSEY: The Board book --

MR. OXER: And you are?

MR. DORSEY: Cameron Dorsey, director of housing tax cuts. Good morning. The Board book includes a report item that identifies those changes the Board made at the November meeting to the QAP and its motion to approve that QAP for publication in the Register and to send to the Governor for approval.

In addition to that, it includes -- identifies a couple of changes that the Governor made to the QAP prior to his approval -- or during his approval. Those changes include a removal of all of the language related to forward commitments in the QAP -- all of the existing language related to forward commitments. So that language has been struck. And, in addition to removing that language, there was a piece added to the waiver section that basically says rules can't be waived in order to provide forward commitments.

In addition to that change, there were some other changes to the waiver section kind of tightening up that section. The portion of that section that refers to waivers being given for good cause has been struck so that -- for good cause. And it's been replaced with -- or kind of modified to say necessary to accomplish the priorities in 2306.

And then there's another couple of lines there that are added to allow the staff to bring back a report item that basically identifies how any waiver may have affected the folks in line behind that particular applicant that got a waiver.

So those are the changes that were made by the Governor. At this point we submitted the QAP to the *Texas Register,* and we've been in discussions with them about minor tweaking of things to make sure it meets all of their requirements and hopefully it will be formal and final in a -- within the next couple of weeks.

We did go ahead and post the version that the Governor approved, which is not technically the -- technically final until it goes into the Register. But given that cycle is starting very quickly here we wanted to make sure it got out there for everyone to view.

MR. IRVINE: And any tweaking that would be occurring in the process with the Secretary of State is non-substantive tweaking dealing solely with formatting issues. Unlike the rest of the world which uses Word with track changes the Secretary of State uses ASCII text with little carats and asterisks and all those other kinds of things. And they also have a very particular format about how sections, paragraphs, sub-paragraphs, et cetera are organized and numbered. And that format is very hard to work with in a Word document.

MR. OXER: So it's format and grammar is what we're looking for from here out.

MR. IRVINE: Not even grammar. If there's a grammatical mistake it's going to stay.

MR. DORSEY: Sometimes references within the document change as a result of other formatting-type changes.

MR. OXER: Any questions?

(No response.)

MR. OXER: All right. Any others?

(No response.)

MR. OXER: That was pretty easy, Cameron. They let you off easy this time.

MR. CONINE: Mr. Chairman, I'd just like again to thank staff for all their hard work on the QAP through all this. You all did a great job and --

MR. OXER: And I think we'd like to also make sure it gets into the record that the staff made the effort to reach out and produced a community-phasing document first, which is a staff draft, and this is -- I think we lost count, Cameron -- but this is like the seventh iteration of one that came -- if you count the Governor's modifications it's number eight.

MR. DORSEY: Who knows?

MR. OXER: Yeah, it was getting close to double figures. But, you know, I'd like to think everybody here feels comfortable, if not with the final result at least with your capacity to engage to participate in the process. So my thanks to the staff and certainly from the Board up here because, you know, it's a better document and we'll have another shot at it next year. So any more questions? Comments?

MR. IRVINE: As long as you're making thanks I would like to express thanks certainly to our Board members who just put in an incredible amount of time and attention to getting the QAP to where it needed to be and --

MR. OXER: Kent spent a whole day working with staff which we appreciate very much.

MR. IRVINE: Tremendous valuable. And also I'd like to thank TAAHP, especially the TAAHP leadership: Dave Koogler, Sarah Anderson, Diana McIver, and Cynthia Bass. I mean, you guys did -- you spent long afternoons sitting in very blah conference rooms working through a lot of details, and not just on the QAP but on the RAF and on some other issues, and we're very appreciative.

MR. OXER: Great. Thanks, Cameron. Now to the consent agenda. Okay. All right. Any items to pull? Mr. Conine?

MR. CONINE: I have a question about Item Number 1. I'm not sure whether it's (a), (b), or (c), but why don't we just pull all three of those and I probably can get a quick answer to my question and then we can approve them all.

MR. OXER: Okay. Any others? All right. I'd like to pull 1(j) and 1(k) on the multifamily -- I'm sorry -- neighborhood stabilization. We'll just take those right here. So with regard to consent agenda I'll entertain a motion.

MS. BINGHAM ESCAREÑO: Move to approve the consent agenda with the exception of Item 1 (a), (b), and (c) and Item 1(j), (k).

MR. OXER: Okay. Motion by Ms. Bingham.

MR. CONINE: Second.

MR. OXER: Second by Mr. Conine. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: Motion passes. All right. Let's take up 1(a) through -- (a), (b), and (c). Good morning, Tim.

MR. NELSON: Good morning. My name is Tim Nelson, director of bond finance. Our first item is the Resolution 12-013 approving the Third Amendment to the 30th Supplemental Residential Mortgage Revenue Bond Trust Indenture which includes modifications to our New Issue Bond Program including extension to 12/31 of 2012.

I think, as the Board is aware, since December of '09 we've been operating under this New Issue Bond Program which gave us 300 million of bonds that the Treasury was willing to buy from us for below market rates.

That program initially was set to expire at the end of 2010.

Last December we worked with Treasury to get an extension through December of this year. And actually on the Wednesday before Thanksgiving, Treasury finally came out and announced that they were extending the program through 12/31 of 2012.

So this is just getting authorization from the Board for us to go ahead and execute documents to extend that program through the end of next year under the new terms.

MR. CONINE: Tim, my understanding in reading the publication from Treasury is that they also have allowed us to do multifamily with that portion of those bonds as well. And I didn't see anywhere in (a), (b), or (c) an indication that the staff had recommended to do some multifamily with those bonds.

MR. NELSON: We have -- under the extension they made a number of changes that you could use single family bond allocation for multifamily, you could use multifamily bond allocation for single family -- which we didn't have any so that doesn't apply to us. They also removed the requirement that we sell a portion of the bond issue in market bonds.

So we certainly have that ability. I had a brief discussion with our bond counsel, and given that these 2009(c) bonds -- or NIBP bonds -- are -- were sold originally under the RMRB indenture, which is a single family indenture, she's not certain that we would be able to sell a piece of those and use it for multifamily as opposed to single family. But that's certainly something that we can talk about.

All this does is it allows us to extend until 12/31 of next year to ability to use that allocation. We're not making any -- we haven't forestalled any options in terms of using all of that for single family or all of that for multifamily. It just merely extends out so that we don't have to redeem --

MR. OXER: So it doesn't restrict the latitude you have in --

MR. NELSON: We have complete latitude under the NIPB program --

MR. OXER: Right.

MR. NELSON: -- to do all the things that they said they want to allow you to do. Our problem might be trying to figure out how to get those done within the restrictions that are in our bond indenture.

MR. CONINE: And can we -- we can't go get another new fresh allocation for next year.

MR. NELSON: No. That was one of the -- that's one of the things that they were looking at that a lot of issuers who were in a position where they'd used all of their NIPB were really pushing Treasury to come out with what people were referring to as NIPB 2.

All this does is it gives you more time to use the allocation that you received in December of '09. It does not give you any new allocations. So they looked at that and ultimately decided not to open it up to any new allocations.

MR. CONINE: Okay. Would you mind doing some homework on that between now and next month's meeting --

MR. NELSON: Absolutely.

MR. CONINE: -- and seeing what other -- how other states are doing that. Because I'm hearing that they're going to use quite a bit of it for multifamily. And obviously, you know, with the super low rates that you get with this sort of allocation of the bond programs, coupling it with 4 percent credits, for instance, would just be a phenomenal tool again to get more affordable housing on the ground all across the state.

And somehow or another the other states and the other FAs and the other bond counsels have figured out how to do it and we just need to get on board with that if we can.

MR. NELSON: I'd be more than happy to do some research on that. Like I said, any action that you take today definitely does not provide any restrictions --

MR. OXER: This just gives us --

MR. NELSON: -- on that.

MR. OXER: This just gives us some more time.

MR. NELSON: That's correct.

MR. OXER: So it's just the mechanics of extending the calendar.

MR. NELSON: That's correct.

MR. OXER: Great. Call the question then. Okay. Is that on (a), (b), and (c), Tim?

MR. NELSON: Yep.

MR. OXER: Okay. Then we'll entertain a motion.

MR. CONINE: Move to approve Item 1(a), (b), and (c).

MR. OXER: Motion by Mr. Conine.

MR. KEIG: Second.

MR. OXER: Second by Mr. Keig. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: Motion passes. Okay. Regarding -- thanks, Tim. Regarding 1(j) and 1(k) --

MR. GANN: Mr. Chairman?

MR. OXER: Mr. Vice Chair?

MR. GANN: Mr. Chairman, I'd like to recuse myself on the items having to do with NSP. Those are Items 1(j) and 1(k).

MR. OXER: Okay. You may recuse yourself without removing yourself if you care to. But --

MR. GANN: Well, I'd better go out there.

MR. OXER: Okay. The -- morning.

MS. HOLLOWAY: Good morning.

MR. OXER: How are you today?

MS. HOLLOWAY: I'm just fine. How are you?

MR. OXER: Good. Well, hard to tell this early I gotta tell you. The -- all right.

MS. HOLLOWAY: All right. My name is Marni Holloway. I'm the director of the Texas Neighborhood Stabilization Program. Thank you, Chairman Oxer, for this opportunity to present our items to the Board.

Item 1(j) is -- we are requesting the Board's approval of three participants in our reservation system moving forward. These are entities who have provided applications that have been reviewed by staff and they are qualified to participate to use the NSP funds moving forward.

The organizations that we are presenting today include the Texas State Affordable Housing Corporation. They are proposing to undertake land banking, demolition, and redevelopment activities. The Cesar Chavez Foundation plans to use NSP funds for purchase and rehabilitation. And the City of Grand Prairie also plans to use the funds for purchase and rehabilitation. Are there any questions?

MR. OXER: Questions? Kent?

MR. CONINE: No.

MR. OXER: Okay. My only interest in that was having these extracted from the consent agenda so Vice Chairman Gann would not be voting on the consent with those items in it.

MS. HOLLOWAY: Okay.

MR. OXER: You betcha.

MS. HOLLOWAY: Item 1(k) is requesting Board approval of an extension to the contract with the Travis County Housing Finance Corporation. We are requesting extension of that contract for a total of 19 months cumulative. The extension is needed so that we can finish up our approval and reimbursement of funds that Travis County has previously expended.

MR. OXER: And staff recommendation is?

MS. HOLLOWAY: Is to approve the extension.

MR. OXER: Good. Any questions?

(No response.)

MR. OXER: Entertain a motion.

MR. CONINE: Motion to approve Item 1(j) and (k).

MR. OXER: Motion by Mr. Conine.

MR. KEIG: Second.

MR. OXER: Second by Mr. Keig. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: Motion carries. Thank you, Marni.

MS. HOLLOWAY: Thank you.

MR. OXER: Can you rescue our lost colleague there, Michael? And while we're having a moment to seek our other Board member, I'd like to say good morning, Julie. Nice to have you here.

MS. FRANK: Morning.

MR. OXER: Good timing. We're just getting to your part anyway. Okay. Any other items out of the -- anything out of order here? All right. Then we'll take 2(a).

MR. IRVINE: 2(a) is just minutes from the prior meeting, Mr. Chairman.

MR. OXER: Okay.

MR. IRVINE: Staff recommends approval.

MS. BINGHAM ESCAREÑO: Move to approve.

MR. CONINE: Second.

MR. OXER: Motion by Ms. Bingham, second by Mr. Conine. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: Motion passes. Okay. Now we'll have the show time. 2(b), which is presentation and discussion of the adoption of the expanded clarification regarding actions taken to award forward commitments.

I would offer that the purpose of this discussion is simply to clarify and not to expand the rationale, but to simply quantify and corroborate and take -- has taken all of the rationale that were expressed in the prior meetings about why the forward commitments were made as they were and the decision how it was taken.

So is there any comment from the Board?

(No response.)

MR. OXER: Well, how should we proceed there, Mr. E.D.? Would you like --

MR. IRVINE: Well, Mr. Chairman, we've gone through and compiled into the single document in your Board materials excerpts from official transcripts of prior meetings laying out the rationale for each of the forwards.

And essentially, as I see it, the way this matter's posted the only action you really can take is if you agree that that accurately reflects the rationale upon which the forwards were based that you memorialize that and then it's on to other items.

MR. OXER: Well, let's -- I know we have some public comment here, so, Julie, would you like to make any comment or have any contribution?

Okay. The Board book has a letter attached by Senator West seeking a clarification and more detailed understanding of the rationale for these decisions. The -- those were extended -- that was quantified in the book in the Board posting. Details for each one of the eleven forward commitments that were made are reflected in 2(b).

Does the Board have any questions or comments? Any thoughts? Any more detail on it?

Then the only thing that I see that we're here to do is to simply confirm that regardless of whether or not you voted for or against the motion on the forward commitments this is a recognition and quantification of the detail that preceded all of those commitments.

MR. KEIG: So can I just make a comment?

MR. OXER: I'm looking forward.

MR. KEIG: Having voted against the motion I intend to abstain if there is a vote on these comments.

MR. OXER: The vote on the comments would only be to say that this is how it happened and these are the criteria, not whether it was right or wrong in anybody's eyes.

MR. KEIG: Well, I still intend to abstain.

MR. OXER: Recognized -- noted. Okay. Given that, is there any action we need to take on this apart from quantifying and recognizing that this quantification is in the record now?

MR. IRVINE: Mr. Chairman, I do not believe there are any legal compulsion to take action as staff has gone in and excerpted from the court recorded -- court reporter recorded transcript the relevant pieces from prior Board meetings relating to the rationale for forwards, and we believe that that sets forth as fully as can be set forth the record for why the Board took its actions.

And I would also say while I've got the mike that, you know, forwards are a little unusual for staff to deal with because we only have so many resources and we can only go through so many applications in terms of underwriting and detailed review.

But we intend fully to continue to work through any open issues with the recipients of forward allocations. And as we address those issues if they need to come back to the Board approval for things such as necessary waivers we would bring them back at the appropriate time.

They will continue to go through underwriting and clear underwriting. As any obstacles presented by the QAP are identified we'll address them. And once they're all addressed and in appropriate condition to issue commitment notices staff would intend to go ahead and issue commitment notices so these guys can get their shovels in the ground.

MR. OXER: Cameron, can you answer a couple of questions for us? Just for the record --

MR. DORSEY: I'll try to.

MR. OXER: Well, we'll all try to. The -- on the competitive round for all those who got the commitments to start with -- not the forward commitments -- everybody who receives those still has to meet underwriting, meet the rules, meet whatever criteria there are to satisfy the detail to meet the -- to receive that commitment. Right?

MR. DORSEY: That's right. Or if there is an issue that arises generally it would be -- it would come back before the Board as either a waiver, or if there were underwriting issues that were resolved -- or that were kind of unresolved and a report was posted with effectively a not recommend after a commitment was issued because the underwriting wasn't done at the time that the Board approved that particular award, then generally that would be dealt with through the appeal process. In any case it would be -- it would come before the Board.

MR. OXER: All right. So since a forward commitment is essentially a commitment out of next year's allocation it has to meet the same criteria -- follows the same path, reaches the same destination.

MR. DORSEY: That's our general process is to -- unless directed otherwise by the Board.

MR. IRVINE: Well, and it would all be handled under the current QAP because it was --

MR. OXER: And under the --

MR. IRVINE: -- under this QAP that they were awarded.

MR. DORSEY: That's right.

MR. OXER: Right.

MR. IRVINE: Yeah, and I would think that all of the current QAP procedures regarding waiver, et cetera, under the 2011 QAP would govern.

MR. CONINE: Mr. Chairman, you know, I'd make at least this observation that -- is that at the time we as a Board elected to make the decision on the forward commitments our assumption as a Board -- at least this Board member and historically has been this way -- has been that if there were any issues related to the project just being on the list that those were accepted by the Board at that time. And that was the intent of my motion that I made at that time.

Now, if there -- and that was always subject to underwriting. We always underwrite these things afterwards because we never have a chance. But at least on the record I view it as my intent to -- that staff had a waiting list prepared for us, they were eligible to be on the waiting list, the Board made a decision to make -- to do forward commitments. And if there are issues that come up after that then it's appropriate in my mind that staff handle that with the individual applicant.

But at the time we made -- and the intent of my motion was that that project at that point in time qualified for a forward commitment and we made that decision. So --

MR. OXER: Contingent upon underwriting.

MR. CONINE: Correct.

MR. OXER: Any other comments? Any other thoughts?

(No response.)

MR. OXER: Well, I guess we'll memorialize this as part of the record since it's in the Board document and the posting for this meeting. Tim?

MR. IRVINE: Well, I actually -- I have a question on Mr. Conine's clarification there. So if we had, for example, an application that did not meet exactly a threshold issue or something like that and for whatever reason staff had failed to get it, you know, fully resolved and addressed and vetted, is it your position then that the Board implicitly approved the waiver of that or that the waiver needs to come back to the Board?

MR. CONINE: I think it was, of course, staff's responsibility --

MR. IRVINE: Right.

MR. CONINE: -- to make sure the Board's fully informed at the time we make any decision. But second bites at the apple, so to speak --

MR. IRVINE: Sure.

MR. CONINE: -- have not historically happened on forward commitments. These guys go out and spend hundreds of thousands of dollars from October until now preparing to get done. And if there's an underwriting issue that comes up --

MR. IRVINE: Right.

MR. CONINE: -- I'm -- we're all onboard with making sure they get underwritten appropriately. But if there are other issues that should have been taken care of or that were mentioned in the Board write-ups as a potential problem that we, you know, selected a project and it got approved then I -- you know, in my opinion I deem it -- the intent of my motion was to make sure that all those were handled at that time with the Board approval, which only leaves underwriting from that point forward.

MR. IRVINE: Well, I take responsibility for it, but there were issues that were not presented in the Board write-ups that we believe need to be addressed that we do not believe staff has the authority to address. Specifically, at least one instance of an application that would not as filed have met one particular aspect of threshold and at least one instance I believe where the way that the $2 million cap is applied would need to be clarified that they were coming out of the 2012 cap.

MR. KEIG: Mr. Chairman?

MR. OXER: Yes, sir, Mr. Keig.

MR. KEIG: Were either of those issues before the Board at the time we voted on the forwards?

MR. IRVINE: They were not, to the best of my recollection.

MR. OXER: So the Board had to -- I'm getting to this -- the Board accepted these on the motion for forwards -- accepted them as is. Is that what your point is, Mr. Conine?

MR. CONINE: Yeah, I -- you know, again, I don't want to put the developers in the anxiety bucket, you know, of having to wait through a second bite at the apple so to speak. These guys are spending money. If there were issues, you know, we should have been notified to come back after the fact and find an issue other than underwriting.

To me, unless it's just, you know, just something just wild and crazy it should have been -- you know, I don't want to throw staff under the bus by any stretch of the imagination, but -- because they're busy doing a thousand things. But we should have been made aware of it at the time.

And unless it's something, you know, that's just outright crazy then -- and if it's some little nuance we need to make sure that their -- at least the intent of my motion was back in October that those projects were on the waiting list, they were eligible for forward commitments, and we chose them.

MR. OXER: Because if they were on the waiting list that means they were eligible which to my mind would say that they satisfied those criteria.

MR. CONINE: That's correct.

MR. OXER: Okay. So then each of the forwards is contingent upon satisfying the underwriting requirements and that's it.

MR. CONINE: I want to make sure we get folks in Giddings take care of. Okay?

MR. OXER: I understand.

MR. CONINE: I just -- and other projects that may -- that staff may find something after the fact. I just, you know, want to make sure that we get some affordable on the ground in places that need it.

MR. OXER: I think that's the intent of the entire operation here.

Yes, sir, Mr. Keig.

MR. KEIG: Mr. Irvine, have we had situations -- let's not look at it as forwards, but just awarding tax credits. Have we had similar situations where something came up afterwards that was not underwriting, like the cap, like the other instance you mentioned where we went back and undid our award of a tax credit? Not --

MR. OXER: Cameron, do you have any anecdotal evidence on that?

MR. DORSEY: I think -- we've dealt with the cap issue before, and I think it was dealt with by honestly Tom jumping up and saying, Whoa, wait. I just happen to know on this one that there is a cap issue and it kind of got just worked out right there.

The process for -- our review process is that -- has historically been that we do a eligibility and selection review for every application. However, threshold reviews are a lot more detailed and can be a lot more cumbersome. And so we only do complete threshold reviews on those applications that we believe are priority and will ultimately be, you know, slotted for -- in the money, so to speak.

So -- and then if there's any -- for example, if money comes back after approval of the waiting list and we can award something further down on the waiting list and we haven't done a threshold review we would go through the process of doing a threshold review and completing that type of review.

Last year we --

MR. CONINE: That seems to be different from my memory of history in that we've always determined threshold review way early in the game. In fact, you send out deficiency letters and all kinds of responses. And so if we're waiting as a staff to -- not to underwrite them but just look at threshold review at a time where the waiting list is active. And that, you know, appears to be a problem as far -- won't be a problem in the future now but it -- you know --

MR. DORSEY: Well, I mean --

MR. CONINE: -- could be an issue.

MR. DORSEY: -- yes and no. It won't be a problem in the future with respect to -- at least not next year with respect to forward commitments. But it may be a problem with respect to reassigning tax credits from the competitive round that had to be returned because they were unable to be used.

So you go to the waiting list, and if that waiting list is sitting there without the threshold analysis done on it then you may give it to somebody who can't then qualify if they're insufficient -- or deficient in their threshold.

MR. DORSEY: Right.

MR. OXER: Tom, you got --

MR. GOURIS: Yes. Tom Gouris, deputy executive director for housing programs. Mr. Conine, it's not so much a second bite at the apple. It's that some information's not readily available and it appears that it meets threshold. And then we go through an underwriting, we go through -- we find some additional information that is in conflict and then something happens we say, Hey, wait a minute, did they really originally meet the threshold requirement?

We have, in fact, brought things back and had to address things and have gotten waivers things for forwards and for regular awards after the fact. So it does happen.

Windwood would have been a good example last year -- that we made them go through a bunch of work to meet a policy that we were evolving and creating after the forward was made. So it does happen.

And, you know, we always strive to address, you know, threshold issues and other issues at the front end if we can. But, you know, sometimes it happens where we don't have all the information.

There's some particularly peculiar -- or interesting issues with some of the forwards that we have this year. The $2 million one is a good example of that in that there is some questions of eligibility that were pulled back and decided to deal with all at one time if they were to get a forward. And that was a known issue for the applicant. It wasn't something we brought in front of the Board when the waiting list was presented because there may be a whole bunch of listings.

Again, we don't have the opportunity to -- and the time available to do a full analysis of all of the waiting list. I wish we did because then you guys would have great information, and that's what we propose in the waiting list.

MR. CONINE: Not necessary going forward obviously. But, you know, historically it's not -- at least in my memory -- hasn't been typical that a project's on the waiting list in July when we make awards that haven't passed threshold. I mean, that's just historic. And we may be dwelling on this stuff for no reason at all -- just, you know --

MR. DORSEY: Historically I think we have been able to resolve issues. Last year we had a similar issue with a deal and I think we were able to work with the applicant to resolve that issue where they, in fact, were able to meet the rule. This is a unique situation because the -- you know, it's kind of an unresolvable issue. So --

MR. OXER: Okay.

MR. KEIG: Mr. Chair, if we do have something like that that has popped up that's a threshold issue and it's eligibility to follow our QAP it sounds like to me we do have to take a look at it and decide one way or the other whether we want to waive that rule requirement.

If they're looking at a couple of instances, I don't think we can just say we blanket-approved that if it wasn't before us.

MR. OXER: Noted.

MR. IRVINE: What I would propose as the resolution of this would be that staff would bring back these items at the next Board meeting with, you know, the information and the Board could basically ratify that it, in fact, waived specific requirements. But I think that only the Board can take that action on the QAP.

MR. OXER: Okay. Just as a thought -- as a comment on this, I mean, from my limited perspective, the $2 million cap is out of the year of the allocation -- at least it would seem. If you had a project for this year and a forward for next year those are two different items that come out.

MR. DORSEY: We could go into quite a bit of detail on this. The statute uses the term "allocation." The allocation is actually made in the year -- at the end of the year from which the ceiling -- or the award money comes from. So, for example --

MR. OXER: So we're working on the 2011 allocation now.

MR. DORSEY: Statute can be interpreted two ways. The QAP clarifies which way that statutory requirement is going to be applied.

MR. OXER: Then clarify it for us.

MR. DORSEY: Okay. So there are effectively, you know, two very clear options based on the statutory language.

VOICE: Explain what it is.

MR. DORSEY: Well, one is that we apply it in the year that the award is made or the other is we apply it in the following year. You could read it both ways. The QAP clarifies that we will -- the Department will apply it in the year that the award is made.

MR. OXER: So the QAP -- for example, if we had a project this year and a forward commitment for next year that was the same project proponent that constitutes two projects from this year's allocation.

MR. DORSEY: For the purposes of --

MR. OXER: For the purposes of the --

MR. DORSEY: -- the $2 million cap.

MR. OXER: Right.

MR. IRVINE: That is correct unless the Board waives the application of that provision of the QAP --

MR. DORSEY: That's right.

MR. IRVINE: -- so that the 2012 cap could apply instead.

MR. DORSEY: That's right.

MR. CONINE: And I would add that historically I can't ever remember doing a forward that was actually counted in the year of the allocation.

MR. OXER: In the year --

MR. CONINE: It's always, as you stated, Mr. Chairman, the future year.

MR. OXER: Well, you know, just -- whatever the legal wranglings are, from my way of thinking if you're taking out of this bucket this year and there's another bucket for next year and we're saying we get some out of next year it goes on next year's cap.

MR. CONINE: Right.

MR. OXER: Counselor, do you have any contribution to make?

MR. PENDER: Yes. Jeff Pender, deputy general counsel. This item is posted for a discussion on the rationale for granting the waivers at the last Board meeting. And I'm not exactly certain what you're discussing right now but it doesn't seem to have anything to do with the rationale for the waivers that were -- I mean, that the -- for the forwards that were given last time.

MR. OXER: Thank you slapping us back into line.

MR. CONINE: Back out of the bar ditch, onto the road.

MR. OXER: Jack this truck back out of this ditch, and let's keep going.

MR. PENDER: Those other issues can be, you know, discussed at the next Board meeting.

MR. OXER: And so we will. Thank you for that. All right. Thanks, Cameron. All right. Well, to my way of thinking we have only to confirm that -- and I don't know that there's any resolution required unless we vote to say, Yeah, this is the way it's annotated in the record is exactly what happened -- those are the criteria that were used to make the forwards and this is it. Jeff?

MR. PENDER: Jeff Pender, deputy general counsel. If you believe that there were some additions to your rationale it might be good to adopt as the Board those additions to your rationale understanding that Mr. Keig is recusing himself on this. I think we have -- yeah, we still --

MR. OXER: He's not recusing. He's abstaining, which is a little different.

MR. PENDER: Okay. Okay. Yeah.

MR. OXER: He gets to stay but he abstains. You know, if you get to recuse you get to leave.

MR. PENDER: Well --

MR. CONINE: Mr. Chair?

MR. PENDER: -- and I would like to --

MR. OXER: Mr. Conine.

MR. CONINE: I move to adopt -- move to accept the staff-generated explanation of the rationale for forwards in our Board book.

MR. OXER: As presented.

MR. CONINE: As presented.

MR. OXER: Okay. Thank you, Mr. Conine. Motion by Mr. Conine to accept.

MR. GANN: Second.

MR. OXER: Second by Mr. Gann. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: Abstaining -- Mr. Keig. Okay. Does that complete our discussion on 2(b).

MR. IRVINE: Yes, sir.

MR. OXER: Good. 3(a). Cameron? Welcome back, Cameron. We haven't seen you for a while.

MR. DORSEY: Thank you.

MR. CONINE: Mr. Cameron.

MR. DORSEY: Cameron Dorsey, director of housing tax credits. Item 3(a) is an appeal of the rescission of credits for Woodside Village Apartments.

Woodside Village Apartments is a transaction that received a 2011 tax credit award at the I believe July 28 meeting. And part of the Board's approval was a condition on the award that by the time of carryover any issues related to final inspections get resolved on previous transactions of one of the principals in the deal. And they were unable to resolve those on November 1, which -- by November 1, which is the date of carryover -- that the carryover's due. And they have yet to resolve those issues as we speak now.

The appeal is to request that that particular partner and the affiliates of that partner be effectively replaced with new folks that weren't previously involved in the transaction. We -- they originally appealed to the executive director and we denied the appeal effectively stating that, you know, the issues had not been resolved. It was a condition of the award. And that the partner in the transaction that was proposed to be removed is the guarantor, the 49 percent owner of the GP, the experience for the transaction, and the developer for the transaction, and was the primary contact, and, frankly, only contact through the -- until after the commitment notice.

Another notable point is that they did have the opportunity to appeal the inclusion of that condition in their award. And that was not done at that time. Staff is effectively recommending that the appeal be denied.

MR. OXER: Let's see. We're supposed to move and then have public comment.

MR. IRVINE: On appeal we need to hear the other comments.

MR. OXER: We need to comment. Okay. All right. We have a number of -- you can park right there for a second, Cameron. I'd like to just take a second and welcome Rebecca Martinez -- good morning --

MS. MARTINEZ: Good morning.

MR. OXER: -- from the Governor's Office joining us. Anybody else?

(No response.)

MR. OXER: Okay. All right. We have six requests to speak on this issue. Mike Sugrue has yielded his time to Linda McMahon. Those will be the first two. Hud Karshmer -- or Sara Anderson has yielded time to Hud Karshmer, so it'd be Ms. McMahon and Mr. Karshmer. Then after that would be -- Claire Palmer has yielded her time to Pastor Carpenter. So good morning.

MS. MCMAHON: Good morning.

MR. OXER: So far.

MS. MCMAHON: Good morning Board. My name is Linda McMahon, and I am the principal of Neighborhood Strategies, which is registered historically underutilized business. And I am the 51 percent owner of this Woodside Village project, applicant 11203, Woodside Village.

As you have heard from Cameron the project was awarded tax credits in the at-risk set-aside in the 2011 round. And I'm here to appeal the rescission that occurred at the beginning of November.

The project is 100 percent HAP contract -- 100 units in Kinney, Texas, and it has received a one-year extension on its HUD -- HAP contract -- Section 8 HAP contract. But it's only a one-year reprieve for these tenants, and in all likelihood the current owner will have no alternative but to demolish but the property and rehab it into a market-rate property. The site would support a market-rate development but these tenants can't afford those units at those rents.

And, in addition, this project could not compete under the new

QAP for next year. It simply would not score enough points. So this is truly a one-shot opportunity for the tenants in the project.

My company was formed in 2009 following my retirement from JP Morgan as the Southwest manager for community development, which was the affordable housing finance group for JP Morgan. And subsequent to that I formed my company, Neighborhood Strategies, for the purpose of being a consultant and a developer in the affordable housing business.

In January of 2011 I was approached by Summit to become a partner in this transaction because of my experience and knowledge of the industry. And having a background that I have, obviously I did a lot of due diligence into my partners. And at the time, just like every loan I made at the time was a good loan, at the time I thought I made a good decision. I had --

MR. OXER: I have a few of those that I'd like to talk about.

MS. MCMAHON: Okay. Maybe we would -- that would --

MR. CONINE: I don't.

MS. MCMAHON: -- be a cause of conversation.

MR. OXER: Well, talk about it.

MS. MCMAHON: I checked their financials, I checked their compliance history, I talked to their investors from prior deals. I had no indication that there was going to be compliance issues.

I was very involved in the underwriting portion of the project, and while I wasn't the point of contact for the TDHCA I can assure you I was involved in the project in the development. Obviously the TDHCA can't have a lot of multiple people being point of contact for a project. It would just make it too complicated, so I was not. And that was not my intention is to be the point person for the project.

But all of my due diligence proved to me that I thought this would be a good partnership. Obviously the project -- the development is in dire need of rehab. And it's a pretty sad-looking property, and the people that live there deserve a better place to live, so I thought it was a good opportunity for me to enter into the development world.

I spent the year with Summit working on the transaction. I worked with the property broker, the seller's attorney -- all the aspects relating to the development. And, as a matter of fact, when I found out about the compliance issues on November 1 -- and that was the first time I'd heard about them -- we were actually starting to plan closing calls.

So it was a complete surprise to me about the compliance issues. And I might add I'm not involved in those transactions so I would have no knowledge about that, and it's not public record until actually the agency decides to make it so.

So I -- when the allocation was rescinded my attorney, Claire Palmer, immediately filed an appeal and started discussions with the TDHCA in terms of what our options were and how we could potentially bring this transaction to a close. Again, my sole goal was basically to rehab the property.

So I spent a considerable amount of time interviewing some replacement partners -- not exactly what I expected to be doing in the month of November -- and finally came down to two. There are two qualifiers that we had gotten from staff. One, they had to make sure that they were under the development fee cap; two, they had to be -- have a spotless compliance record. So that was really -- those two important things were part of my due diligence process in identifying a replacement general partner.

Through my experience with JPMorgan, I also was responsible for the Colorado market. And so I -- when I got down to the two finalists one of the finalists that survived still -- which is here today -- was a developer that I was very aware of and knew of their reputation in Colorado -- they're based in Denver. So they were obviously known to me, they have a stellar record, and they also have experience here in Texas. They have an excellent compliance history and they also --

MR. OXER: You have two more minutes.

MS. MCMAHON: Right. They also have done business with the general contractor. So in evaluating the replacement general partners this partner was the one who could step in and seamlessly bring this project to a close -- so obviously my first choice at the end of the day.

So I would ask that you allow this appeal to occur -- and grant our appeal. The QAP allows you to replace the general partner, so I'm not asking you for something that's unusual. The real goal here is to make sure that the people that live in this property have a decent, affordable place to live.

And so this rehab, if it does not occur and you do not grant this appeal, as I said earlier, we won't have the ability to do anything under the tax credit program for the hundred families that live in this unit. So I would request that you grant our appeal and I thank you very much for your time.

MR. OXER: Thank you. Any questions from the Board?

Kent?

MR. CONINE: Ms. McMahon, you said in your testimony I believe that back in January or whenever it was that you had done some due diligence and background checking on the previous general partner; I think you mentioned compliance. Can you kind of go embellish that a little bit more?

MS. MCMAHON: Well, all I did was make some inquiries in terms of their compliance history with other projects. And so they had --

MR. CONINE: With our staff?

MS. MCMAHON: Yes.

MR. CONINE: Okay.

MS. MCMAHON: So I think that they had at the time -- and that was a casual inquiry -- it wasn't a formal written submission. At the time I think they had three or four properties, and at that time I think they were probably all under construction so maybe there weren't compliance issues that had surfaced yet.

MR. OXER: What were the compliance issues that had surfaced?

MS. MCMAHON: I don't know.

MR. OXER: Just compliance.

MS. MCMAHON: I have no idea.

MR. OXER: Can you give me any -- can you give us any insight into that, Patricia?

MS. MURPHY: Sure. Patricia Murphy, chief of compliance and asset oversight. Summit has six existing housing tax credit awards. Five of those have failed to receive 8609s. They are all acquisition rehabs that have significant physical condition issues -- scores in the 60s on their UPCS reports.

These 2005 awards they have not cleared final construction inspection, which is an unusual delay. The most recent inspections for the construction inspection stuff -- there's, you know, 23 deficiencies on some of them. Like one of theirs -- the most recent UPCS we did they scored 47 out of 100. So there's some pretty significant physical condition issues. They will no longer be part of this transaction.

MR. OXER: Okay. And so what are the efforts underway, or have there been any, to rectify this.

MS. MCMAHON: I'm not part of --

MR. OXER: Or do you know.

MS. MCMAHON: I don't work for Summit. I have my own company and I'm not a partner in any of those transactions. So I have no knowledge of their actions.

MR. OXER: So what you're saying basically is Summit's out of the game on this.

MS. MCMAHON: Summit's totally out of the game and Steel is replacing them 100 percent. They will have nothing to do with this project at all.

MR. OXER: Let's see. Give me a report card on Steel.

MS. MURPHY: I'm sorry. I have not done previous participation reading on them yet.

MR. OXER: Okay.

MS. MURPHY: But from our perspective we have to resolve these existing transactions. So --

MR. OXER: Right.

MS. MURPHY: -- we have administrative penalties that we can go through. But so, you know, we'll do whatever we can to get these properties into shape, you know, including what we've done with this new award to say you have to get this stuff resolved before you can get another award from us. So that's why it was a condition of the award that you made for Woodside.

MR. CONINE: Then I have a follow-up question, Mr. Chairman.

MR. OXER: Yes, sir, Mr. Conine.

MR. CONINE: Ms. McMahon, she said she hasn't done a previous participation review on the new entity, yet you said you've checked them out and everything's wonderful.

MS. MCMAHON: Well, Claire Palmer has spoken with Cameron Dorsey regarding their history --

MR. CONINE: Aw, now we've got somebody.

MS. MCMAHON: -- and we've been told

MR. DORSEY: So I went in and just did a really quick -- it's not a full previous participation review, but just a really quick look at their existing properties. They're all very new properties. Most of them we haven't even been out to yet, and none of them had compliance scores higher than like a six.

MR. CONINE: So the Gestapo hasn't been there yet.

MR. DORSEY: To some of them. One of them we had been out to and it had a compliance score of a six. The other ones I don't think we had necessarily been out to yet. But, you know -- and I obviously conditionalize this but I said it doesn't look like they have compliance issues but --

MR. CONINE: How many properties --

MR. DORSEY: -- but we haven't gone through the full previous participation --

MR. CONINE: How many properties were there?

MR. DORSEY: There's like five or six.

VOICE: Five.

MR. DORSEY: Five?

MR. OXER: Five?

MR. DORSEY: Okay.

MR. OXER: By the way, for everybody, you know the difference between Chief Murphy here and a terrorist? You can negotiate with a terrorist. We deal with black-and-white rules in the rules game here. Thank you for that, Patricia. We really appreciate that.

MS. MCMAHON: If I might add, I can honestly say I have a lot of experience in this industry -- maybe not as a developer -- but I know how to get deals done. And so the ability to be able to get this project done with the right partner is something that I know how to do. And even though I don't have experience and I haven't developed before I have got 15 years in the affordable housing industry. So I would hope that you would take that under consideration.

MR. OXER: Certainly want somebody who knows what they're doing to get into this because I can tell you from personal experience it's not an adventure you come into unknowing.

MS. MCMAHON: I've learned that.

MR. OXER: Right. As have I.

MR. CONINE: Mr. Chairman, I move to grant the appeal.

MR. OXER: Well, we have some more comments to be heard.

MR. CONINE: Oh, I'm sorry.

MR. OXER: But hold your point. I understand that.

MR. CONINE: He's a good looking guy.

MR. OXER: You know, the --

MS. MCMAHON: Don't change your mind.

MR. OXER: If you guys want to say, Okay, amen, we'll let him have at it.

VOICE: If you want to grant the appeal we don't want to waste too much of your time.

MR. OXER: Well, I'm all over that.

MS. BINGHAM ESCAREÑO: I'll second the motion.

MR. OXER: Okay. Motion by Mr. Conine, second by Ms. Bingham to grant the appeal. Any questions?

(No response.)

MR. OXER: All right. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: Good. Motion passes.

MS. MCMAHON: Thank you very much.

MR. OXER: Thank you for being here, Mr. Carson.

MR. CARSON: Thank you.

MR. OXER: We will recognize that Claire Palmer was there, and, Pastor Carpenter, thank you for coming.

PASTOR CARPENTER: Thank you, sir.

MR. OXER: Got to defend your position. Okay. All right. Item 3(b) on Neighborhood Stabilization. Tom, I think -- is Tom here?

VOICE: Let me go get him.

MR. OXER: Find him. Okay. Everything else is fine with him. Okay. 4(a) -- Tim?

MR. NELSON: Good morning. I'm still Tim Nelson and still director of bond finance. And we are on Item 4(a), Resolution Number 12-014 authorizing the execution of a universal cap escrow agreement related to the residential mortgage revenue bonds, Series 2009A/B.

I'm going to attempt to go through this without having to get into too much detail on the ins and outs and vagaries of universal cap because it's a very complicated area.

But I would like to begin by reminding the Board that under our single family bond programs we have an annual requirement for down payment assistance that --

(Sound of phone ringing.)

MR. CONINE: There's a hundred bucks for Housing Trust Fund.

MR. NELSON: There you go. Who did that? Who did that?

MR. OXER: Go ahead, Time.

MR. NELSON: We have an annual DPA requirement that's in the 8 to $10 million range to meet our -- the requirements of what comes up day to day. I would also remind the Board that in May of this year the Board authorized us to move $3 million out of general funds that were set aside for our warehouse escrow agreement -- the escrow agreement for our warehousing agreement.

And so we started working with our bond counsel and working group people because we were trying to figure out -- we could either just take the money and put it into the RMRB indenture and certainly make it available for DPA, which is what, of course, the Board was intending to do in May.

But we were also trying to address in these transactions -- if you sell bonds and you don't end up using the proceeds for mortgages, which in our 2009 deal we had an extensive amount of negative arbitrage so we used a lot of the money in that -- out of those bond proceeds to fund capitalized interest. We also used a good portion of the money in that transaction to pay for cost of issuance directly.

So when you do that you create under the Tax Code what's called the universal cap exposure. You have to take other assets in your indenture, which we certainly have -- those get allocated over to that particular transaction and you are now subject to taking a look at the yield on all those assets. If they're above your bond yield you're subject to rebate.

So we've known that we've had that exposure. We've been trying to figure out how to address it. And working with bond counsel we determined that if we took these dollars and didn't directly put them in for down payment assistance, but instead put them in an escrow agreement, directly pledged them to that 2009 deal -- we now have assets that we know specifically what they are, we know what their yield is, and we could manage that rebate exposure.

So by doing that we also then free up other assets that are in RMRB that were obviously moved over and covering that issue because we didn't have these dollars.

So we're -- staff is recommending to the Board that we move forward with this approach so that we can basically accomplish both of those goals at the same time. And so staff recommends approval.

MR. OXER: So this is essentially the mechanics of directing the staff to do the things that will give you the latitude to manage the indenture.

MR. NELSON: Well, to -- yeah. To go through and take this action, take these general funds, put them under that escrow agreement.

MR. OXER: What's the cap lift on that -- or the cap -- was it 1-1/8?

MR. NELSON: Well, you're allowed on program assets to make 1-1/8 over your bond yield when -- and, again, we're going to start getting into a lot of details. When you have even mortgages they get reallocated under universal cap. You don't get the 1-1/8. You just get your bond yield. And so that lowers the threshold of what you can make on any of these free radical assets that are moving around and being pledged over this '09 deal.

So by taking this action again we know the dollars we're dealing with, we know what the yield on them is, we're able to specifically allocate those and pledge them to the '09 deal and at least to the extent of the 4 million we stop all of these assets that we don't know -- there are very complicated allocation rules related to this, so we don't know which assets at any particular point in time might be allocated. And then certainly again we have a number of different types of assets -- those all have different yields. So this --

MR. OXER: So this is a wiring diagram to keep us from getting off in the ditch again.

MR. NELSON: Exactly.

MR. OXER: Thank you. All right. Any questions? Mr. Conine, Ms. Bingham?

(No response.)

MR. OXER: Okay. Entertain a motion. And your -- the staff recommendation is to approve.

MR. NELSON: Is to approve.

MR. OXER: Okay.

MR. NELSON: Yes, sir.

MR. GANN: I move staff recommendation.

MR. OXER: Mr. Gann moves to accept the recommendation.

MR. CONINE: Second.

MR. OXER: Second by Mr. Conine. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: And there are none. Thank you, Tim.

MR. NELSON: Thank you. Item 4(b), Resolution 12-015 authorizing the sale of certain mortgage loans under the mortgage -- or the residential mortgage revenue bond trust indenture.

This is the -- the Board -- by way of some background, the Board authorized staff in December of last year to restructure -- to move forward with the restructure in our Series 1998 and 1999 bond transaction.

Staff, working with our legal counsel and working group, closed on that restructuring in June of this past summer. The result of that restructuring provided cash that we were able to use for our down payment assistance program.

The other result of that restructuring is we had about 650,000 of whole loans -- not mortgage-backed securities -- but these are old whole loans from the late eighties before we started doing mortgage-backed securities that, by virtue of the fact that we paid off those bonds we now have some of these mortgages that are floating around in the RMRB indenture similar to some of the assets we were talking about on the last item.

What staff would like to do is take those mortgages and move them over to the single family indenture. And we'd like to do that for two reasons. These are the only whole loans that we have in the RMRB indenture. All the rest of the assets are MBSs.

In the single family transaction we have about 6-1/2 million of other whole loans just like this, so our thought is get all of your whole loans into one indenture -- makes it easier for investors to understand, makes it easier for us to deal with rating agencies.

The secondary benefit that we get from this is that that generates some cash that we can then go ahead and use for our down payment assistance program. And as I outlined in the previous item we have an 8 to $10 million requirement and this would help us close that gap.

MR. OXER: And that 8 to $10 million requirement is what you anticipate for support of the down payment assistance or something you're required to keep?

MR. NELSON: That's our required need over any annual period so --

MR. OXER: So it's a projected need.

MR. NELSON: Projected need. That's correct.

MR. OXER: Okay.

MR. NELSON: So this would allow us to fill about three-quarters of a million dollar, you know, amount of that 8 to 10 million.

MR. OXER: And maintains transparency, increases your capacity to manage the total indenture -- all those good things. right?

MR. NELSON: And overall obviously we're not selling these out into the market so when you look at our balance sheet we have the same amount of cash we had before, we have the same amount of MBSs in mortgages. We just --

MR. OXER: We've just got it piled in a different bucket.

MR. NELSON: We've just got to realign them so it's a little bit easier to deal with, again, ratings agencies, investors, and the like. So staff recommends approval on this.

MR. OXER: So this increases the transparency to a rating agency so they don't have to guess where these are.

MR. NELSON: Right.

MR. OXER: Good. Any questions?

(No response.)

MR. OXER: Okay. Entertain a motion.

MR. CONINE: Move approval.

MR. OXER: Motion to move -- or motion to approve by Mr. Conine. Second?

MS. BINGHAM ESCAREÑO: Second.

MR. OXER: Second by Ms. Bingham. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: Motion passes.

MR. NELSON: Thank you.

MR. OXER: Thank you, Tim. Okay. Item Number 5. Hi, Eric.

MR. PIKE: Hello. Good morning. I'm Eric Pike, the director of the Homeownership Division. The item today that we're presenting is the ability to seek approval to publish our RFP for a market-rate Ginnie Mae program administrator for our First Time Homebuyer Program.

The -- through the new issue bond program the Department currently offers a single family MRB program, as you know. And, as you recall, NIBP was created by the Treasury in 2009 as a result of an inefficient municipal bond market. And what it's done is it's enabled housing finance agencies in the interim to offer competitive interest rates to first time homebuyers.

Although it's projected the Department can continue to operate its current NIBP program through the end of March it is unclear at this time whether we'll be able to achieve competitive rates beyond that date.

Although NIBP was recently extended, as Tim mentioned to you guy earlier, through the end of 2012 the pricing is more expensive and the interest rates achieved by using it would not currently be competitive. As a result, the Department's looking at other alternative programs.

TBA programs are -- it's called a To Be Announced program -- TBA -- are forward commitment mortgage programs that were developed to enable housing finance agencies to offer down payment assistance and access to the TBA market without assuming pipeline interest rate risk.

By offering a mortgage loan with down payment assistance and FHA can create a mortgage-backed security that can then, in turn, sell for a premium in the highly liquid Ginnie Mae market.

The Department intends that the administrator would manage and hedge its pipeline, estimate pipeline fallout, and deliver these mortgage-backed securities into the market. The program administrator would be responsible for covering financial risk and costs associated with any overages and underages.

And the benefits of such a program include reduced out-of-pocket cost incurred by the housing finance agency and no negative arbitrage since no Department tax exempt bonds would be issued.

It's a new type of program for the Department and, therefore, staff is seeking approval to develop and publish an RFP for a market-rate Ginnie Mae program administrator for the First Time Homebuyer Program and then we will advise the Board of the program provider that were selected.

So merely this is something that we're seeking approval to go out into the market, find out what type of organizations are out there that can do this for us, and it's an alternative that we'll have in case the bond market doesn't come back and we're not able to offer a competitive interest rate through our bond program.

MR. OXER: Any questions? Mr. Conine?

MR. CONINE: Mr. Pike, my concern here would be that we're essentially taking our eye off the ball, if you will, on generating with our mortgage originator partners. If we offer an FHA loan through the TBA market at 3-1/2 percent and our bond programs are stuck at 4 it's a no brainer which one they're going to pick to go do, therefore, creating some suffering on our existing bond portfolio.

How do you rationalize wanting to create this activity to be able to do that in light of a potential bond -- the bond program suffering a little bit? He needs recruits here.

MR. PIKE: I need Mr. Nelson to help me on this.

MR. NELSON: Good morning. Tim Nelson, director of bond finance. Mr. Conine, I think it was probably staff's original intent when we started working on this, which we have now for four or five months, was really to develop a program for I guess what we're referring to is the post-NIBP world that, again, as we've shared with the Board, that absent the ability to utilize this Treasury program we would not be able to offer rates that are low enough to have it be competitive.

So we started working on this in the hopes that the NIBP program was not going to go on forever -- that we might have to have some sort of a non-bond alternative.

And I think given the fact that Treasury has come out and extended the program they've done it under much less attractive terms. I was actually going to mention this when we were talking about the multifamily -- that under our current single family program we're offering 3.95 as our assisted rate with 4 points of assistance.

Under the 2012 pricing formula that same mortgage would be probably 5.10 So we're about 110 to 120 basis points higher. It's a possibility through some different structuring techniques that we might be able to bring that rate down. But, in any case, it's our feeling that certainly something north of a 4-1/2 percent is -- in today's market anyway where you can get a non-assisted loan out in the conventional market for in the 4 percent range -- is probably not an attractive product.

So it's our feeling that we need to be able to move forward and at least start exploring that so that we have that as an alternative. Certainly with the action that you've taken today as part of I think 1(b) we are converting another 75 million of the NIBP which will give us -- we've been originating somewhere in the $20 million a month range, so in addition to finishing out the transaction that we closed in September we think we've got enough capacity to probably last us through the end of March.

Coming to April if, again, rates haven't changed and we're looking at the choice of do we want to offer a 5.10 assisted rate in the market at that point in time or between now and then have we developed an alternative where maybe we might be able to offer -- we think on a TBA product in today's market we can probably offer something, again, closer to a 4.50 with 4 points of assistance.

Again, that's not as attractive as the 3.95 that we're offering now, but we're not going to be in a position to offer that 3.95 throughout all of next year. And it's staff's belief that we need to start looking at some other alternatives and this TBA program certainly, again, one that not only are we looking at it but probably every other state agency and housing agency in the country is looking at it right now.

MR. CONINE: So is it your testimony that all of our previous bond issuances plus what we've just done here today we're going to run out of those bond proceeds in March or April of next year?

MR. NELSON: Probably in March of April. And at point in time either we'll need to convert our next tranche and make that money available -- but, again, based upon current interest rates you would -- you're going to be in that 5 percent range.

MR. CONINE: How much do we have available --

MR. NELSON: NIBP --

MR. CONINE: -- in NIBP?

MR. NELSON: -- I think it's in the -- not an exact number -- but 75 millionish range. And even though Treasury says we don't have to match that up with market bonds we can. So I think it was our thought if we extended that and the market rates were such that we could make it work that we would combine that with another 75 million of market bonds. So we thought going into next year we had 150 million that would be available to us for our programs next year.

MR. OXER: At about what rate -- the combined 150?

MR. NELSON: Again, that's -- it's our estimate based on today's market that those would be about a 5.10 with 4 points of assistance.

MR. OXER: Okay.

MR. NELSON: So it's about 115 basis points higher than the rate that we're offering on the street today.

MR. CONINE: Do you anticipate any way the Department can offer assistance -- down payment assistance with the TBA program?

MR. NELSON: Yes. That's one of the attractive pieces of the TBA program is that we're able to offer the down payment assistance in the same manner that we do with the bond program. And because we're a governmental entity under the FHA rules that's allowed to come in and count toward the homebuyer's cash contribution at closing.

And so that's one of the attractive features of that program is we can still take our down payment assistance and just match it up with -- again, you hate to say that there's taxable conventional financing out there that's more attractive than what Treasury's offering us on a tax-exempt basis, but, you know --

MR. OXER: There's some figure in it.

MR. NELSON: -- at some point you stop trying to figure out what the logic is. We're just telling you those are what the numbers are and we don't understand why Treasury came out with such an unattractive extension but --

MR. OXER: Sounds like somebody else's truck got off in a ditch.

MR. CONINE: I suspect that by 2013 that situation might change. It's just a hunch I have, but it probably -- and, again, my concerns would be we don't keep our eye off the ball. Let's use up all of our bond allocation that we possibly can. I don't want to get stuck with a bunch of that stuff that we're, you know, stuck in negative arbitrage. And then, you know, graduate into this TBA program that will suffice as a temporary measure to keep delivering product to the marketplace.

MR. NELSON: It's something that staff -- I mean, we're concerned about as well. I mean, it's certainly under the TBA program -- that's a much more market discipline sort of an approach so -- whereas now we release commitment lots on a monthly basis, we give lenders up to 120 days to deliver those loans, and we're very liberal with extensions if they need a little bit more time.

Under the TBA market-driven approach you've got 45 days to deliver that loan. And there are no extensions, there --

MR. OXER: Period.

MR. NELSON: That's period. And so we're going to have to go through an extensive amount of training, lenders are going to have to -- again, they do this in their everyday business --

MR. CONINE: Right.

MR. NELSON: -- so it's certainly not a new concept for them. But in terms of dealing with TDHCA and dealing with what's traditionally been a very liberal policy regarding timing of bringing loans in we're going to have to do a lot of training with our lenders and make sure that they understand these new time lines.

But, again, we're just looking at the reality of if we don't do that, you know, we may be out of the market. And so while we --

MR. OXER: So this is just giving you another option in the spectrum.

MR. NELSON: Correct. We just want to have as many arrows in the quiver as possible.

MR. CONINE: The other thing Eric mentioned was the word "hedging." And I know that's a -- you know, an interesting subject matter and a discipline that I'm sure we're going to have to go outside to find, you know.

MR. NELSON: Well, that, again, is the intent of working with this TBA administrator. You know, we certainly don't have the expertise, the manpower, and we don't want to accept the risk that's associated with hedging the pipeline on this. You have pipeline fallout and so in a lot of cases, you know, there are people that end up -- that's their business is making and losing money on these types of, you know, hedging programs.

We're not looking for that at all. We want to put, you know, attractive mortgage financing out in the marketplace. So we want to bring in a third party who's got a lot more people -- lot more probably smarter people -- and that's they do every day. And so they will -- we'll offload that risk to them.

MR. OXER: Having had the experience that I've had in some of my past professional incarnations, I would suggest to you that you're absolutely correct that hedging is one of those adventures that you do not go into. It is not an exercise for the fainthearted or for those who have money that they can't afford to lose.

MR. NELSON: I already wake up screaming in the middle of the night. I don't need to add any more --

MR. OXER: Right. It's not from the caffeine either. Right?

MR. CONINE: Call the question.

MR. OXER: Okay. All right. Entertain a motion.

MR. CONINE: Move to approve, Mr. Chairman.

MR. OXER: Okay. We've got a motion by Mr. Conine to approve. Second?

MR. GANN: Second.

MR. OXER: Second by Mr. Gann. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: Motion carries. Thank you, gentlemen.

MR. NELSON: Thank you.

MR. PIKE: Thank you.

MR. OXER: I'd like to take a moment and recognize Mr. Don Bethel, former chairman of this Board. So morning, Don. Nice to see you last evening. All right. Item Number 6. Patricia. Good morning, again.

MS. MURPHY: Good morning. Patricia Murphy, chief of compliance and asset oversight.

Item Number 6 is a proposed rule to be put in the *Texas Register* for public comment to address the right of first refusal requirements for a certain group of housing tax credit properties that were awarded credit in

1995. So those properties -- they're ending the 15-year compliance period and this requirement is being triggered at this point. So this is a draft rule up for comment to suggest some procedures for handling that.

We also are having a roundtable to solicit public input on this rule on January 18, which is the day after the next Board meeting. Does anyone have any questions about the proposed rule or was there any public comment on it?

MR. OXER: We have no request for comment on it. Does any on the Board have questions? Comments? Okay.

MR. CONINE: Got mine answered.

MR. OXER: Okay. Yeah. So -- all right. Entertain a motion on 6(a).

MR. CONINE: Move approval.

MR. OXER: All right. Mr. Conine moves approval.

MS. BINGHAM ESCAREÑO: Second.

MR. OXER: Second by Mr. Bingham. All in favor?

(A chorus of ayes.)

MR. OXER: All opposed?

(No response.)

MR. OXER: Motion carries. Thank you, Patricia. 6(b).

MS. MURPHY: 6(b) is an amendment to existing Rule 1.9, which is the qualified contract rule where the current right of first refusal requirements are embedded. So by putting the -- really just put for public comment it affects the existing qualified contract rule. So it's just an amendment to that to address the changes.

There's an error in your Board book that I need to bring to your attention on page 9 of 9 of your write-up. I made a mistake and I did it --

MR. CONINE: Wait a minute.

MR. OXER: Wait a minute.

MR. CONINE: Wait a minute. Let me look this up.

MS. MURPHY: Did everyone hear that again? I made a mistake.

MR. OXER: Mark this down, Penny.

MS. MURPHY: Yeah, I made a mistake --

MR. CONINE: Point that out, will you?

MS. MURPHY: -- and I missed where the -- it was point out to me that I needed to be specific and referenced the section of the rules where the extended use period compliance policy is included. So the version that will go to the *Texas Register* will reference the correct section, which is in 10 TAC Chapter 6, Subchapter A, Section 60.122. So I request your approval of this with that minor change before it goes to the Register.

MR. CONINE: I sure hope Penny got this down for the record. I move --

MR. OXER: Rare enough that it occurs. Motion by Mr. Conine to approve.

MR. GANN: That is with the correct. Right?

MR. OXER: Yes, with the correction.

MR. CONINE: As amended.

MR. GANN: I'll second.

MR. OXER: As amended. Okay. Second by Mr. Gann. All in favor.

(A chorus of ayes.)

MR. OXER: All opposed?

(No response.)

MR. OXER: Motions carries. Thank you. All right. 6(c) -- Michael. Michael here? Hey, Brooke, welcome back.

MS. BOSTON: Thank you. Brooke Boston.

MR. OXER: How are you?

MS. BOSTON: Okay.

MR. OXER: Been a while since we've seen you.

MS. BOSTON: It has. I'm getting -- I'm practicing today to come back for January.

MR. OXER: There you go. We're looking forward to you being back.

MS. BOSTON: Thank you very much.

MR. OXER: All right. So, Brooke Boston, have at it.

MS. BOSTON: All right. So Item 6(c) is relating to the Comprehensive Energy Assistance rules. We're bringing them to you for final order adoption which would make them official at this point.

These came to you guys in November. They went out for public comment. The changes we're proposing strengthen the requirements relating to the energy crises that trigger eligibility for the program. And we think that the changes make a better assessment and inspection as it relates to the program. We recommend approval.

MR. OXER: Any questions?

MR. KEIG: Yes. Mr. Keig. I want to talk a little bit about refrigerators. So if I understand correctly what we're doing is we're cutting back on replacement of fridges except for in medication instances.

MS. BOSTON: Correct.

MR. KEIG: And is that as a savings because we were spending too much on replacing refrigerators or something else?

MS. BOSTON: I think there is -- and it may be that Stella can answer this better than I can as the non-energy expert here. But my understanding is that federally it is required to have the medical trigger. So we are trying to do it where it's most consistent with the federal requirement.

MR. KEIG: And it's my understanding that it's not a federal requirement. Is there somebody else that is here than can speak to that?

MS. BOSTON: Do you know, Stella? Stella may.

MR. KEIG: Okay.

MR. IRVINE: Stella, you would need to complete a witness affirmation form.

MS. RODRIGUEZ: Stella Rodriguez with the Texas Association of Community Action Agencies. And most of our network do operate the CL program.

In this instance the refrigerators would be used only in the crisis component, so it's not under the regular program for energy savings. It's more for crisis situations.

So we do see clients that have medication that needs to be refrigerated, and so we requested to have that included just under the crisis component. It's my understanding it is allowed.

MR. KEIG: Well, and I guess what I'm saying is if we're going to take a change and back off on refrigerators and only have it in the instance of medication are we losing some savings there for inefficiency if a refrigerator -- if it is more cost effective to go and replace it or repair it to do so. We're not able to do that now if we pass this rule this way.

MS. RODRIGUEZ: Right. Well, we did recommend that we would be allowed under the crisis component to replace refrigerators not only for medical reasons but also for faulty wiring of -- sometimes our clients -- we see clients that have old refrigerators that -- we see that the wiring is poor and could cause a fire.

We also see clients that if we don't replace the refrigerators then they will most likely when they go -- they're no longer functional. They don't discard them properly.

MR. KEIG: So when we say crisis-related purchase of, dot, dot, dot, refrigerators -- crisis-related would include faulty wiring and that sort of situation. Is it -- it's broader than just medication.

MS. RODRIGUEZ: Right now it won't be broader than medication. It will just be medication related.

MR. KEIG: Okay. Because I just want to make sure everybody understands that the way this rule is written is we can no longer repair -- you know, spent $100 to get the refrigerator working right --

MS. RODRIGUEZ: Right.

MR. KEIG: -- and save some money and we won't be able to replace it either unless it's a medication issue.

MS. BOSTON: And this is only in the crisis component.

MS. RODRIGUEZ: Right.

MS. BOSTON: Just to clarify.

MR. KEIG: As opposed to what?

MS. RODRIGUEZ: As opposed to a regular -- there's three components -- there were four components in the LIHEAP -- or the CEAP rule. There's a co-pay component where the client agrees to enter into an agreement to pay part of their energy bills and the Agency pays part of their energy bills to help them also become energy self-sufficient so that they budget properly and that sort of thing. So there are other components, but we were only dealing with the crisis component.

MR. KEIG: So what you're saying is indirectly if you identified an issue with a refrigerator and it was being inefficient and you said, You know, if you would go ahead and replace this or get it repaired we might be able to give them some help to do so on their own by giving them some assistance -- some financial assistance.

MS. RODRIGUEZ: In helping pay their utility bill.

MR. KEIG: Their utility.

MS. RODRIGUEZ: Right.

MR. OXER: But not for the --

MS. RODRIGUEZ: Not replacement.

MR. OXER: -- capital cost -- the replacement --

MS. RODRIGUEZ: Right.

MR. OXER: -- of the refrigerator.

MS. BOSTON: And they can be referred to the weatherization program.

MS. RODRIGUEZ: Yes. Definitely they could be referred to the weatherization program. Unfortunately, with the weatherization program there's a longer waiting list and so that client would have to wait.

MR. KEIG: Yeah. I just want to make sure that we understand that's what we're doing here and it wasn't an oversight that we -- you know, we don't want to -- I don't want us to miss out on some energy savings just because it was an oversight in the way we drafted the rule.

MR. IRVINE: I think what we're clearly doing is just differentiating the two programs. The weatherization assistance is the program that goes in and looks at energy efficiency and those types of issues. And then CEAP is an assistance program that deals with, you know, helping people meet their financial obligations on an ongoing basis.

And the one reason that there is that exception for refrigerators under this program is where we come in and we're helping somebody. If we've got something that presents a health and safety issue like I've got to keep my medications refrigerated then we need to be able to address that issue as a health and safety issue, not as an energy savings issue.

MR. IRVINE: So this -- go ahead.

MR. KEIG: I was going to go ahead and move to approve the amended rule.

MR. OXER: Okay. So this -- for my clarification this is just an emergency -- dealing with an emergency problem.

MS. BOSTON: Correct.

MR. OXER: Okay. All right. Motion by Mr. Keig to approve staff recommendation.

MR. CONINE: Second.

MR. OXER: Second by Mr. Conine. Good job. Okay. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: Motion carries. All right. We're going to take a quick break here. We seem to be moving smartly through the agenda. So let's be back in our chairs at ten minutes till eleven by that clock.

(Whereupon, a short recess was taken.)

MR. OXER: Seems the crowd is thinner. Okay. Brooke, Item Number 7 -- beginning with 7(a) on community affairs. Brooke?

MS. BOSTON: Right. 7(a) is relating to the Comprehensive Energy Assistance Program awards.

MR. OXER: Tell us again -- say who you are.

MS. BOSTON: Excuse me. I'm sorry. Brooke Boston.

MR. OXER: You're out of practice.

MS. BOSTON: I'm very out of practice. And then you throw me a refrigerator question, Mr. Keig?

MR. OXER: At least it was just a question and not the refrigerator.

MS. BOSTON: Right. So Brooke Boston, deputy for community-based programs. The next item, 7(a), is the award of the 2012 Comprehensive Energy Assistance Program contracts.

These are a network of providers who we provide the same amounts of -- excuse me -- the same group each year. We at this point have 37 million in LIHEAP funding that's proportioned out into the CEAP program, weatherization program, and administrative funds.

So the portion coming to the CEAP program is the 25.4 million that's referenced in your write-up. Those are proportionally allocated based on a formula that we have to the 44 network members.

Probably the most significant change to the way we're using the funds this time is we are going from 75 percent of the funds being used for CEAP -- excuse me -- we're going from 75 percent to 70. And the reason we are doing that is CEAP is kind of more of the band-aid -- it helps with the short-term issues like utility payment assistance or a crisis situation.

But the weatherization program is more of the real fix. So once you help fix someone's utility problems, they have less need of the utility payment assistance, so we're trying to start to make that transition. I don't know if there's any questions. I can take a stab at it.

MR. KEIG: I move --

MR. OXER: So one's emergency -- one's the emergency room and the second one's long-term care in the hospital.

MS. BOSTON: Right.

MR. OXER: Okay. Just checking. So the CEAP gets you the short-term fix and then the LIHEAP gives you the long-term attention.

MS. BOSTON: Well, the weatherization does.

MR. OXER: The weatherization.

MS. BOSTON: LIHEAP is kind of the umbrella funding source, and then we fund CEAP and weatherization.

MR. OXER: Okay.

MS. BOSTON: Yeah. But you're right.

MS. BINGHAM ESCAREÑO: Second.

MR. OXER: So there was a motion by Mr. Keig and second by Ms. Bingham to accept staff recommendation. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: Motion carries. 7(b).

MS. BOSTON: Okay. 7(b) is the award of the 2012 Community Service Block Grant awards. The awards are estimated to be 17.4 million. Again, we have 44 providers. They cover all 254 counties.

We anticipate receiving about half of what we have received in the past. Our awards so far is for about 4.3 million and so that's for roughly a quarter of the year. We're doing the awards today based on all four quarters so it's an estimate. So if there are fluctuations we will proportionately apply the formula.

Historically there -- we have a formula that we use to determine how much each organization is going to get. And without getting into too much detail about the formula there is a $75,000 floor. In the past that floor has been $150,000.

Because of the anticipated reduction by about half of the federal funding source we're recommending that that floor go down to 75,000. If for some reason over the course of the subsequent quarterly allocations federally -- if it looks like we're going to hit a greater amount than 50 percent -- or we think about 75 percent then we'd like to recalculate the floor and use the current floor of 150-.

So essentially the -- if we end up with about 75 percent or more of our annual allocation we would use the current floor of 150- per organization. If we end up 75 percent or less of our annual allocation we would go with the floor of 75,000.

That way all the organizations are taking somewhat of an equal hit. If we give $150,000 floor but we've reduced our total amount significantly some of the smaller organizations are going to --

MR. OXER: So it breaks up into smaller blocks.

MS. BOSTON: Correct. Correct.

MR. KEIG: Can you repeat the bottom line there for me --

MS. BOSTON: Yes.

MR. KEIG: -- of significant versus insignificant?

MS. BOSTON: Right. I was just talking with Michael Dean this morning, and I think we agreed that 75 percent or greater of this year's allocation we would perceive -- or, you know, classify as significant funding. And then we would use the higher floor.

MR. OXER: And what was this year's funding, did you say? Yeah, what was this year's funding? So if we had more than this amount coming you use --

MS. BOSTON: Right.

MR. OXER: -- the higher level.

MS. BOSTON: It was in the mid-30 millions.

MR. OXER: Okay.

MS. BOSTON: Because 17 million is about 53 percent.

MR. OXER: Okay.

MS. BOSTON: So it would be about double that.

MR. OXER: Okay. Okay.

MR. KEIG: And I'm okay with that with the clarification on that issue.

MR. OXER: Okay. So the motion would be to -- I'm sorry to put words in your mouth. Make the motion.

MR. KEIG: Well, staff's -- I would move to adopt staff's recommendation as clarified --

MR. CONINE: Second.

MR. KEIG: -- by Ms. Boston.

MR. OXER: Okay. Motion by Mr. Keig, second by Mr.

Conine to accept staff recommendation as clarified. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: And there are none. Motion carries. Okay.

MS. BOSTON: Then --

MR. OXER: Next point.

MS. BOSTON: -- the last item I have is the Emergency Solutions Grant Program awards. We've had these before you once before this year.

In June of this year we awarded the first allocation. Federally they decided to divide this program into two pots for the year. Usually that's not the case. They had switched the program from Emergency Shelter Grant to Emergency Solutions Grant. And I think we talked about that a little bit with you guys as it was transpiring earlier in the year.

The first half they gave us was under the rules of the Emergency Shelter Grant Programs. So we had people compete under a NOFA -- we made awards to 44 organizations.

Then the -- we got -- we've been notified of the second amount, although we do not have our official letter -- but we anticipate that that's the additional 2.9 million. The respondents have to follow the new rules, although the interim rules are clear that they -- the same pool of candidates can still be used. The rules aren't so different that we would have had to release the NOFA.

When we wrote the NOFA we were clear that if the rules come out they'll have to follow the newer more -- I won't say they're restrictive -- but the newer version of the federal guidelines.

We went back through the award list. We made whole, so to speak, anyone who had been awarded but didn't get full funding, and then we additionally were able to go through the remaining regions and fund the organization who had applied and had met a sufficient threshold score. So this award, with the additional 2.9 million, ends up funding all of the qualified applications that we had.

MR. OXER: Good. Any questions from the Board?

(No response.)

MR. OXER: Okay. Motion? I'll entertain a motion.

MS. BINGHAM ESCAREÑO: Move staff's recommendation.

MR. OXER: Okay.

MR. KEIG: Second.

MR. OXER: Motion by Ms. Bingham to accept staff recommendation, second by Mr. Keig. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: Motion carries. Thanks, Brooke.

MS. BOSTON: Thank you.

MR. OXER: Okay. Patricia, do we have anything on the compliance and asset oversight?

MR. IRVINE: Item 8 has been pulled, Mr. Chairman.

MR. OXER: Okay.

MR. CONINE: Been pulled?

MR. OXER: All right. Then Number 9.

MR. CONINE: Number 9.

MR. OXER: Elizabeth?

MS. YEVICH: Yes. Good morning. I'm Elizabeth Yevich, director of the Housing Resource Center. And I'm here this morning for Item Number 9, which is the 2012 State of Texas Low Income Housing Plan and Annual Report draft for public comment. And this is frequently and affectionately known as the SLIHP.

TDHCA is required to prepare and submit to the Board not later than March 18 of each year an annual report of the Department's housing activities for the preceding year.

This report -- the SLIHP -- must be submitted annually to the Governor, Lieutenant Governor, Speaker of the House, and Legislative Oversight Committee members not later than 30 days after the Board receives and approves this final SLIHP in March.

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, and plans to meet the housing needs and reports on the previous year's performance. This year that was September 1, 2010, through August 31, 2011.

And this year's SLIHP is going out for a 30-day public comment -- that's going to be January 9 through February 7. There's going to be a public hearing at 11:00 a.m. on Tuesday, January 10, in the Stephen F. Austin Building here in Austin. And then, as mentioned, the SLIHP is coming back to the Board for final approval on March 6.

Staff recommends approval of the draft 2012 State of Texas Low Income Housing Plan and Annual Report for public comment. Along with this is the section which adopts by reference the rule that the SLIHP is located in. Any questions?

MR. OXER: Any questions from the Board?

(No response.)

MR. OXER: So how'd we do?

MS. YEVICH: Did great, of course.

MR. OXER: Just checking.

MS. YEVICH: You want specifics? I've got about 400 pages of them.

MR. OXER: Oh, I'd settle for we did okay.

MS. YEVICH: Okay.

MR. OXER: All right. Entertain a motion.

MR. GANN: I'll move staff approval.

MR. CONINE: Second.

MR. OXER: Motion by Mr. Gann, second by Mr. Conine to accept staff recommendation. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: Motion carries.

MS. YEVICH: Thanks.

MR. OXER: Thanks, Elizabeth. Okay. Number -- Item Number 10. Cameron, you're back.

MR. DORSEY: I am. Cameron Dorsey, director of Housing Tax Credits. This item is extensions. Generally extensions are addressed on the consent agenda. So this is going to be pretty quick deal.

All three extensions are extensions to the commencement of substantial construction. They are 2010 9 percent transactions. And they already received one extension at the staff level and they're coming back to receive further extension.

All three have closed. You know, when I look at these types of extensions my questions are, are they really going to make it happen and are they going to be able to place in service by the place in service date. And I have a fair amount of confidence based on what these folks submitted that they will be able to do that. So staff recommends approval.

MR. OXER: That's on all three of them.

MR. DORSEY: That's right.

MR. OXER: Okay. We have some requests for public comment. Mr. Fairfield?

MR. FAIRFIELD: No.

MR. OXER: Okay.

MR. FAIRFIELD: Just here as a resource person.

MR. OXER: Okay. Yeah, I'm looking at that. See if you have any questions. Okay. Sara, you're waiting just to see if there's questions too. Right?

MS. ANDERSON: Yes, sir.

MR. OXER: Okay. All right. Are there any questions from the Board?

MR. CONINE: Move for approval.

MR. OXER: Okay. Mr. --

MS. BINGHAM ESCAREÑO: Second.

MR. OXER: Motion by Mr. Conine to approve staff recommendation, second by Ms. Bingham. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: Thanks. That's it. 10(b).

MR. DORSEY: All right. Next item is -- these are four local issuer bond transactions that have come in for 4 percent credits from us. So we're bringing these before you to receive approval to issue determination notices. I'm going to pick them off one of a time because a couple need approvals of waivers if that's all right.

MR. OXER: Okay.

MR. DORSEY: Fox Run is -- Fox Run actually does not need a waiver, but we're requesting approval to issue a determination notice of 275,474. And we're just recommending approval of that one.

MS. BINGHAM ESCAREÑO: Mr. Chair, do you want to take them separately since they're -- okay. Move to approve --

MR. OXER: Yeah, I'd like to take --

MS. BINGHAM ESCAREÑO: -- recommendation on Fox Run.

MR. OXER: Hold on just a second.

MS. BINGHAM ESCAREÑO: Sorry.

MR. OXER: That's all right. You did want to deal with them one at a time or did you?

MR. DORSEY: There's a couple that I want to note some waivers that are kind of embedded in the recommendation. So, yes.

MR. OXER: Yeah, let's make sure those are clear. All right. Let's do them one at a time. All right. Motion on Fox Run.

MR. CONINE: Second.

MR. OXER: Okay. Motion by Ms. Bingham for approval of Fox -- staff recommendation on Fox Run, second by Mr. Conine. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: Okay. That one's good. Next one.

MR. DORSEY: Village of Kaufman also does not need any waivers. It's the issuance of a determination notice of $181,088. We recommend approval.

MR. OXER: Any questions? Anything outstanding on this? Any other details?

MR. DORSEY: There is one --

MR. OXER: I mean, is this just sort of procedural at this point?

MR. DORSEY: Yes. We're going to issue a determination notice in this amount. And what happens at these 4 percent deals is we'll -- they're going to go out, construct the deal, close on the bonds and all that good stuff. They're going to come in at cost certification and try to prove up the amount we issued in the determination notice, and that amount can actually go up or down at that point depending on what actually happened. These credits aren't subject to the tax credit -- annual tax credit ceiling.

MR. OXER: Okay. All right. Questions on Project 11403? (No response.) Entertain a motion.

MR. GANN: I move for approval of 11403.

MR. OXER: Okay.

MR. CONINE: Second.

MR. OXER: Okay. Motion by Mr. Gann, second by Mr. Conine to accept staff recommendation. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: 11043 is good.

MR. DORSEY: Okay. 11404 is Buckeye Trail Commons. And this is a Dallas Housing Authority HOPE 6 transaction. And so we're recommending issuance of a determination notice in the amount of $1,084,186, subject to a couple of -- the Board approving a couple of waivers.

One on this one is that it is close to an active railroad. It's actually less than 300 feet from an active railroad. The key thing to note about these is these are redevelopments so they're putting these on existing sites.

They originally came in and were approved in 2009 and would have been considered reconstruction back then. but they're technically new construction now because the existing property's been demolished. So they would have been okay if they were considered reconstruction. So it's kind of a funny definitional issue.

We would recommend, you know, moving forward with this and approval of that waiver. it's a pretty straightforward --

MR. OXER: It's non-substantive in terms of the issue. Is that what you're saying?

MR. DORSEY: I would suggest that if there's a reason why you can do waivers this is it.

MR. CONINE: Cameron, do you know if they're going back with the same number of units that were there? Do you have the ability to determine that based on the information provided?

MR. DORSEY: I think we probably have that in the application but I don't have that in front of me. I believe they are here if you'd like to ask that of them.

VOICE: Mr. Chair --

MR. OXER: Barry?

MR. CONINE: No, you've got to come up here.

MR. OXER: You've got to come up and get on the --

MR. CONINE: As much as I hate to say it.

MR. OXER: You're inviting a lawyer to come speak.

MR. CONINE: I know. It's dangerous. Must have been a hard answer, because he's having to get recruits.

MR. IRVINE: We have to have them fill out a witness affirmation form.

VOICE: I turned them in.

MR. OXER: Okay. Good. You're one step ahead of the game here.

MS. QUITUGUA: Debbie Quitugua with the Dallas Housing Authority. And we are putting some additional units on the site. We originally had 274 and we're putting 323 back on the site.

MR. OXER: So this is actually better than it was.

MR. CONINE: More units.

MR. OXER: More units.

MS. QUITUGUA: More units and a mixture of public housing and Section 8 project based and a few market-rate rentals.

MR. CONINE: Okay.

MR. OXER: Okay. All right. Any other questions?

MR. DORSEY: Real quick. There's one more waiver on this one. It needs a waiver of the unit mix requirements. There's 51 percent of the units are one bedroom on this phase 1 piece -- and that's 21 percent over the threshold.

But the reason that they're over this threshold is there's one building on site that is going to be leased only to elderly households. And so if you looked at that building as a project then it would meet the requirements of an elderly project. And then if you looked at the remaining family units it would meet the unit mix requirements for that piece as well.

So it's just when you look at it as a whole it goes over the number of one bedrooms because, you know, units restricted to elderly households are generally one or two bedrooms.

MR. OXER: Well, for the record, I like the idea of having -- rather than a complete, exclusive elderly community I like to see the elder part of a community that's multi-generational. So I would be inclined to suggest that this is all more or less what we're trying to do anyway. So -- all right.

MR. CONINE: The reason they're in two pieces is because of the million dollar cap?

MR. OXER: Because the structure --

MR. DORSEY: No. They're -- actually I'm not sure why they're in two pieces. The two pieces are actually a little bit funny. One has both community buildings and the other one is like kind of right attached to it. And it's basically an extension of the same --

MR. CONINE: Why don't we ask her why she's got two pieces?

MS. QUITUGUA: We had originally hoped to build them not simultaneously in two phases and had some delays getting our -- getting approvals from the city. And it happened we got approvals for both and it's let's build them together. By that time we'd already been down the road.

MR. CONINE: Great.

MR. OXER: So it was two projects and now it's one basically. Great. Glad to see the housing get it.

MR. DORSEY: Right. But it is on your agenda as two, so if you want to go ahead and approve these two -- Buckeye Trails I -- and Buckeye Trails II is the next one.

MR. OXER: And specifically the waivers would be for the unit mix?

MR. DORSEY: And the active railroad track.

MR. OXER: And active railroad.

MR. CONINE: Move approval for both, Mr. Chairman, with waivers.

MR. OXER: Okay.

MS. BINGHAM ESCAREÑO: Second.

MR. OXER: Second by Ms. Bingham. So motion by Mr. Conine to approve staff recommendation with waivers -- as waivered and second by Ms. Bingham. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: Good. Congratulations.

MS. QUITUGUA: Thank you.

MR. OXER: Okay. Well, we seem to have --

MR. CONINE: We set a land speed record.

MR. OXER: Yeah, I think we'll -- we have some things to do in executive session. We'll break for executive session. It's 20 after eleven now. Is there any way we can accelerate lunch by a little bit? Okay. All right. Well, then let's be back in our seats by 20 of one. Well, we're going to break for executive session. All right. Break for -- we'll be back here at 12:30 after executive session. Okay?

MR. IRVINE: At 11:20 the Governing Board of the Texas Department of Housing and Community Affairs went into executive session. In accordance with Texas Government Code, Section 551.074 regarding personal matters including the performance review of the internal auditor, and under 551.071 to confer with counsel and to discuss pending or threatened litigation, and under 2306.039 to discuss matters of fraud, waste, or abuse with the internal auditor or ethics advisor.

(Whereupon, at 11:20 a.m., the meeting adjourned to go into executive session.)

MR. OXER: All right. It's 12:32. Mr. Executive Director.

MR. IRVINE: The Board concluded its executive session at 12:23. No action was taken.

MR. OXER: No action was taken. Now, following the discussion, do you have an item, Mr. Vice Chairman?

MR. GANN: I do. It's that time of year again when we have the annual personal review for Sandy Donoho of the audit department. And

I'd like to make a motion that we appoint Leslie Bingham to chair that committee to conduct that review. I so move.

MR. CONINE: Second.

MR. OXER: Okay. A motion by Mr. Gann and second by Mr. Conine to direct Ms. Bingham to conduct the annual review for our internal auditor Sandy Donoho. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: And there are none. Motion carries.

MR. CONINE: Mr. Chairman, I'd like a make a motion if I might that we appoint you, the Chair, to take care of the personnel review for our new executive director, Mr. Tim Irvine, who's doing an absolutely fantastic job and let you handle the review and the discussion with the Governor's Office.

MR. OXER: Okay. Motion by Mr. Conine as stated for me to handle the review.

MS. BINGHAM ESCAREÑO: Second.

MR. OXER: Second by Ms. Bingham. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: Okay. I'll take care of it for you, Tim. And for the record, just so I have it on the record, the -- being relatively new at the job, and as Cam has said here, it's been a little turbulent since I got here. I'm trying to find out if there was a cause and effect relationship or it just happens to be coincidental. But, you know, since I have been here it's been a lot of fun. I'm glad to have Tim next to the right side of me here.

Okay. Are there any other items that would have been result of discussions from the executive session? No. Okay. Do we have any report items?

MR. IRVINE: Yes, Mr. Chairman. We'd like to receive a report on the Exchange Program, please.

MR. OXER: Cameron, you're back.

MR. DORSEY: I'm back, but -- Cameron Dorsey, director of Housing Tax Credits. I'm just a figurehead guy. I just want -- Theresa's actually going to present on the Exchange -- on the report -- the status of Exchange.

But I just wanted to say that she has been unbelievable. I basically can ignore her entirely and she just does everything right. And she is going to be leaving us here toward the end of the year and going on to do better things. But we've -- it's been absolutely phenomenal to have her onboard.

MR. OXER: Theresa, we'll match the offer.

MR. DORSEY: So I'm going to go ahead and give it over to her. And I think she's going to give a shout out to staff too.

MR. OXER: Great.

MS. SHELL: Thank you, Cameron. Good morning -- good afternoon.

MR. OXER: It's barely afternoon for a change too.

MS. SHELL: I know -- barely.

MR. OXER: You know, it's barely there.

MS. SHELL: This is true. Well, as of this morning we are 99.67 percent funded. We are almost there.

MR. OXER: We're going to hit December 31. Right?

MS. SHELL: Yes. Yes, sir. We have -- 85 of the 89 transactions are fully funded. We anticipate two transactions will not fully fund. They're over sourced. One of them is 1.1 million and the other one is 235,000.

So that leaves us with two transactions that still have draws that we are anticipating. One is in -- going to be receiving the final CO this afternoon, so we should be able to process that draw later this week. And the other one -- and that draw is for about 582,000.

The other one is for $10,000. It's a $25 million transaction. They'll probably get it in, but that's up to them. So other than that all the deals are built, the cost verifications are coming in, the inspections are coming in, and we're just about done.

I really wanted to take this opportunity to thank staff. We have an amazing group over there and they're working just as hard as they possibly can. And we ask a lot from them. These are folks that were not loan processors. They didn't know what down dates were or lien waivers or things like that. And that's things that perhaps I took for granted initially, and they really, really stepped up, as did the development community.

Guys, this has been a wild, crazy ride. But it's been fun. It's been great.

MR. OXER: Yeah, you should see it from my side.

MS. SHELL: No, I really don't want to see it from that side.

MR. OXER: Well, and I have to tell you just to echo some of your -- kind of exercise my prerogative as Chairman to toss in a comment here. The one thing that I've found that TDHCA is just staffed with an amazing number of really good people that really know what they're doing and really work hard.

And so I -- you know, personally I'm incredibly grateful for the work that they do, and it sure does make it easy for me. Even as hard as it is, it's a lot easier than it would be if they weren't there.

MS. SHELL: Well, I will have to say that kudos to Tom and to Cameron and to Robbie. They allowed me the latitude -- and to Tim as well -- to build a portfolio. And --

MR. OXER: Well, I have the first question.

MS. SHELL: Yes, sir.

MR. OXER: Where are you going? The offer stands. I'll match the offer, you know.

MS. SHELL: I appreciate that. You know, I really wish there was an opportunity internally, but I'm just not sure exactly what that is. So I really have appreciated the opportunity to build a portfolio.

MR. OXER: Well --

MS. SHELL: It's been great.

MR. OXER: -- we'll keep the name tag for you when you come back. Okay? We'll be waiting for you to come home.

MS. SHELL: Okay.

MR. OXER: All right. Any questions from the Board?

MR. IRVINE: May I make one comment?

MS. SHELL: Yes, sir.

MR. IRVINE: You are just the embodiment of professionalism. You are. You have brought a calm but forceful and focused energy to the largest syndication program on the planet. And you did it and we're grateful. Thank you.

MS. SHELL: Thank you.

MR. OXER: I get accused of being something like a magnesium flare because I go off in every direction. People like you that are focused are a torch. You know, they get things done so I'm happy you're here. So thanks for all you do.

MS. SHELL: I very much appreciate it. It's been great.

MR. OXER: Okay. All right. Anything else? Brooke? Is Brooke still here? She's gone. Any other items?

MR. IRVINE: That's it, Mr. Chairman.

MR. OXER: Okay. Michael Lyttle, do we have any outreach programs or anything else we need to think of? What's coming up? Got anything?

MR. LYTTLE: No, sir.

MR. OXER: So this is easy. Well, I'll --

MR. LYTTLE: It's the holidays.

MR. OXER: Okay. I'll take a moment -- as the Chair of this Board, I'll say happy holidays. Everybody please have a safe Christmas, a safe New Year, and come back because I need all of you back. All right. With that I'll exercise -- entertain a motion to adjourn.

MR. CONINE: So move.

MR. OXER: Second by?

MR. KEIG: Second.

MR. OXER: Okay. Motion by Mr. Conine, second by Mr. Keig to adjourn. All in favor?

(A chorus of ayes.)

MR. OXER: Adjourned.

(Whereupon, at 12:40 p.m., the meeting concluded.)

C E R T I F I C A T E

MEETING OF: TDHCA Board

LOCATION: Austin, Texas

DATE: December 15, 2011

I do hereby certify that the foregoing pages, numbers 1 through 97, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Penny Bynum before the Texas Department of Housing & Community Affairs.

12/19/2011
(Transcriber) (Date)

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