

**SUPPLEMENT FOR
BOARD MEETING OF MARCH 12, 2009**

November 2008 Board Minutes

LEGAL SERVICES DIVISION

BOARD ACTION REQUEST

March 12, 2009

Action Items

Minutes of the Board Meeting of November 13, 2008.

Required Action

Review minutes for November 13, 2008 Board Meeting.

Background

The Board is required to keep minutes of each of their meetings.

Recommendation

Staff recommends approval of minutes, with any requested corrections.

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

November 13, 2008; 8:30 am

1500 Congress, E2.036; Austin, TX

MINUTE SUMMARY

All Members present at Call to order of 8:45 a.m.

PUBLIC COMMENT

The following members of the public addressed the board at the general comment section of the meeting:

Jeff Crozier—regarding RRHA issues
Jim Brown—representing TAAHP
Bobby Bowling—representing self on cap issues and compliance rules
Paul Fitch—discussed rural issues with tax credits
Jerry Lowry—regarding QAP changes
Neely Plumb— Forward commitment in City of Palestine
Joan Tompkins—Forward commitment in City of Palestine
Jean Latsha—regarding Casa Alton
Jorge Acante—regarding Casa Alton
Margarita Vasquez—Spanish presentation regarding Casa Alton (Board requested the Casa Alton issue be placed on the December agenda at his time)
Les Kilday—regarding TDHCA application 07309
Hollis Fitch—Regarding TDHCA application 08184
John Greenan—regarding forward commitments given to 2006 applications treated as 2007
Albert Sierra—regarding TDHCA application 04432
Ana Dueñez—regarding Desert Villa Apartments
Matt Hull—regarding HTF commitments and NSP Program
Craig Meyers—regarding Blackshear application
Ron Pegrum—regarding Peachtree Housing
Steve Moore—regarding Premier Apartments
Bill Fisher—regarding TDHCA application 07228
Mike Gerber read letters into the record

CONSENT AGENDA

Items on the Consent Agenda may be removed at the request of any Board member and considered at another appropriate time on this agenda. Placement on the Consent Agenda does not limit the possibility of any presentation, discussion or approval at this meeting. Under no circumstances does the consent agenda alter any requirements provided under Texas Government Code Chapter 551, the Texas Open Meetings Act.

AGENDA ITEM 1:

Legal Division:

- a) Presentation, Discussion and Possible Approval of Board Meeting Minutes of June 26, July 21, July 31 and September 4, 2008

Community Affairs:

- b) Presentation, Discussion and Possible Approval of the 2009 Section 8 Housing Choice Voucher Program Payment Standards

Financial Services:

- c) Presentation and Discussion of the 4th Quarter Investment Report

HOME:

- d) Presentation, Discussion and Possible Approval of Revisions to the HOME Program 2008 Single Family (Owner-Occupied Housing Assistance, Tenant-Based Rental Assistance, and Homebuyer Assistance Programs), Contract for Deed Program, 2008 Single Family Persons with Disabilities, Rental Housing Development Program, and Community Housing Development Organization (CHDO) Rental Housing Development Program Notices of Funding Availability (NOFAs) to be updated with adopted HOME Program Rule changes
- e) Presentation, Discussion and Possible Approval of Revisions to the Housing Trust Fund Rental Production Program Notice of Funding Availability (NOFA) to be updated with adopted Housing Trust Fund Rule changes

Housing Resource Center:

- f) Presentation, Discussion and Possible Approval of the 2009 State of Texas Consolidated Plan: One-Year Action Plan
- g) Presentation, Discussion and Possible Approval of the 2009 Regional Allocation Formula Methodology
- h) Presentation, Discussion and Possible Approval of the 2009 Affordable Housing Needs Score Methodology

Multifamily Finance:

- i) Presentation, Discussion and Possible Approval of Housing Tax Credit Extensions
 - 05623 Coral Hills Apartments Houston
 - 05629 Village Park Apartments Houston
 - 05034 Gardens of Taylor Taylor
 - 060409 Artisan at Mission Creek (fka) Artisan at Military San Antonio
 - 07401 Gulfway Manor Apartments Corpus Christi
 - 07402 Rockwell Manor Apartments Brownsville
 - 04496 Oak Tree Manor Houston
- j) Presentation, Discussion and Possible Issuance of Determination Notices for Housing Tax Credits Associated with Mortgage Revenue Bond Transactions with Other Issuers:
 - 08419 Chaminade Apartments
San Antonio Housing Trust Finance Corp is the Issuer; Recommended Credit Amount \$481,307
- k) Presentation, Discussion and Possible Approval Authorizing the Filing of Applications to the Texas Bond Review Board for HR 3221 Multifamily Private Activity Bond Authority. Resolution Nos. 09-005 and 09-012
- l) Presentation, Discussion and Possible Action for the Inducement Resolution Declaring Intent to Issue Multifamily Housing Mortgage Revenue Bonds for Developments throughout the State of Texas and Authorizing the Filing of related Applications for the Allocation of Private Activity Bonds with the Texas Bond Review Board for Program Year 2007, Resolution No. 09-013
 - 08617 Costa Miraposa Texas City

Office of Colonia Initiatives:

- m) Presentation, Discussion and Possible Approval of a Colonia Self-Help Center Program award to Webb County through Community Development Block Grant (CDBG) funding
Pulled from Consent Agenda
- n) Presentation, Discussion and Possible Approval of a Colonia Self-Help Center Program award to Cameron County through Community Development Block Grant (CDBG) funding
Pulled from Consent Agenda
- o) Presentation, Discussion and Possible Approval of the Texas Department of Housing and Community Affairs Texas Bootstrap Loan Program Notice of Funding Availability (NOFA)

Texas Homeownership:

- p) Presentation, Discussion and Possible Approval of 10 TAC, Chapter 7, 2009 Texas First Time Homebuyer Program Rule
- q) Presentation, Discussion and Possible Approval to Terminate the Texas Loan Star Program

Motion by Gloria Ray to approve staff recommendations on all items on the consent agenda except items (m) and (n) which were pulled from the Consent Agenda; seconded by Tom Cardenas; passed unanimously.

ACTION ITEMS

AGENDA ITEM 2: Multifamily Division Items - Housing Tax Credit Program:

- a) Presentation, Discussion and Possible Approval of Housing Tax Credit Amendments
 - 03184 Pegasus Dallas
Public Comment by Suzie Hudson.
Motion by Gloria Ray to approve staff recommendation; seconded by Sonny Flores; passed unanimously
 - 04432 Mariposa Apartment Homes San Marcos
Public Comment by Barry Palmer.
Motion by Sonny Flores to approve appeal with microwave ovens installed and no penalties by Sonny Flores; seconded by Gloria Ray; passed unanimously
 - 04489 Port Royal Homes San Antonio
Public Comment by Bill Fisher.
Motion by Gloria ray to approve staff recommendation with no penalties and seconded by Tom Cardenas; passed unanimously
 - 05025 Poinsettia Apartments Alamo
Public comments by Rick Deyoe and Cynthia Bast.
Motion by Sonny Flores to approve appeal subject to the credit amount; seconded

- 060125 **by Gloria Ray; passed unanimously**
Country Club Apartments Pecos
Public comment by Paul Holden.
Motion by Gloria Ray to approve reduction in senior units and modify the LURA accordingly; seconded by Juan Muñoz.; passed unanimously
- 060129 Chisholm Trail Crossings Apartments Vernon
Public comment by Paul Holden.
Motion by Gloria Ray to approve reduction in senior units and modify the LURA accordingly; seconded by Sonny Flores; passed unanimously

b) Presentation, Discussion and Possible Approval of Additional Housing Tax Credits through the Implementation of HR 3221
Public Comment from Granger McDonald, Ron Pegram, William McDonald, Scott Marks, Barry Palmer, Tim Lang, Walter Martinez, Keith Fambraux, Diane McIver, Mark Mayfield, Bill Skeen, Charles Shelton, David Marquez, Gil Pia, Cynthia Bast, (break for executive session and recognition of Brooke Boston), Doak Brown, George Littlejohn, Ike Monty, Frank Ainsa, Ray Lucas, Donald Pace, and Shelly Gaston.

Motion by Sonny Flores to approve staff recommendation of increase of 5%, dies for lack of a second.
Motion by Gloria Ray to move staff recommendation plus adding in 2006 forward committed applications allowing a 10% increase in construction costs, with an amnesty period until December 20, 2008; seconded by Sonny Flores; passed unanimously.

Motion to amend accepted by Gloria Ray and Sonny Flores to amend the amnesty date until January 2, 2009.

c) Presentation, Discussion and Possible Approval of the Policy for Implementation of HR 1424 on the Housing Tax Credit Program including possible allocation of 2008 Housing Tax Credit ceiling

Public Comment by Ken Mitchell.

Motion by Sonny Flores to approve the swap of 2008 Ike credits and carry the exchanged 2008 credits forward and limit them to the Ike impacted areas initially and if not used then collapsed statewide; seconded by Gloria Ray; passed unanimously

d) Presentation, Discussion and Possible Approval of Forward Commitments from the 2009 State Housing Credit Ceiling for the Allocation of Competitive Housing Tax Credits

Public Comment by Don Jones on behalf of Rep. Menendez, Loraine Robles, Evelyn King, Ryan Wilson, George Littlejohn, and Mike Sugrue.

Motion by Gloria Ray to approve all the 2008 waiting list for a forward commitment subject to the 2009 Regional Allocation Formula, the 10% increase in costs, underwriting and being able to close 180 days after this motion; seconded by Leslie Bingham Escareño; passed unanimously.

Motion by Sonny Flores to direct staff to bring forward a calculation of how forwards and additional credits would impact the two million dollar cap for the December meeting; seconded by Gloria Ray; passed unanimously.

e) Presentation, Discussion and Possible Issuance of a Determination Notice for Housing Tax Credits Associated with Mortgage Revenue Bond Transactions with Other Issuers and contracts for HOME Rental Housing Development Fund, and Housing Trust Fund Rental Production Funds:

- 08418 Mirabella Apartments
San Antonio HFC is the Issuer
Requested HTC Credit Amount \$695,738
Requested HTF Credit Amount \$384,000
Requested HOME Credit Amount \$500,000

Public Comment by Barry Palmer, Ken Maksoudian and Giovanna Colson-Basurto.

Motion by Gloria Ray to approve the transaction as presented by the developer; seconded by Juan Muñoz; passed on a vote of 3-2 with Sonny Flores and Tom Cardenas voting no.

AGENDA ITEM 3: Multifamily Division Items–Private Activity Bond Program:

a) Presentation, Discussion and Possible Issuance of Variable Rate Demand Multifamily Mortgage Revenue Refunding Bonds Series 2008 with TDHCA as the Issuer; Resolution #09-001:

- 08616 Alta Cullen Apartments; Houston
Requested Bond Amount \$14,000,000;

Public Comment by Zachary marks and Edward Boze.

Motion by Sonny Flores to approve staff recommendation; seconded by Tom Cardenas; passed unanimously.

AGENDA ITEM 4: Rules:

- a) Presentation, Discussion and Possible Approval for publication in the *Texas Register* a final order adopting of 10 TAC, Chapter 1, Sections 31-37, 2009 Real Estate Analysis Rules and Guidelines

Motion by Sonny Flores to approve staff recommendation; seconded by Tom Cardenas; passed unanimously.

- b) Presentation, Discussion and Possible Action on the publication in the *Texas Register* of a notice proposing new Title 10, Part 1 of the Texas Administrative Code, Chapter 5 concerning Community Affairs Programs

Public Comment by Stella Rodriguez, A.R. Kampschafer.

Motion by Tom Cardenas to approve staff recommendation with technical changes; seconded by Sonny Flores; passed unanimously.

- c) Presentation, Discussion and Possible Approval to publish the proposed repeal of 10 TAC Chapter 49, concerning 2007 Housing Tax Credit Program Qualified Allocation Plan and Rules, and a draft of proposed new 10 TAC Chapter 49, concerning 2009 Housing Tax Credit Program Qualified Allocation Plan and Rules for comment in the *Texas Register*

Public comment by Chris Richardson, Scott Marks, Diana McIver, and Donald Sampley,

Motion by Sony Flores to accept staff recommendation with changes the QAP removing the limitation of awards to the statutory cap and expand LPS regions and technical cleanups; seconded by Gloria Ray; passed unanimously.

Juan Muñoz left meeting at this time.

- d) Presentation, Discussion and Possible Approval to publish the proposed repeal of 10 TAC Chapter 35, Multifamily Housing Revenue Bond Rules, and a draft of proposed new 10 TAC Chapter 35, 2009 Multifamily Revenue Bond Rules for comment in the *Texas Register*

Pulled from Agenda

- e) Presentation, Discussion and Possible Approval for publication in the *Texas Register* notice of proposed amendments to 10 TAC, §60, the Compliance Monitoring Rules

Motion by Gloria Ray to approve staff recommendation as amended; seconded by Leslie Bingham Escareño; passed unanimously

- f) Presentation, Discussion and Possible Approval for publication in the *Texas Register* a final order adopting repeal of 10 TAC Chapter 53, HOME Program, Rule and final order adopting new 10 TAC Chapter 53, HOME Program Rule

Public Comment by Ken Coignet.

Motion made by Gloria Ray to approve staff recommendation and seconded by Sonny Flores; passed unanimously.

- g) Presentation, Discussion and Possible Approval for publication in the *Texas Register* a final order adopting repeal of 10 TAC Chapter 51, Housing Trust Fund Rule, and final order adopting new 10 TAC Chapter 51, Housing Trust Fund Rule

Motion by Sonny Flores to approve staff recommendation; seconded by Tom Cardenas; passed unanimously

AGENDA ITEM 5: Executive:

- a) Presentation, Discussion and Possible Approval of the Neighborhood Stabilization Program Action Plan

Motion made by Leslie Bingham Escareño to approve staff recommendation and seconded by Gloria Ray; passed unanimously

AGENDA ITEM 6: Real Estate Analysis:

- a) Presentation, Discussion and Possible Action for 2008 Competitive Housing Tax Credit Appeals of Underwriting Appeals Timely Filed

None

- b) Status Report on the Issuance of IRS Forms 8609 for the 2005 Competitive Housing Tax Credit Developments with 2008 Binding Agreements for Additional Credits

No Action

AGENDA ITEM 7: Disaster Recovery:

- a) Presentation and Discussion of the Disaster Recovery Division's Status Report on CDBG and FEMA AHPP Contracts Administered by TDHCA

Pulled from Agenda

- b) Presentation, Discussion and Possible Approval of Requests for Amendments to CDBG Disaster Recovery Contracts Administered by TDHCA for CDBG Round 1 Funding
C 06 001 Houston-Galveston Area Council
C 06 003 South East Texas Regional Planning Commission

Motion made by Sonny Flores to approve staff recommendation and seconded by Gloria Ray; passed unanimously.

- c) Presentation, Discussion and Possible Approval of Request for Amendment to CDBG Disaster Recovery Action Plan for Round 2 Funding

Motion by Sonny Flores to approve staff recommendation; seconded by Leslie Bingham Escareño; passed unanimously

AGENDA ITEM 8: Community Affairs:

- a) Presentation, Discussion and Possible Approval of staff recommendations (based on a Request for Applications process) to award the Community Services Block Grant, the Comprehensive Energy Assistance Program and the Weatherization Assistance Program to Subrecipients to serve Duval and McMullen counties

Motion made by Sonny Flores to approve staff recommendation and seconded by Tom Cardenas; passed unanimously

- b) Presentation, Discussion and Possible Approval of a plan for the Low Income Home Energy Assistance Program (LIHEAP) award for Program Year (PY) 2009

Motion made by Sonny Flores to approve staff recommendation and seconded by Gloria Ray; passed unanimously

- c) Presentation, Discussion and Possible Approval of the 2009 Emergency Shelter Grants Program Notice of Funding Availability (NOFA)

Motion made by Gloria Ray to approve staff recommendation and seconded by Tom Cardenas; passed unanimously

AGENDA ITEM 9: Bond Finance:

- a) Presentation, Discussion and Possible Approval of Resolution No. 09-002 authorizing the extension of the certificate purchase period for Single Family Mortgage Revenue Bonds, 2006 Series A-C (Program 66)
b) Presentation, Discussion and Possible Approval of Resolution No. 09-003 authorizing the extension of the certificate purchase period for Single Family Mortgage Revenue Bonds, 2007 Series A (Program 69)
c) Presentation, Discussion and Possible Approval of Resolution No. 09-004 authorizing the extension of the certificate purchase period for Single Family Mortgage Revenue Bonds, 2007 Series B (Program 70) and authorizing entering into a new acquisition fund investment agreement

Motion by Sonny Flores to approve staff recommendation on items 9(a) (b) & (c); seconded by Gloria Ray; passed unanimously.

- d) Presentation, Discussion and Possible Approval of Resolution No. 09-009 authorizing entering into a new float fund investment agreement for the Residential Mortgage Revenue Bond, 2000 Series B-E, 2001 Series A-E and 2003 Series A

Pulled from Agenda

- e) Presentation, Discussion and Possible Approval of Resolution No. 09-007 authorizing application to the Texas Bond Review Board for reservation of HR 3221 single family private activity bond authority in the amount of \$120 million and presentation, discussion and approval of a Mortgage Credit Certificate Program (MCC) for first time homebuyers (Program 73) to be administered by the Texas Department of Housing and Community Affairs

Motion by Sonny Flores to approve staff recommendation; seconded by Tom Cardenas; passed unanimously

- f) Presentation, Discussion and Possible Approval of Resolution No. 09-008 authorizing the Department to seek a change in liquidity providers due to the ratings downgrade of current providers for seven outstanding variable rate demand obligations and a liquidity provider for new issuance of Single Family Variable Rate Mortgage Revenue Bonds, Program 71

Public Comment by Gary Machak.

Motion by Gloria Ray to approve staff recommendation; Sonny Flores; passed unanimously.

AGENDA ITEM 10: HOME Division:

- a) Presentation, Discussion and Possible Action for Appeals:
Appeals Timely Filed

None.

- b) Presentation, Discussion and Possible Approval of Requests for Amendments to HOME Program Contracts/Commitments:

1000950	City of Cleveland	OCC-DR
1000952	Liberty County	OCC-DR
1000951	City of Ames	OCC-DR
	Motion by Gloria Ray to approves staff recommendation on items 1000950, 1000951, & 1000952; seconded by Sonny Flores; passed unanimously	
1000986	Creekside Villas Senior Village	RHD
	Motion by Leslie Bingham Escareño to approve staff recommendation to not exceed \$3 million and subject to analysis to ensure the development is not over-subsidized; seconded by Gloria Ray; passed unanimously.	

EXECUTIVE SESSION Began at 12:10 and ended at 1:32 p.m.

- a) The Board may go into Executive Session (close its meeting to the public) on any agenda item if appropriate and authorized by the Open Meetings Act, Texas Government Code, Chapter 551
- b) The Board may go into Executive Session Pursuant to Texas Government Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee.
 1. Performance Evaluation of Michael Gerber, Executive Director
- c) Consultation with Attorney Pursuant to §551.071(a), Texas Government Code:
 2. With Respect to pending litigation styled *Rick Sims v. Texas Department of Housing and Community Affairs* filed in federal district court (new filing of previously dismissed suit)
 3. With Respect to pending litigation styled *The Inclusive Communities Project, Inc. v. Texas Department of Housing and Community Affairs, et al* filed in federal district court
 4. With Respect to Any Other Pending Litigation Filed Since the Last Board Meeting
 5. Potential sale of agency owned real estate and/or sales of loans
- d) Consultation with Internal Auditor regarding Draft Audit Report on Office of Colonia Initiatives pursuant to Texas Government Code §2306.039

OPEN SESSION

Action in Open Session on Items Discussed in Executive Session

Motion by Juan Muñoz to provide a 6% pay increase to Michael Gerber retroactive to September 1, 2009; seconded by Leslie Bingham Escareño; passed unanimously.

REPORT ITEMS

1. TDHCA Outreach Activities, September/October 2008

ADJOURN

Since there was no further business to come before the board, Kent Conine adjourned the meeting at 5:05 p.m. on November 13, 2008.

Kevin Hamby, Board Secretary

For a full transcript of this meeting, please visit the TDHCA website at www.tdhca.state.tx.us.

December 2008 Board Minutes

**THIS ITEM HAS BEEN PULLED
FROM THE AGENDA**

OFFICE OF COLONIA INITIATIVES

BOARD ACTION REQUEST

March 12, 2009

Action Items

Presentation, Discussion and Possible Approval of a Memorandum of Understanding (MOU) between the Texas Department of Housing and Community Affairs (TDHCA) and the Office of Rural Community Affairs (ORCA) regarding the management of Community Development Block Grant (CDBG) funds for the Colonia Self-Help Center Program.

Required Action

Approve, deny or approve with modifications the Memorandum of Understanding (MOU) between TDHCA and ORCA.

Background

The Office of Colonia Initiatives (OCI) Division of TDHCA was created and charged with the responsibility of coordinating Department and legislative initiatives involving border issues and managing a portion of the Department's existing programs targeted at colonias. In accordance with a note referenced in Section 487.351 of the Texas Government Code (Section 2.15 of Acts 2001, Chapter 1367, 77th Legislative Session), the purpose of this MOU is to transfer federal Community Development Block Grant (CDBG) funds from ORCA to TDHCA for the administration, operation and program activities of TDHCA's Border Field Offices and the Colonia Self-Help Centers (SHC) pursuant to the provisions of Rider 7 to ORCA's appropriations and as authorized pursuant to Subchapter Z of Chapter 2306, Texas Government Code and Rider 8 to TDHCA's appropriation for the 2007-2008 biennium.

On December 12, 2008, ORCA's Executive Committee approved the enclosed MOU. Upon approval of the Board, the MOU will be fully executed by the Executive Directors of TDHCA and ORCA.

Recommendation

Approve or approve with modifications the MOU between TDHCA and ORCA.

**MEMORANDUM OF UNDERSTANDING
BETWEEN
OFFICE OF RURAL COMMUNITY AFFAIRS
AND
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

SECTION I. PARTIES

This Memorandum of Understanding, hereinafter referred to as “Memorandum,” is made and entered into between the Office of Rural Community Affairs, hereinafter referred to as “OFFICE,” an agency of the State of Texas, and the Texas Department of Housing and Community Affairs, hereinafter referred to as “TDHCA,” an agency of the State of Texas.

SECTION II. PURPOSE

In accordance with a note to Section 487.351 of the Texas Government Code, the purpose of this Memorandum is to make available federal Community Development Block Grant (CDBG) funds from the OFFICE to TDHCA for the administration, operation, and program activities of the Colonia Self-Help Centers (SHC) and to partially fund TDHCA’s border field offices pursuant to the provisions of Rider 8 of TDHCA’s appropriation and the Rider 7 of the OFFICE’s appropriation for the 2008-2009 biennium under the General Appropriations Act of the 80th Legislature, Regular Session, and authorized pursuant to Subchapter Z of Chapter 2306, Texas Government Code.

SECTION III. PERIOD OF PERFORMANCE

This Memorandum shall begin on February 1, 2009 and shall terminate on January 31, 2011.

SECTION IV. TDHCA PERFORMANCE

TDHCA shall allocate the funds received under this Memorandum to each county in which a Colonia SHC, designated in accordance with Section 2306.583, Texas Government Code, is located. TDHCA shall then ensure that each county receiving funds under this MOU enters into an agreement with a nonprofit organization for the operation of the Colonia SHC within its jurisdiction consistent with program rules and regulations. TDHCA oversight of the program administration shall ensure that all activities are carried out in accordance with the federal law and regulations at 42 USC Sec. 5301 et seq. and 24 CFR Part 570, Subpart I and the state law and rules at Chapter 2306, Subpart Z of the Texas Government Code and 10 T.A.C. Chapters 255 and 3. In addition, TDHCA shall:

- A. Approve all awards, amendments and modifications related to the funding of the Colonia SHCs in accordance with the Texas Community Development Block Grant (TxCDBG) Program and Colonia SHC Program Rules.

- B. Participate in public hearings to solicit comments regarding the funds provided under this contract and provide input as necessary.
- C. Adhere to the certifications the OFFICE makes to the U.S. Department of Housing and Urban Development (HUD) in order to receive CDBG funding.
- D. Ensure that each activity included in a Colonia SHC contract meets a national objective, and qualifies as an eligible activity as identified under the state CDBG regulations. Compliance with this requirement shall be clearly reflected in the Performance Statements and Budgets of all Colonia SHC contracts.
- E. Ensure that each activity in the contract's Performance Statement has a corresponding budget line item in the budget.
- F. Work in coordination with the OFFICE staff to determine a reasonable amount of administrative costs that can be charged by each county for general and program administrative costs, and Colonia SHC operational costs.
- G. Ensure that direct delivery costs, associated with the delivery of housing assistance including the preparation of work write-ups and required architectural or professional services that are directly attributable to a particular housing unit, be charged to the housing related construction budget line item under each Colonia SHC contract.
- H. TDHCA shall provide oversight and monitoring of the activities of Colonia SHC subrecipients, units of local government and the respective Colonia SHC nonprofit service providers, to ensure that CDBG activities are completed, performance goals are met and funds expended in accordance with the Colonia SHC Program Rules, contract provisions, applicable state and federal rules, regulations, policies, including OMB Circulars A-87 and A-122 as applicable, and related statutes. Monitoring reviews may take place at any time or at the request of the unit of local government or TDHCA. A final monitoring review must take place within 120 days of the contract termination
- I. TDHCA shall conduct the final monitoring review of contract close-out documents and an on-site review of subrecipient records to achieve the following monitoring objectives: ensure that activities have been completed and beneficiaries served in accordance with the contract's Performance Statement and Budget; ensure that subrecipient systems, policies and procedures used to administer CDBG funds contain sufficient controls against fraud and misuse and that they are in place and operating efficiently; identify areas of specific need for additional technical assistance.
- J. TDHCA shall provide the OFFICE a copy of any findings and associated necessary corrective actions to be carried out by the Colonia SHC and non-profit providers as well as concerns and recommendations that do not require corrective action

SECTION V. OFFICE FUNDING AND PERFORMANCE OBLIGATIONS

- A. Colonia SHC funding. Notwithstanding any other provision of this Memorandum, the total obligations incurred by the OFFICE shall not exceed 2.5% of the annual allocation of CDBG funds received by the State of Texas from HUD for state fiscal years 2009 and 2010. The OFFICE shall transfer funds provided under this section to the appropriate local government upon receipt of requests for payment from TDHCA and receipt of funds from HUD. The OFFICE shall simultaneously notify TDHCA of the transfer to the local government. TDHCA shall obligate the funds provided under this Memorandum within fourteen months after the date the funds were provided to the OFFICE from HUD.

- B. The OFFICE shall transfer to TDHCA a total of \$82,755 for the period February 1, 2009 until January 31, 2010 and a total of \$ 82,755 for the period of February 1, 2010 until January 31, 2011, assuming the OFFICE receives from HUD a state CDBG allocation for Program Years 2009 and 2010 in at least the same dollar amount as Program Year 2008, for costs incurred for TDHCA's border field offices and Office of Colonia Initiatives staff and planning activities. The amount of this reimbursement will be adjusted on February 1, 2009 and February 1, 2010 based upon the U.S. Department of Housing and Urban Development CDBG Program Year allocation to the OFFICE. TDHCA shall submit a budget that defines the use of CDBG funds for this purpose. Funds deobligated and any program income recovered from the funds provided through the Colonia SHC Program shall be used by TDHCA for the Colonia SHCs in accordance with the Consolidated Plan.
- C. If necessary, the OFFICE shall be responsible for initiating the reimbursement adjustment on February 1, 2009 and February 1, 2010 as an amendment according to the procedure described in Section VIII of this MOU. The OFFICE shall submit an amended MOU, signed by the Executive Director of the OFFICE, for this purpose with back-up documentation sufficient to detail the adjustments to the transfer of funds to TDHCA respective to the changes in the annual allocation from HUD to the State of Texas. The amendment will become fully executed upon signature by the Executive Director of TDHCA.
- D. The OFFICE shall be responsible for fulfilling the federal match requirement for the award of CDBG funds to the OFFICE.
- E. All increases and reductions in the contract amount for the administration of the Colonia SHC Program should be in proportion to the amount of the grant award from HUD.
- F. The OFFICE shall monitor TDHCA's oversight and monitoring of the activities of Colonia SHC subrecipients, units of local government and the respective Colonia SHC nonprofit service providers, to ensure that CDBG activities are completed, performance goals are met and funds expended in accordance with the Colonia SHC Program Rules, contract provisions, applicable state and federal rules, regulations, policies, including OMB Circulars A-87 and A-122 as applicable, and related statutes.
- G. The OFFICE shall monitor TDHCA's monitoring activities to achieve the following monitoring objectives: ensure that activities have been completed and beneficiaries served in accordance with the contract's Performance Statement and Budget; ensure that subrecipient systems, policies and procedures used to administer CDBG funds contain sufficient controls against fraud and misuse and that they are in place and operating efficiently; identify areas of specific need for additional technical assistance.
- H. The OFFICE shall identify in writing, through a monitoring report, any findings and recommended associated corrective actions that may be carried out by TDHCA or the subrecipient of Colonia SHC funding as well as concerns and recommendations that do not require corrective action.

SECTION VI. MEASURE OF LIABILITY

- A. TDHCA continues to assume responsibility and liability for outstanding issues relating to the funding and operation of the Colonia SHCs prior to the execution of this Memorandum.
- B. TDHCA shall provide oversight of activities on a regular basis according to Colonia SHC Standard Operating Procedures that is separate from the monitoring responsibilities of the OFFICE to ensure compliance with Colonia SHC Program Rules and federal and state regulations. The OFFICE shall monitor the activities funded under this Memorandum as

described in the previous section. Costs that are found to be disallowed, if any, by TDHCA, the OFFICE or HUD may be deducted from existing and future allocations of CDBG funds to TDHCA in an amount agreed upon by the parties to this Memorandum, to the extent allowed by law.

SECTION VII. REPORTING REQUIREMENTS AND RETENTION OF AND ACCESS TO RECORDS

- A. TDHCA shall furnish to the OFFICE, and the OFFICE shall furnish to TDHCA, such reports on the operation and performance of work under this Memorandum as may be required by the OFFICE or TDHCA in order to respond to requests for information.
- B. TDHCA shall retain all records relating to its responsibilities described by this Memorandum until its duties are completed and monitored by HUD or until the applicable retention period has expired, whichever is longer.
- C. TDHCA shall give the OFFICE, HUD, the Auditor of the State of Texas, and any of their duly authorized representatives access to, and the right to examine, all records relating to this Memorandum for as long as such records are retained by TDHCA as specified in Subsection B of this section. TDHCA shall also provide the OFFICE a copy of any audits conducted on the programs and services covered by this agreement.
- D. TDHCA shall maintain and submit to the OFFICE up-to-date accomplishments in quarterly reports on a timely basis in an agreed upon format sufficient for the OFFICE to complete the CDBG Annual Performance Evaluation Report (PER) and for the purposes of drawing funds under the IDIS system.
- E. TDHCA shall maintain and submit to the OFFICE up-to-date accomplishments in quarterly reports identifying cumulative data necessary for the HUD IDIS Performance Measures, including the colonias served, activities performed and total number of beneficiaries and shall enter up-to-date accomplishments in the OFFICE's CDBG contract management system. Each contractor shall maintain data regarding all activities completed under the Colonia SHC contract.
- F. TDHCA shall submit Personnel Cost Calculation forms and timesheets to the OFFICE for the reimbursement of administrative expenses.
- G. TDHCA shall respond to the OFFICE in a timely manner regarding any HUD or other correspondence related to the Colonia SHC fund, including any monitoring or audit reports.
- H. TDCHA shall submit copies of Colonia SHC contracts and amendments necessary to keep the OFFICE tracking systems updated and for the payment of draws.

SECTION VIII. AMENDMENTS AND CHANGES

Any alteration, addition or deletion to the terms of this Memorandum shall be by amendment hereto in writing and executed by both parties hereto except as may be expressly provided for in some other manner by the terms of this Memorandum.

SECTION IX. POLITICAL ACTIVITY

None of the activities or performances rendered hereunder by TDHCA shall involve and no portion of the funds received by TDHCA hereunder shall be used for any political activity, including but not limited to any activity to further the election or defeat of any candidate for public office, or any activity undertaken to influence the passage, defeat, or final contents of legislation.

SECTION X. SECTARIAN ACTIVITY

None of the activities or performances rendered hereunder by TDHCA shall involve and no portion of the funds received by TDHCA hereunder shall be used in support of any sectarian or religious activity.

SECTION XI. ORAL AND WRITTEN AGREEMENTS

All oral or written agreements between the parties hereto relating to the subject matter of this agreement that were made prior to the execution of this contract have been reduced to writing and are contained herein.

APPROVED AND ACCEPTED ON BEHALF OF THE TDHCA AND THE OFFICE EFFECTIVE THE 1ST DAY OF FEBRUARY 2009.

AGREED AND EXECUTED BY:

Charles S. (Charlie) Stone
Executive Director
Office of Rural Community Affairs

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Texas Department of Housing and Community Affairs

MULTIFAMILY FINANCE PRODUCTION DIVISION

BOARD ACTION REQUEST

March 12, 2009

Action Item

Presentation, Discussion and Possible Approval of policy regarding use of the American Recovery and Reinvestment Act (ARRA) 2009 Exchange Program and HOME Partnership Tax Credit Gap Financing

Requested Action

Establish policy or provide direction for the use of ARRA programs with the Housing Tax Credit properties.

Background

On February 17th of this year, President Obama signed into law H.R. 1 the American Recovery and Reinvestment Act of 2009 (the "Act"). The Act has many elements that may impact the workings of TDHCA and provide additional funding. While the acceptance of the stimulus package is still being discussed between Governor Perry, the Legislature, and the public, TDHCA has reviewed the bill for potential program developments that may be required.

This Board item deals with two potentially related items involving the Housing Tax Credit Program, Section 1602 of the Act, commonly referred to as the Exchange Program, and Title IV Division A the Home Investment Partnership Program, commonly referred to as the Tax Credit Assistance Program, or TCAP. To place this new Act and these new programs in context it is important to remember that the Board already has taken extraordinary measures to attempt to stabilize 2007 and 2008 9% transactions financially by providing a 10% increase in credit allocation last November. This increase in credits was ineffective in strengthening many of the transactions due to the more significant decline in demand for tax credits nationwide and the broad stalling of financial markets and the national economy.

The Tax Credit Exchange Program

The exchange program permits State Housing Finance Agencies to exchange annual state credit ceiling for cash (at eight-five cents on the dollar) from the Treasury that can then be offered to development owners to supplement or replace tax credit and/or other sources of equity in the financing structure. Staff currently estimates the maximum available exchange to be approximately \$350,000,000. However, this amount could increase with additional return of prior year credits. (See the attached exhibit reflecting the total current status of tax credits available to the State of Texas for 2009.) The additional Hurricane Ike credits received in 2008 and 2009 and 4% tax credits associated with tax exempt bonds are not eligible to be exchanged though developments with those sources of funds may be eligible to receive supplemental assistance from the program. The final amount of any eligible credits to be exchanged is a discretionary item for the Board to determine. If the credits are exchanged, this would provide the Board a way to assure that a significant portion of the funding of a development is made in

cash rather than credits that would have to be sold in an unstable market. The certainty of a cash allocation would result in development with a fixed known amount of current dollars. The Department's General Counsel issued a legal opinion, on February 24, 2009, stating that due to state law only applicants that have applications in place for the 2009 application round would be eligible for this portion of the exchange program (a copy of the legal determination is included with this presentation). The 2009 application round deadline was February 27, 2009. All exchange funds must be used or returned by January 1, 2011. The enabling legislation for the exchange requires that Department develop a plan to ensure asset management using internal or external sources and establish a recapture mechanism for these funds if a building does not initially qualify or subsequently ceases to meet the requirements of the tax credit program. While potentially increasing the Department's liability, utilizing the exchange program in the current market environment will provide more affordable units than can be delivered in the coming year if no credits are exchanged as shown in the following example:

(\$52,589,636)	All Tax Credits	Maximum Exchange	Remaining Credits
% of 2009 Regular Cycle Funds	100%	40%	60%
10 Year value of the Credit	\$525,896,360	\$210,358,544	\$315,537,816
X Current Syndication or Exchange Rate	\$0.70/\$1.00	\$0.85/\$1.00	\$0.70/\$1.00
= Proceeds from Syndication or Exchange	\$368,127,452	\$178,804,762	\$220,876,471
÷ Estimated Subsidy per Unit	\$79,000	\$79,000	\$79,000
Estimated Number of Units	4,660	2,263	2,796
Total Estimated Units	4,660	5,059	

The Tax Credit Assistance Program

The Tax Credit Assistance Program (TCAP) is different from the exchange program. Assuming the Governor accepts the assistance provided for in the Act, these additional funds will come to the Department under the Act in the amount of \$148,354,769. These funds may only be used in assisting existing 2007, 2008, and new 2009 tax credit developments that have a shortfall, including the difference from changes in underwriting giving effect to lowered bond credit purchase price. These funds are being distributed only through the state Housing Finance Agencies rather than HOME participating jurisdictions and therefore may be used in all areas of Texas including participating jurisdictions and non-participating jurisdictions. The Department's General Counsel has issued an opinion that this program is not subject to the 95/5 rule for HOME funds but must be distributed according to the distribution pattern in the QAP. In this case, these funds will be regionally allocated with at risk and rural set asides in place. The Department will need to develop a new competitive

process for distribution of these funds. The Department is still awaiting word from the HUD Secretary as to the final guidelines and requirements of the program. However, the Secretary has said these are not traditional HOME funds and many, if not most, HOME requirements are not anticipated to apply.

In both programs, staff believes Davis Bacon (labor standards), fair housing, affirmative marketing, and environmental clearance review apply. Also both programs require a new asset management responsibility for the Department that may be operated either internally or externally to ensure long term viability of each development.

A public roundtable has held on March 2, 2009, to solicit comment and suggestions of how the Department should use the funds provided through the Act. The general and most frequent comment was the difficulty of syndication in rural Texas. This was followed by the need to assist the 2007 and 2008 developments that were previously awarded credits. Other comments indicated that developments proposing rehabilitation were also difficult to syndicate. Some suggested that there would be other urban deals that would not be able to be syndicated either. Three syndicators represented at the roundtable reinforced the comments about the difficulties of rural transactions and limited investor interest in rural development. In addition, they supported the use of the exchange program in rural areas and for rehabilitation developments. They all agreed to participate with the Department and the development teams to work through the financing structures on individual transactions. Concerns were voiced about the Department's establishment of a mechanism for recapture in the event of non-compliance. There were comments made in support and opposition to modifying the underwriting rules. There was also comment made to ensure that the Ike credits that were swapped with regular credits last year and carried forward to 2009, continue to be dedicated to the Ike impacted areas and separate from the regional pool if they are exchanged for cash in the exchange program. In summary, there appears to be need with the rural, rehabilitation and 2007/2008 developments.

In order to move forward with the 2009 competitive application round and assist deals quickly, staff will be developing additional guidelines to bring forward for consideration at the April Board meeting, however to do so there are a number of basic direction issues that should be addressed today. Staff has already begun the process of evaluating the 2009 applications which have been submitted without much or any foreknowledge of the two new program options provided in the Act. To the extent that the Board sets policy to utilize either or both programs and the State accepts the programs under the Act, the degree to which the programs will be utilized must be resolved to allow Staff to prepare adequately and underwrite the deals based on any revised deal structure. If the exchange funds are used, the applicants need to know in what structure they will be used so that they can provide the appropriate information (i.e. sources and uses of funds, revised commitment letters, etc.) so that any necessary prioritization changes or changes to the financial structure can be solidified. A chart reflecting some of the key aspects for the two programs is attached.

Combinations of the two programs

The programs may be used in combination or separately. Staff has identified at least five different ways that Exchange Funds and Tax Credit Assistance Program (TCAP) funds could be utilized on any particular property.

- Option One: Exchange Funds replacing existing Housing Tax Credits entirely
- Option Two: Exchange Funds plus all or a portion of existing Housing Tax Credits
- Option Three: Exchange Funds plus all or a portion of housing tax credits plus TCAP
- Option Four: Exchange Funds replacing HTCs entirely plus TCAP
- Option Five: All or a portion of existing Housing Tax Credits plus TCAP

While it may be difficult for the Board to determine what level of investment will help make a deal viable and what level will simply provide the limited partner the opportunity to increase yield, requiring a higher syndication price as a condition of receiving blended funds may be prudent requirement.

If the Board chooses to utilize these provisions in ARRA to exchange credits or provide supplemental TCAP funding, these considerations of long term responsibility verses front end uncertainty will be important considerations. These considerations will need to be made in conjunction with other questions about whether blended transactions may even be possible in areas of the state where investor interest is extremely limited and whether there are other methods of involving or engaging the syndicator community in these transactions.

Initial Policy Decisions Needed

1. Do we utilize the exchange program or the TCAP and if so to what levels of funding does the State want to access and what levels of funding should the Department allow for specific developments?

Accessing the maximum funds for both programs would potentially lead to the development of the most units of affordable housing in the state of Texas.

2. Should the Department provide grants or loans or become an equity investor in the developments?

- Grant: Department could provide a grant but retain some form of performance structure requirement that allows the department to sue either the developer in a recourse type situation or the property for non-performance. This may also be accomplished with a performance bond but such a bond may be cost prohibitive.
- Loan: Deferred Forgivable Loan structure would place the funds in the deal and allow a monitoring through the 15 year period under a deed of trust that would allow us to foreclose and sell the property (depending on lien position and net value of the property at the time of sale) to recapture funds.
- Equity Owner: With the funds placed in the deal, the Department takes an ownership position that would provide the ability to distribute profits, loses and depreciation as well as control the sale of the property. Some elevated risk and some question as to whether the state can be in a partnership. The partnership could be done with two or three parties if a syndicator is in the limited partnership.

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3. Where or how to distribute the exchange funds.

- Even distribution: While an overall allocation in accordance with the regional allocation formula (RAF) is statutorily required, the blind use of the RAF to distribute these funds evenly across the State would be fair and consistent and eliminate potential judgment in the allocation.
- Impaired Market Distribution: There was some indication at the round table from syndicators and developers that there was little to no market for rural credits at any price. Also, there was discussion that there was not much of a market for tax credits involving rehab transactions unless they were doing deep rehab and generally in the major markets. Thus a determination on the lack of a market exists could be made while still ensuring that funds overall are regional allocated.

Other considerations

- Using exchange or TCAP for additional support for 2007 transactions still in the program (and not requiring a placed in service extension due to disaster delays) may be suspect. Owners and developers already received potential additional credits in last November's Board action and moved forward with a deal structure that presumably was locked in. These transactions must be completed by the end of this year and therefore should be well underway. Development risks and gap amounts were determined and accepted. Staff has no evidence that additional increases in costs have materialized and it is likely that costs will be stable if not receding over the course of the next year. Additional soft financing may be requested but will only serve to allow a retrade of the deal and or a reduction of previously acceptable level of deferred developer fee.
- Using TCAP in conjunction with exchange funds may be inadvisable. Since the funds can be used in similar ways structuring them to do the same thing and then layering them on top of each other only unnecessarily adds to the complexity of the transaction and potentially overlapping regulatory requirements.
- Should exchange funds be focused on the most distressed tax credit markets (rural, rehab, and small projects) in a full replacement of existing tax credits?

Current Tax Credit Allocation And Maximum Exchange Amounts

	Total Allocation	Maximum Exchange	Remaining Credits
State Annual Credit Ceiling* (Based On Population)	\$ 47,808,760		
H.R. 3221 Addition Credit* (HERA Credits)	\$ 4,780,876		
National Pool (To Be Determined)			
Total Regular Allocation Credits (Exchange 40% / Credit 60%)	\$ 52,589,636	\$ 21,035,854	\$ 31,553,782
2009 Ike Credits* (Not Eligible For Exchange)	\$ 14,906,160		\$ 14,906,160
2008 Allocation Carried Forward to 2009 (Exchange 100%)	\$ 16,639,664	\$ 16,639,664	
Returned Credits Thus Far In 2009 (Exchange 100%)	\$ 3,624,148	\$ 3,624,148	
Total	\$ 87,759,608	\$ 41,299,666	\$ 46,459,942
		X 10	
		\$ 412,996,664	
		X .85	
Total Credit/\$ Value Of Exchange Available	\$ 87,759,608	\$ 351,047,164	\$ 46,459,942
Ike Area Dedicated*	\$ 29,812,320	\$ 126,702,360	\$ 14,906,160
2009 Credits Forward Committed In November 2008**	\$ 20,294,514		\$ 20,294,514
Remaining Available To Regionally Allocate	\$ 37,652,774	\$ 224,344,801	\$ 11,259,268

*All Amounts Are Estimated Based On 2008 Population

**Estimated Based Original Requested Amount - Pending Completion Of All Underwriting

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
LEGAL DETERMINATION

TO: Interested parties
FILE

FROM: Kevin Hamby
General Counsel

DATE: February 24, 2009

RE: Harmonizing H.R.1 American Recovery and Reinvestment Act of 2009 (ARRA) Subtitle G Section 1602 (The Tax Credit Exchange Program) and Texas Government Code Chapter 2306

QUESTION PRESENTED:

How will the above referenced ARRA section apply during the tax credit award process in Texas considering the statutory limitations on the tax credit program?

SHORT ANSWER:

Applications submitted in the 2009 Tax Allocation round will be eligible for consideration by the Governing Board for the possible award of grant dollars in exchange for allocated tax credits. Only applications submitted by February 27, 2009 may be considered in this round. No other awards would be available unless following the allocation round there are remaining unexpended funds.

FACTS:

The ARRA was passed by Congress and signed into law by President Obama on February 17, 2009. This law contains many provisions designed to stimulate the economy. One section of the bill, Section 1602 of Subtitle G, provided "Grants to States for Low Income Housing Projects in Lieu of Low Income Housing Credit Allocations for 2009." This section is commonly referred to as the "Tax Credit Exchange Program" (hereinafter "Exchange Program"). It provides that a state may, at its discretion, convert for cash from the Federal government, a portion of its returned credits, carry forward credits, and annual allocation of credits under Internal Revenue Code §42, based on the exchange formula set forth in Section 1602 of the ARRA . This program is voluntary and can be used for developments that have credits or developments can be fully funded with the exchanged cash based on the "same manner" and "subject to the same limitations" as the tax credit allocation award method used by the state.

LEGAL ANALYSIS:

The tax credit program in Texas is governed by the Texas Government Code Chapter 2306 and 26 USC §42, the IRS Code. Other than providing notice that the section referenced in ARRA §1602(c)(2) of §42(h)(3)(J) does not exist and therefore does not distinguish any of the tax credit allocation decisions referenced in any of the other paragraphs of that section, 26 USC §42 is in

complete harmony with the ARRA and therefore most of this analysis will be devoted to applications of state law and only apply to the State of Texas. The direction provided within the bill that the funds will be distributed in the “same manner” as the credits creates a requirement that a state electing to make an exchange follow the state’s distribution process for making the awards of the grant dollars received in the exchange.

As a short summary of statutory analysis, if statutes can be read in harmony, a federal law will not be read as to preempt or replace state law. The test for this is not whether there was an intent to have a particular course of action taken, but rather whether there is a logical manner in which the two statutes could work together so as to allow both to be given effect. One of the tests for this is whether the Federal statute directs a state to take certain actions. This language is often accompanied by words like “the state shall” take some particular course of action.

In this case when reading the relevant language of the ARRA and holding clarifying conversations with our outside tax credit counsel, Anthony Freedman of Holland and Knight, ARRA §1602 does not appear to be intended to preempt state law. Given this interpretation, the next test would be to determine if the federal and state statute could be read in harmony, thereby effectuating the language of both.

Key provisions of the Texas Government Code Chapter 2306 govern aspects of the implementation of the tax credit program in Texas. For purposes of this discussion, one of the most directed provisions deals with how an application may be considered for an award. The Texas legislature has prescribed hard deadlines that must be met by the Department for awarding tax credits during an allocation round.

The deadlines for the Low Income Housing Tax Credit Application Round are found in Texas Government Code §2306.6724. That section in its entirety impacts the use of the Exchange Program in Texas. It reads:

- Sec. 2306.6724. DEADLINES FOR ALLOCATION OF LOW INCOME HOUSING TAX CREDITS. (a) Not later than September 30 of each year, the department shall prepare and submit to the board for adoption the qualified allocation plan required by federal law for use by the department in setting criteria and priorities for the allocation of tax credits under the low income housing tax credit program.
- (b) The board shall adopt and submit to the governor the qualified allocation plan not later than November 15.
- (c) The governor shall approve, reject, or modify and approve the qualified allocation plan not later than December 1.
- (d) An applicant for a low income housing tax credit to be issued a commitment during the initial allocation cycle in a calendar year must submit an application to the department not later than March 1.
- (e) The board shall review the recommendations of department staff regarding applications and shall issue a list of approved applications each year in accordance with the qualified allocation plan not later than June 30.
- (f) The board shall issue final commitments for allocations of housing tax credits each year in accordance with the qualified allocation plan not later than July 31.

Different discussions have developed on the application of Texas Government Code §2306.6724 to the Exchange Program. One train of thought has dealt with a modification to the Qualified Allocation Plan (QAP) to allow this program to be included within the plan. Two issues arise with this discussion. §2306.6724 (a)–(c) specifies steps that must be completed in the development of the QAP. Each of these dates is a hard date and must be met for the entire application round. There is no provision for amendment of the QAP.

In discussions with staff and the office of the Attorney General, the QAP was amended once during the application round when the Attorney General opined (GA-208) that the QAP had not legally been created. In this case, the state was forced with either enforcing a QAP that had been found in violation of the enabling legislation or to redraft a QAP and ignore procedural guidance on amending the QAP, a Hobson's choice that provided no completely statutory way to proceed and therefore it appears that the substance of the enabling legislation was selected over the procedural guidance found in §2306.6724.

No such conflict exists here. While it might not be an ideal situation, it is possible to make awards under both the substantive and procedural situations following the Code so there is not a statutorily permissible reason to amend the QAP.

In the same manner, subsection (d) can be achieved by awarding either credits or exchanged dollars to applicants who are competing in the existing 2009 application round that have completed an application by the February 27, 2009, deadline required in the QAP and under the Code (last working day prior to the mandatory March 1 of application year deadline). In order to be considered for paragraphs (e) and (f) of Section Texas Government Code 2306.6724, you must have filed an application on or before February 27, 2009.

These are statutory provision that cannot be waived by the TDHCA Governing Board but may only be altered by the legislative enactment.

A second argument is that since this is additional funding, not anticipated by the legislature, that Texas Government Code §2306.6724 should not apply. The legal difficulty with this argument is that this is, in fact, a program that exchanges the state's allocation of tax credits for dollars. Under Texas Government Code §2306.111 and §2306.1115 the state is instructed as to how to distribute its allocated housing tax credits. Neither of these provisions allows TDHCA to "sell the credits" and not provide tax credits, or to reduce the amount of the credits allocated to and available for award under the 2009 Application Round. In effect, the credits are assigned to the state subject to federally mandated set asides and a regional distribution formula. Once assigned in these areas, the deadlines in Texas Government Code §2306.6724 and the scoring in Texas Government Code §2306.6710 are mandatory and binding on the Department and reflected in the Board approved and Governor signed QAP controlling the 2009 application round.

The trading of dollars for credits once allocated under Texas Governemnt Code §2306.111 and §2306.1115 can be read in harmony with the requirements of those sections as there is not a direction that only a certain type of funding may be exchanged for credits. This is also consistent with the Exchange Program, provided the federal test that "efforts have been made to obtain

investment commitments” have been met and the state can determine that “such use will increase the total funds available to build and rehabilitate affordable housing.”

One other question that has arisen is the language found in §2306.6724 that says the March 1 deadline for that application deadline refers to an “initial round.” Exactly what constitutes an “initial round” is unknown since the tax credit program has been oversubscribed and statute requires funding of the approved waiting list with any additional credits available. Since passage of this controlling language in the Texas Government Code, Texas has only carried forward de minimis amounts forward to the next year until the “Ike trade out” of credits in the Ike impacted counties that carried forward into 2009, and therefore only one round has been conducted in Texas. This means that in Texas the initial round has been the only round.

The Office of the Attorney was not asked to endorse this legal determination and has issued no formal or informal opinion on this issue. In preparing this legal determination, the department discussed the application of the Texas Government Code to ARRA §1602 with The Office of the Attorney General in reaching the conclusion made in this memo. There was agreement that no federal preemption existed and the ARRA and the Texas Government Code Chapter 2306 could be read in harmony by requiring that if an Exchange Program purchase of tax credits from the 2009 were approved by the TDHCA Governing Board, it would be only be available to applicants in the 2009 application round that closes February 27, 2009.

ANSWER:

If a policy is approved by the Board approving some form of exchange as provided for under ARRA §1602, only applicants in the 2009 Application Round will be eligible for this program. Texas Government Code §2306.111 distributes the 2009 Tax Credit Allocation in required set asides and in conjunction with Texas Government Code §2306.1115, and the selling of tax credits to generate other funds is not a permissible use of the credits that would alter the credit disbursement.

Note that there are other issues that may require legal determinations regarding this program, this determination only attempts to address the issue of who will be eligible for credits/exchange funding if the program is approved by the TDHCA Governing Board.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
LEGAL DETERMINATION

TO: Interested parties
FILE

FROM: Kevin Hamby
General Counsel

DATE: February 24, 2009

RE: Harmonizing H.R.1 American Recovery and Reinvestment Act of 2009 (ARRA) Title XII Captioned HOME Investment Partnerships Program (Gap Financing for Tax Credit Properties) and Texas Government Code Chapter 2306

QUESTION PRESENTED:

Does the Texas Government Code §2306.111(c) regarding the 95/5 allocation apply to the funds made available for tax credit properties in ARRA HOME Investment Partnerships Program?

SHORT ANSWER:

No. Federal law preempts state law on this issue, and, as specified in ARRA, the funds must be distributed according to the tax credit set asides and regional allocation formula called for under Texas statutes and the QAP.

FACTS:

The ARRA was passed by Congress and signed into law by President Obama on February 17, 2009. This law contains many provisions designed to stimulate the economy. One section of the bill, found in Title XII, relates supplemental funds to provide gap financing for tax credit properties being delivered to the local Housing Finance Agencies in charge of tax credits. This section is titled Home Investment Partnerships Program (at pp. H.R. 1-106-107). The funds are delivered based on the Home Investment Partnerships Program (“HOME”) formula, but rather than the usual delivery method, these funds are to be delivered to the State Housing Finance Agency in charge of tax credits. In many states the housing finance agency does not administer the HOME program. Usually, HOME funds are provide to the local HUD office for distribution to participating jurisdictions, and in the case of Texas, a percentage of these are provided to the state for non-participating jurisdictions. This program is new funding not previously available or committed in the Consolidated Plan by the Department. This makes it different than the grant funds made available in §1602 of ARRA, also related to tax credit properties.

LEGAL ANALYSIS:

The Texas Government Code in §2306.111 provides that funds under the Cranston-Gonzales national Affordable Housing Act (42 U.S.C. §12704 et seq.) will be provided to the TDHCA for

distribution according to this section. The legislature has directed the allocation of the HOME funds in the following section of the Texas code:

(c) In administering federal housing funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. Section 12701 et seq.), the department shall expend:

- (1) 95 percent of these funds for the benefit of non-participating small cities and rural areas that do not qualify to receive funds under the Cranston-Gonzalez National Affordable Housing Act directly from the United States Department of Housing and Urban Development; and
- (2) five percent of these funds for the benefit of persons with disabilities who live in any area of this state.

(c-1) The following entities are eligible to apply for set-aside funds under Subsection (c):

- (1) nonprofit providers of affordable housing, including community housing development organizations; and
- (2) for-profit providers of affordable housing.

(c-2) In allocating set-aside funds under Subsection (c), the department may not give preference to nonprofit providers of affordable housing, except as required by federal law.

This section is commonly referred to as the “95/5 rule.” This provision requires that 95% of all HOME funds received by the state go to non-participating jurisdictions, which are usually more rural in nature.

The ARRA, however, directs the state on how to spend these funds and removes the discretion and other distribution criteria normally associated with HOME funds. The ARRA states the funds are to be used exclusively for tax credit properties and “each State shall distribute these funds competitively under this heading and **pursuant to their qualified allocation plan** (emphasis added).” This language preempts any other state provisions regarding the distribution of these funds. The ARRA also provides “that projects awarded low income housing tax credits under section 42(h) of the IRC of 1986 in fiscal years 2007, 2008 or 2009 shall be eligible for funding under this heading. . .”

The TDHCA also administers the Low Income Housing Tax Credit program on behalf of the State of Texas. This program is governed by Texas Government Code Chapter 2306. Part of this Chapter requires the development of a Qualified Allocation Plan (“QAP”) or process for awarding tax credits. Plans have been approved in accordance with the statutory requirements and agreed to by the Governor for the years 2007, 2008, and 2009.

The QAP takes into account several statutory requirements for the distribution of funds. Specifically, Texas Government Code §2306.111 states:

(d) The department shall allocate housing funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. Section 12701 et seq.), housing trust funds administered by the department under Sections 2306.201-2306.206, and commitments issued under the federal low income housing tax credit program administered by the department under Subchapter DD to all urban areas and rural areas of each uniform state service region based on a formula developed by the department under Section 2306.1115. If the department determines under the formula that an insufficient number of eligible applications for assistance out of funds or credits allocable under this subsection are submitted to the

department from a particular uniform state service region, the department shall use the unused funds or credits allocated to that region for all urban areas and rural areas in other uniform state service regions based on identified need and financial feasibility.

(d-1) In allocating low income housing tax credit commitments under Subchapter DD, the department shall, before applying the regional allocation formula prescribed by Section 2306.1115, set aside for at-risk developments, as defined by Section 2306.6702, not less than the minimum amount of housing tax credits required under Section 2306.6714. Funds or credits are not required to be allocated according to the regional allocation formula under Subsection (d) if:

(1) the funds or credits are reserved for contract-for-deed conversions or for set-asides mandated by state or federal law and each contract-for-deed allocation or set-aside allocation equals not more than 10 percent of the total allocation of funds or credits for the applicable program;

(2) the funds or credits are allocated by the department primarily to serve persons with disabilities; or

(3) the funds are housing trust funds administered by the department under Sections 2306.201-2306.206 that are not otherwise required to be set aside under state or federal law and do not exceed \$3 million during each application cycle.

(d-2) In allocating low income housing tax credit commitments under Subchapter DD, the department shall allocate five percent of the housing tax credits in each application cycle to developments that receive federal financial assistance through the Texas Rural Development Office of the United States Department of Agriculture. Any funds allocated to developments under this subsection that involve rehabilitation must come from the funds set aside for at-risk developments under Section 2306.6714 and any additional funds set aside for those developments under Subsection (d-1). This subsection does not apply to a development financed wholly or partly under Section 538 of the Housing Act of 1949 (42 U.S.C. Section 1490p-2).

(d-3) In allocating low income tax credit commitments under Subchapter DD, the department shall allocate to developments in rural areas 20 percent or more of the housing tax credits in the state in the application cycle, with \$500,000 or more in housing tax credits being reserved for each uniform state service region under this subsection. Any amount of housing tax credits set aside for developments in a rural area in a specific uniform state service region under this subsection that remains after the initial allocation of housing tax credits is available for allocation to developments in any other rural area first, and then is available to developments in urban areas of any uniform state service region.

(e) The department shall include in its annual low income housing plan under Section 2306.0721:

(1) the formula developed by the department under Section 2306.1115 ;and

(2) the allocation targets established under the formula for the urban areas and rural areas of each uniform state service region.

This language requires and the QAP reflects that there is a minimum amount to set aside for at risk properties—including USDA properties and a set aside for rural properties equal to 20% of the total amount or \$500,000 per rural region. All funds should be made available first on the Regional Allocation Formula (formula approved by TDHCA in accordance with Texas Government Code §2306.1115) for the 26 regions, as set forth in the QAP. A statewide collapse

would occur only if the funds are not requested in any one region. It should be noted that before there can be a statewide collapse the rural set aside must still be met if applications are available whereby any rural deal will get funded first out of the rural set aside before a statewide collapse.

ANSWER:

Federal law directs that these funds shall be distributed according to the state QAP for the purpose of supporting tax credit properties. The distribution by the QAP formula preempts the distribution method described in Texas Government Code §2306.111(c). Therefore the distribution method, regardless whether these funds are characterized as HOME program funds, must follow the distribution called for in §2306.111(d-1) - (e) and in a similar format to the QAP. This effectively distributes the funds as if they were tax credits rather than HOME funds.

Note that there are other issues that may require legal determinations regarding this program, and this determination only attempts to address the issue of who will be eligible for the supplemental HOME funding if the program is approved by the TDHCA Governing Board.

Key Attributes Of The Tax Credit Exchange Program And The Tax Credit Assistance Program

Exchange

TCAP

Potential Amount of Funds:	\$350,000,000	\$148,000,000
Source of Funds:	Existing Tax Credit Authority Is Returned To The IRS By the State In Exchange For Cash (\$0.85/\$1.00 Of Ten Year Credit) Which granted To The State With Broad Discretionary Use And Recapture Provisions.	New "HOME" Money From HUD granted To The State With Recapture Provisions Unknown At This Time.
Federal Deadlines For Use:	Must Exchange And Allocate By End Of 2009 And Return Any Unused Funds By 1/1/2011.	Must Allocate/Commit 75% By 2/17/2010 Expend 75% By 2/17/2011 And Return Any Unused Funds By 2/17/2012.
Application Deadline For Developer:	February 27, 2009	To Be Determined (TBD)
Eligibility:	Currently Limited by State Statute to Applicants in 2009 Competitive HTC Round.	2007, 2008, 2009 HTC New & Current Applicants.
Distribution of funds:	TBD Subject To 2009 RAF And Forwards Awarded In November Of 2008.	Subject to RAF? With Or Without Considering Forwards?
Prioritizing Funding:	QAP Scoring	New Policy
Federal Requirements of Funds:	All Crosscutting Federal Requirements Including Labor Standards (Davis-Bacon), Environmental, Fair Housing, Affirmative Marketing Apply Regardless Of Development Size. In Addition, New Asset Management Requirements Must Be Established To Ensure Long Term Feasibility Of Developments Funded With These Programs.	
Structure of Financing:	Can Be: Equity With Major or Minor Ownership Control, Grant or Forgivable Loan, Soft Subordinate Loan, Hard Priority Loan Or Any Combination Of These.	

DISASTER RECOVERY DIVISION

BOARD ACTION REQUEST

March 12, 2009

Action Item

Presentation and Discussion of the Disaster Recovery Division's Status Report on CDBG and FEMA AHPP Contracts Administered by TDHCA

Requested Action

Presentation and Discussion of the Disaster Recovery Division's Status Report on CDBG and FEMA AHPP Contracts Administered by TDHCA

Background

This Board Action Request summarizes the activities of the Disaster Recovery Division which has oversight responsibility for Community Development Block Grant (CDBG) Disaster Recovery Programs for Round I and Round II funding administered by TDHCA, as well as the FEMA Alternative Housing Pilot Program (AHPP).

Public Law 109-148 – 1st Supplemental (\$74.5 Million)

Under the **1st Supplemental CDBG Disaster Recovery Program (referred to as Round I)**, there are three Councils of Governments (COGs) responsible for administering housing contracts to help restore and rebuild in areas of the State most directly impacted by Hurricane Rita. Of the \$74.5 million, the total funding allocation administered by the COGs is \$40,259,276 broken down as follows:

- Deep East Texas Council Of Governments (DETCOG) - \$6,745,034
- Houston-Galveston Area Council (H-GAC) - \$7,015,70
- South East Texas Regional Planning Commission (SETRPC) - \$26,348,536
 - SETRPC - \$15,520,536
 - Beaumont - \$5,232,000
 - Port Arthur - \$5,596,000

As detailed below, the COGs are wrapping up activities under their respective contracts. They have cumulatively completed assistance to four hundred seven (407) households, have another fifty (50) homes under construction, and have sixty-five (65) more homes under contract pending the onset of construction activities. Cumulatively, there are five hundred twenty-two (522) homes either under bid award, under construction, or completed as of March 1, 2009 which represents one hundred twenty-one percent (121%) of their contracted number of households to be served. Program efficiencies have allowed for a greater number to be served than was originally anticipated.

Staff anticipates that DETCOG's contract activities will be complete by April. In order to utilize all of the funding available to H-GAC and SETRPC, additional time extensions have become necessary to allow for adding households to the Program, establishing their programmatic eligibility, and completing construction activities. For example, SETRPC is requesting a 6 month extension to serve an additional 25 to 30 homeowners under their program that has saved \$2.3 million in costs due to their competitive bid process that resulted in homes being delivered at a lower price than originally projected. The Executive Director is extending these contracts to allow for completion of these homes under the Round 1 contract.

The COGs have committed \$670,420 of HTF dollars to assist with gap financing needs, and \$374,247,100 of that has been drawn. More of these HTF dollars are anticipated to be obligated to address the gap financing needs of additional homeowners being served under this program.

Financial Summary

	Current Budget	Admin \$ Drawn To Date	Project \$ Drawn To Date	Total Drawn	% of Funds Disbursed
DETCOG	\$6,745,034.00	\$656,466.85	\$5,397,475.72	\$6,053,942.57	90.22%
H-GAC	\$7,015,706.00	\$817,639.38	\$4,133,309.06	\$4,950,948.44	71.97%
SETRPC	\$26,348,536.00	\$1,923,026.09	\$11,947,257.24	\$13,870,283.33	52.97%
SETRPC	\$15,520,536.00	\$1,650,345.99	\$7,252,179.00	\$8,902,524.99	57.70%
Beaumont	\$5,232,000.00	\$258,300.10	\$2,565,455.23	\$2,823,755.33	54.60%
Port Arthur	\$5,596,000.00	\$14,380.00	\$2,129,623.01	\$2,144,003.01	38.31%
Totals	\$40,109,276.00	\$3,397,132.32	\$21,478,042.02	\$24,875,174.34	62.02%

Project Summary

	No. to be Served per Contract*	No. out for Bid	**Units Under Contract	No. Site-built Under Construction	Total Rehabilitated /Reconstructed	No. of MHUs Delivered	Total No. Constructed/ Delivered
DETCOG	96	0	8	0	12	108	120
H-GAC	105	6	2	5	19	71	90
SETRPC	229	0	55	45	146	51	197
SETRPC	127	0	40	23	74	51	125
Beaumont	56	0	5	11	39	0	39
Port Arthur	46	0	10	11	33	0	33
Total	430	6	65	50	177	230	407

* Based on the contractual number of households that the COGs will be able to serve with the funding allocation

** Total of MHUs ordered but not yet delivered and construction contracts signed for site-built units

Public Law 109-234 – Round II (\$428 Million)

The **2nd Supplemental CDBG Disaster Recovery Funding (referred to Round II)** is the second of two awards in CDBG funding to help restore and rebuild in areas of the State most directly impacted by hurricane Rita, but it also addresses needs arising from hurricane Katrina evacuees. The total funding allocation is \$428,671,849, broken down as follows:

2nd Supplemental CDBG Disaster Recovery Activity	Available Funding	Amount Contracted per Activity	Cumulative Expenditures	% of Expenditures Disbursed	Balance Remaining
Rental Housing Stock Restoration Program (“Rental”)	\$82,866,984	\$81,147,333	\$15,141,245.92	18.66%	\$66,006,087.08
ORCA’s Restoration of Critical Infrastructure Program (Infrastructure)	\$42,000,000	\$42,000,000	\$7,691,326.46	18.31%	\$34,308,673.54
City of Houston and Harris County Public Service and CDP (“Houston/Harris”)	\$60,000,000	\$60,000,000	\$27,192,035.74	45.32%	\$32,807,964.26
Homeowner Assistance Program (“HAP”)	\$210,371,273	\$210,371,273	\$7,880,455.56	3.752%	\$202,490,817.44
Sabine Pass Restoration Program (“SPRP”)	\$12,000,000	\$12,000,000	\$941,788.39	7.85%	\$11,058,211.61
State Administration Funds (Used to Administer Funding)	\$21,433,592	\$21,433,592	\$5,512,460.47	25.72%	\$15,921,131.53
Total CDBG Round 2 Funding	\$428,671,849	\$426,952,198	\$64,359,312.54	15.07%	\$362,592,885.46

CDBG Round 2 City of Houston and Harris County Public Service and Community Development Program

City of Houston

Funding of \$20 million was allocated to the Houston Police Department for establishment of the Housing Safety Component, composed of civilian and officer personnel. Civilian personnel consist of administrative staff that supports the officer personnel and the entry of the overtime incurred by officers on behalf of the hurricane evacuee population. Funding of \$20 million was also allocated to carry out rehabilitation of existing multi-family housing stock through the existing Apartment to Standards Program. These funds will provide rehabilitation of multi-family housing to the evacuee population. Additionally, the City of Houston has a \$2,000,000 administrative budget.

The City of Houston’s Housing Safety Component has expended \$18,574,649.11 (92.87%) of their \$20,000,000 allocation Housing Safety and Apartment to Standards program has expended \$6,585,097.76 (32.93%) of their \$20,000,000 allocation for multifamily housing with a separate administrative allocation of \$2,000,000. Administrative expenditures have yet to be submitted for reimbursement.

The Apartment to Standards program has allocated funds for two rehabilitation projects. Expenditures represent progress on one of the two projects, the second which is expected to commence in the first quarter of 2009.

Harris County

Funding of \$20 million was allocated to provide services to the residents of Harris County among five different program components: Expanded Services to Hurricane Evacuees (Harris County Sheriff’s Dept.), Evacuee Medical Services (Harris County Hospital District), Katrina Crisis Counseling Program (Mental Health and Mental Retardation Authority), Youth Offenders Services (Harris County Sheriff’s Dept.) and the Disaster Housing Assistance Program Component (Harris County).

Harris County has expended approximately 5.07% of its \$20,000,000 allocation along with a separate administrative allocation of \$1,000,000. Administrative expenditures remain at \$189,151.05 (18.92%) from the previous month. Expenditures incurred among the five different programs are \$2,032,288.87 (10.16%).

CDBG Round 2 Multifamily Rental Housing Stock Restoration Program

On September 13, 2007, the TDHCA Board awarded \$81.1 million to repair or rebuild seven Golden Triangle-area affordable multifamily rental properties damaged or destroyed by Hurricane Rita. The construction work, once completed, will restore rental unit housing to 813 low-income individuals and families. Award-specific status is outlined in the table below:

Loan Number	Development Name	City	Total Units	Type of Activity	CDBG Loan Amount	Funds Drawn/ Expended	Loan Closing Date
7060007	Orange Navy Homes	Orange	115	Recon.	\$14,189,439	\$1,928,240.26	10/15/2008
7060010	Brittany Place II Single Family	Port Arthur	100	Recon.	\$13,077,366	\$1,202,874.20	12/04/08
7060006	Pointe North	Beaumont	158	Recon.	\$13,778,332	\$270,100.61	8/31/2008
7060011	Gulfbreeze Plaza I	Port Arthur	86	Recon.	\$9,067,577	\$407,164.87	12/17/2008
7060012	Gulfbreeze Plaza II	Port Arthur	148	Recon.	\$13,280,250	\$3,573,935.80	6/11/2008
7060008	Virginia Estates	Beaumont	110	Rehab	\$6,707,534	\$2,949,659.32	5/26/2008
7060009	Brittany Place I Multifamily	Port Arthur	96	Recon.	\$11,046,835	\$4,809,270.86	4/9/2008
Totals:			813		\$81,147,333	\$15,141,245.92	

CDBG Round 2 Homeowner Assistance Program and Sabine Pass Restoration Program Update from ACS State & Local Solutions, Inc.

Program activities, especially as they relate to permitting and construction, have increased significantly since the last Board meeting. There are now 39 homes that have been permitted and an additional 94 permits that have been applied for by the contractors. By 3/31/2009, approximately 94 homes should be under construction.

The HUD release of funds for the second half of HAP was received on February 17th. This final notification completes the release of funds for all of SPRP and HAP and allows closings to be completed in all program areas.

The initiative to address almost 1,800 applicants from whom no response has been received since the mailing of the original Supplemental Applications continues on schedule. To date 1,176 Final Notices have been mailed to the nonresponsive population. Positive responses from this mailing include the following:

- 77 have expressed interest in continuing in the program and have scheduled appointments at the Service Centers
- 88 applications were received with a forwarding address and remailed to attempt to contact them for participation in the program

To supplement those nonresponsive applicants removed from the program, outreach continues to those applicants on the Wait List. To date, 789 applications have been mailed to applicants on the Wait List and there are currently 522 applicants remaining on the List to be served. The remaining applicants will receive an application as the process to complete the outreach to the nonresponsive population is completed. Results to date for these applicants are as follows:

- 130 new applications have been returned
 - Jefferson County – 66
 - Jasper County – 18
 - Newton County – 12
 - 8 Other Counties - 34
- 83 of the returned applications are already complete and moving through eligibility determination
- 36 applicants withdrew from the program

Reflected below are the number of applicants that have moved through the Homeowners Assistance and Sabine Pass Restoration Programs (HAP and SPRP) as of March 4, 2009:

- Completed applications have been received from 2,040 applicants
- Eligibility has been determined on 1,163 applicants
- Inspections have been conducted on 1,095 damaged homes
- Contractors have been assigned to 701 applicants
- Benefit selection meetings have been held for 519 applicants with another 138 being scheduled
- Permits have been applied for on 133 homes
- Closings have been held for 78 applicants

- Program metrics differentiated between HAP and SPRP are included in the table below.

Metrics as of 3/4/2009	HAP	SPRP	Total
Completed Applications	1,940	100	2,040
Eligibility Determined	1,077	86	1,163
Inspections Complete	996	99	1,095
Projects Assigned to Contractors	610	91	701
Benefit Selection Meetings Held	460	59	519
Closings	28	50	78
Permits Applied For	92	41	133
Construction Starts	5	17	22

In February, the program met with Permitting Officials in Orange, Beaumont, Jasper and Newton for the purpose of sharing building plans and discussing permitting procedures. These meetings were held in order to inform officials of program plans and to solicit their cooperation in expediting the processing of requests for building permits. The difficulty in locating titles was also discussed with judges in Jasper and Newton. Information pertaining to applicants with title problems were provided to these judges who will employ Commissioners in their jurisdiction to assist in locating these titles. In other measures designed to compress the timeline from application to construction, the permitting process originally being initiated after closing has been moved to begin at the time of Benefit Selection by the homeowner. It is estimated that this will reduce the cycle from application to construction by about two weeks. Additionally, two meetings previously held separately, Benefit Selection and Construction Kick-off, have been combined, thereby further compressing the timeline by a number of days.

Staff has been added to the Environmental team and the team has presented 218 homes to the Texas Historical Commission for review and they have cleared all 218 so far.

FEMA Affordable Housing Pilot Program

The Disaster Recovery Division is also responsible for administration of the Federal Emergency Management Agency (FEMA) award of \$16,471,725 for the Affordable Housing Pilot Program (AHPP). The purpose of the AHPP is to demonstrate an alternative housing solution to the FEMA trailer in the areas affected by the 2005 Hurricanes.

On January 7, 2008, the Federal Emergency Management Agency (FEMA) announced that TDHCA was awarded \$16,471,725 for the Affordable Housing Pilot Program (AHPP). The purpose of the AHPP is to demonstrate an alternative housing solution to the FEMA trailer in the areas affected by the 2005 Hurricanes for a time period of twenty-four months. A one-time exemption to the Stafford Act, AHPP permits the use of FEMA funding to study alternatives to the FEMA trailer by examining cost-effective solutions that meet a variety of housing needs. Pursuant to FEMA requirements, the pre-fabricated units must be awarded within the 22 counties affected by the 2005 Hurricanes.

The Heston Group was selected to pilot a pre-fabricated, panelized solution which can be deployed quickly and built to accommodate a diverse population.

The Department has been working diligently with the Heston Group to identify and manage activities to be performed in preparation of the construction of 18 homes in East Texas and up to 60 homes in the City of Houston.

There are currently 18 eligible families in East Texas with 14 of those sites having been submitted to FEMA for Environmental Clearance. FEMA has given Environmental Clearance for seven sites to date and site work is in progress for four of those sites. We expect the first four homes to be placed and occupied by March 31st.

TDHCA staff is working closely with the city of Houston on the placement of a ten home infill site program to further address housing needs in the area as well as planning for the 30-40 unit group site that will address the renter population that relocated from East Texas due to Hurricane Rita.

MULTIFAMILY FINANCE PRODUCTION DIVISION

BOARD ACTION REQUEST

March 12, 2009

Action Item

Presentation, Discussion, and Possible Action regarding a Notice of Funds Availability for a \$58 million affordable rental housing set-aside under CDBG disaster funding related to Hurricanes Ike and Dolly

Required Action

Approve and provide Direction for the Proposed Draft Notice of Funding Availability for \$58 Million for Multifamily Rental Housing.

Background

At the February 5, 2009 Board meeting, staff presented an update of the Disaster Recovery Funds for Ike and Dolly and requested the Board's approval to move forward in drafting a Notice of Funding Availability (NOFA) for \$58 million of Multifamily Rental Funds.

A copy of the draft NOFA is included with this presentation. Staff is scheduling a roundtable to discuss the NOFA in detail with stakeholders. These funds will be allocated similarly to the housing tax credit program. The funds will be set-aside regionally first. Staff will identify the highest scoring applications in each region in accordance with the priorities set forth in the NOFA. Staff will recommend applications until all allocation is exhausted in a region without exceeding the set-aside amount. Any remaining amounts will be combined and the next highest scoring application in the most underserved region and priority will be recommended. This selection will continue until all remaining funds are exhausted.

These funds will give first priority to individual owners and rural areas. Councils of Government, Counties and Cities will also have the opportunity to participate in the use of these funds.

Recommendation

Staff recommends the collection of additional public comment in two separate roundtables. Provided there are no significant changes after obtaining the public input, staff requests the Board grant contingent approval for the Executive Director, working with the Board Chair, to publish this NOFA prior to the next scheduled Board meeting.



Texas Department of Housing and Community Affairs
Disaster Recovery Division
State Administered CDBG Hurricane Dolly and Ike Multifamily Rental
Programs
Notice of Funding Availability (NOFA)

1) Summary

- a) The Texas Department of Housing and Community Affairs (“the Department” or “TDHCA”) announces this Draft Notice of Funding Availability (“NOFA”) of approximately \$58,894,225 in federal funding from the Community Development Block Grant (“CDBG”) Disaster Recovery Fund (the “Funds”) to be used within only those Impacted Counties specified in Section 1(b), below, for an Affordable Rental Housing Stock Restoration Program in response to Hurricanes Dolly and Ike. The availability and use of these funds is subject to the U. S. Department of Housing and Urban Development’s (“HUD”) approval of the State of Texas Action Plan, submitted to HUD by the Office of Rural and Community Affairs (“ORCA”) pursuant to the Hurricane’s Dolly and Ike CDBG *State of Texas Plan for Disaster Recovery* (“Action Plan”), Subpart I of the regulations at Title 24 Part 570 of the Code of Federal Regulations, 24 CFR 570.606, 24 CFR 570.200(j), and 24 CFR 570.513, as it is the only regulation promulgated by the Secretary, unless specifically waived for Texas under Public Law 110-329. ORCA has been designated by the Governor of the State of Texas as the primary agency to administer the Action Plan, and the Department has been assigned responsibility for the administration of the housing component of the Action Plan.
- b) These funds are proposed to be made available in the form of grants or loans to the owners of affordable rental properties in any of the 37 Hurricane Dolly or Ike “Impacted Counties” counties covered under the Action Plan (Angelina, Austin, Brazoria, Cameron, Chambers, Cherokee, Fort Bend, Galveston, Gregg, Grimes, Hardin, Harris, Harrison, Hidalgo, Houston, Jasper, Jefferson, Liberty, Madison, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Trinity, Tyler, Walker, Waller, Washington, Willacy). A minimum of 51% of the funds to each property are to be used for affordable rental housing for low/moderate-income Texans earning 80 percent or less of the Area Median Family Income (AMFI).
- c) The NOFA complies with the requirements as stated in the Action Plan for the Rental Housing Stock Restoration Program. This draft NOFA will clearly establish the award process, the application acceptance period, threshold criteria (including applicable building codes), and selection criteria. This draft NOFA will not be released until HUD approval of the Action Plan is received. It is anticipated that funds will be awarded in September 2009; however all dates in the NOFA are subject to change depending on when ORCA obtains final HUD approval of the Action Plan. (HUD approved Action Plan 3/6/09).

- d) To reflect the Department's commitment to obtain public input at the local level on CDBG activities as described in the Action Plan, this draft NOFA will be used at a roundtable meeting in east Texas (WHEN?) and then subsequently brought before the TDHCA Board for approval in March 2009.

2) Allocation of CDBG Funds

- a) These funds are made available through the Department's allocation of CDBG Disaster Recovery funds from the U.S. Department of Housing and Urban Development (HUD). These CDBG Disaster Recovery funds have been set-aside solely for affordable rental housing activities to restore the affordable housing rental stock that was damaged, depleted, or destroyed in the Impacted Counties by Hurricanes Ike or Dolly.
- b) The CDBG funds will be made available to Impacted Counties through an application process. Applications submitted for properties located in each of the regions identified in the chart below will be evaluated for Eligibility and Selection criteria. Only the highest scoring applications will then be evaluated for Threshold criteria. Applications that successfully satisfy Threshold criteria will be moved forward for Underwriting. Recommendations for funding will be made from the applications that have met all evaluation criteria to the satisfaction of the Department. Impacted Counties/Regions appear in the table below:

COG	Impacted counties within COG	\$ amount available	Percentage of this set aside allocated
East Texas Council of Government	Cherokee, Gregg, Harrison, Rusk, Smith	\$518,423.02	0.876890879%
Brazos Valley Council of Government	Grimes, Madison, Washington	\$503,099.95	0.855104409%
Deep East Texas Council of Government	Angelina, Houston, Jasper, Nacogdoches, Newton, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, Tyler	\$3,333,184.52	5.637942331%
South East Texas Regional Planning Commission	Hardin, Jefferson, Orange	\$7,864,483.99	13.302446022%
Houston-Galveston Area Council	Austin, Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Matagorda, Montgomery, Walker, Waller	\$45,753,239.36	77.389692425%
Lower Rio Grande Valley Development Council	Cameron, Hidalgo, Willacy	\$862,483.46	1.465938165%
Total		\$58,834,914.30	100%

If there are any CDBG Disaster Recovery Funds remaining in any Impacted Region after awards have been made to the most competitive, fully fundable applications, the remaining funds from each Impacted Region will be combined and made available to the highest scoring Application in the region most underserved by CDBG Disaster Recovery Funds. Awards will be made in this order until all funds have been exhausted without exceeding the amount provided. This will be referred to as the Disaster Recovery Collapse.

- c) Priority will be given to applications as follows:
 - i) Applications for developments of any size that are owned by an individual or single company will have preference over developments owned or controlled by a governmental entity (city/county/COG/etc).
 - ii) Applications for developments located in Rural areas will have preference over developments located in Urban areas. Current Rural/Urban designations are found in the 2009 Site Demographics.

3) Eligible Activities and Applicants

- a) Rehabilitation of existing affordable multifamily rental housing developments damaged by hurricane Ike or Dolly that were uninsured or underinsured.
- b) Replacement of multifamily rental housing developments or units damaged or destroyed by Hurricane Ike or Dolly through reconstruction and new construction on the same site or another site as long as the applicant is replacing the same number of units destroyed.
- c) Eligible activities will include those permissible under the Housing and Community Development Act (HCDA) Section 105(a) and the federal CDBG Rules at §24 CFR 570, Subpart I, which involve the rehabilitation, reconstruction, or new construction (including demolition, site clearance, and remediation) of affordable rental housing in Hurricane Ike and Dolly impacted areas.
- d) The Department provides CDBG funding to qualified nonprofit organizations, for-profit entities, sole proprietors, public housing authorities and units of general local government.

4) Ineligible Applicants

The following violations will cause an Applicant and any Applications they have submitted to be ineligible:

- a) The Applicant, Development Owner, or Developer is an Administrator of a previously funded Contract for which Department funds have been partially or fully deobligated due to failure to meet contractual obligations during the 12 months prior to application submission date, unless the deobligation was voluntary and prior to the contract term expiration date, or was the remainder on a completed Contract;
- b) The Applicant, Development Owner, or Developer has failed to submit a response to provide an explanation, evidence of corrective action or a payment of disallowed costs or fees as a result of a monitoring review;
- c) The Applicant, Development Owner, or Developer has failed to make timely payment or is delinquent on any loans or fee commitments made with the Department on the date of the Application submission;
- d) The Applicant, Development Owner, or Developer has been or is barred, suspended, or terminated from procurement in a state or federal program or listed in the List of Parties Excluded from Federal Procurement or Non-Procurement Programs or has otherwise been debarred by HUD or the Department;
- e) The Applicant, Development Owner, or Developer has violated the State's revolving door policy;

- f) The Applicant, Development Owner, or Developer has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within fifteen years preceding the Application deadline;
- g) The Applicant, Development Owner, or Developer at the time of Application submission is:
 - i) subject to an enforcement or disciplinary action under state or federal securities law or by the NASD;
 - ii) subject to a federal tax lien;
 - iii) or is the subject of an enforcement proceeding with any governmental entity;
- h) The Applicant, Development Owner, or Developer with any past due audits has not submitted those past due audits to the Department in a satisfactory format on or before the Application submission date in accordance with §1.3 of this title;
- i) The submitted Application has an entire volume of the Application missing; has excessive omissions of documentation from the threshold Criteria or uniform Application documentation; or is so unclear, disjointed, or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department. If an Application is determined ineligible pursuant to this section, the Application will be terminated without being processed as an Administrative Deficiency. To the extent that a review was able to be performed, specific reasons for the Department's determination of ineligibility will be included in the termination letter to the Applicant;
- j) The Applicant, Development Owner, or Developer or anyone that has Controlling ownership interest in the Development Owner or Developer that is active in the ownership or Control of one or more other rent restricted rental housing properties in the state of Texas administered by the Department is in Material Noncompliance with the LURA;
- k) Any Application that includes financial participation by a Person who, during the five-year period preceding the date of the bid or award, has been convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or Reconstruction efforts as a result of Hurricanes Dolly and/or Ike or Katrina or any other disaster occurring after September 25, 2005, or was assessed a federal civil or administrative penalty in relation to such a contract.

5) Affordability Requirements

- a) Each development will require a minimum CDBG affordability period of 5 years after closeout of the loan or grant. Throughout this period, the applicant agrees to maintain the development for the intended purpose as outlined in the Land Use Restriction Agreement (“LURA”). Compliance will be monitored by the Department consistent with 10 TAC §60, Subchapter A, Compliance Monitoring.
- b) At a minimum, 51% of the assisted units must benefit low-moderate income persons earning 80 percent or less of the AMFI as defined by HUD and detailed in the Housing and Community Development Act of 1974 (HCDA) Title I, 105(a).
- c) Properties will be restricted under a “LURA”, or other such instrument as determined by the Department for these terms. Among other restrictions, the LURA may require the owner of the property to continue to accept subsidies which may be offered by the federal government, prohibit the owner from exercising an option to prepay a federally insured loan, impose tenant income-based occupancy and rental restrictions, or impose any of these and other restrictions as deemed necessary at the sole discretion of the Department in order to preserve the property as affordable housing on a case-by-case basis.
- d) The maximum monthly gross rent charged (which includes the tenant paid portion of the rent, the utility allowance, and any rental assistance payment) by the development owner for units benefiting low-moderate income persons earning 80 percent or less of the AMFI, as defined by HUD, shall not exceed the limits determined by the Department and published on an annual basis. Such rent shall not be greater than the lesser of the fair market rent, or thirty percent (30%) of the income of a family whose income equals sixty-five percent (65%) of AMFI as defined by HUD with adjustments for

family size. This is the same as the “High HOME Rent” maximum rent limitation. **Jennifer Molinari**

6) Site and Development Restrictions:

- a) Applicant properties must be located within the 37 (I’ve verified that 37 counties were impacted and received Individual Assistance from FEMA) Impacted Counties directly affected by Hurricane Dolly and/or Ike.
- b) Housing units subsidized by CDBG funds must be affordable to low, very-low or extremely low-income persons. Mixed Income rental developments may only receive funds for units that meet the CDBG program affordability standards. All applications intended to serve persons with disabilities must adhere to the Department’s Integrated Housing Rule at 10 TAC §1.15.
- c) Housing that is constructed or rehabilitated with CDBG funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code for new construction or rehabilitation, CDBG-assisted new construction or rehabilitation must meet, as applicable, one of three model codes: Uniform Building Code (ICBO), National Building Code (BOCA), Standard (Southern) Building Code (SBCCI); or the Council of American Building Officials (CABO) one or two family code; or the Minimum Property Standards (MPS) in 24 CFR §200.925 or §200.926. To avoid duplicative inspections when Federal Housing Administration (FHA) financing is involved in a CDBG-assisted property, a participating jurisdiction may rely on a Minimum Property Standards (MPS) inspection performed by a qualified person. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.
- d) All other CDBG-assisted housing (e.g., acquisition) must meet all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR §982.401. When CDBG funds are used for a rehabilitation development the entire unit must be brought up to the applicable property standards.
- e) 2009 Qualified Allocation Plan and Rules 10 TAC §49.6(a) stipulating that all developments in a 100-year flood plain are subject to Department restrictions. Units that are being demolished and rebuilt shall be elevated in accordance with FEMA advisory flood elevations.

7) Threshold Criteria:

- a) Applicants for Rental Development activities will be required to provide written notification to each of the following persons or entities fourteen (14) days prior to the submission of any application package. Applicants must provide notifications to:
 - i) the executive officer and elected members of the governing board of the community where the development will be located. This includes municipal governing boards, city councils, and County governing boards;
 - ii) all neighborhood organizations on record with the city whose defined boundaries include the location of the Development;
 - iii) executive officer and Board President of the school district that covers the location of the Development;
 - iv) residents of occupied housing units that may be rehabilitated, reconstructed or demolished; and,
 - v) the State Representative and State Senator whose district covers the location of the Development.
 - vi) the notification letter must include, but not be limited to, the address of the development site, the number of units to be built or rehabilitated, the proposed rent and income levels to be served, and all other details required of the NOFA and Application Manual.
- b) To encourage Green Building Initiatives, applicants must elect to provide green building amenities worth at least 3 points, pursuant to §49.9(h)(4)(A)(ii)(XXV) of the 2009 Qualified Allocation Plan.

- c) To encourage the inclusion of families and individuals with the highest need for affordable housing, applicants must target a minimum of 5% of the total units for individuals or families earning 30% or less of area medium income for the development site.
- d) To encourage developments that help people avoid or transition from homelessness, Applicants that dedicate at least 10% of their units initial lease-up towards serving persons previously homeless, or at risk of being homeless, pursuant to the Stewart McKinney Act, the Department may allow a 3-year forgivable loan (as opposed to 5-year).
- e) To encourage very-low income targeting and mixed income housing, if the Applicant elects to restrict 10% of all units to market rate households, and an additional 10% of all units for households at or below 30% of AMFI and at least 10% of all units for households at or below 50% of AMFI, and those units are not designated to serve very or extremely low-income households through another subsidy source such as project-based Section 8, the Department may allow a 3-year forgivable loan (as opposed to 5-year). Applications must still meet the requirements of the Real Estate Analysis (REA) Rules and Guidelines in 10 TAC §1.32.
- f) All units targeting Extremely Low Income households at 30% of area median income and 30% of area median income must also restrict rents at comparable levels using the Housing Tax Credit program rents calculated annually by the Department and available on the Department's website (www.tdhca.state.tx.us). These additional restrictions will limit the tenant paid portion of the rent and any applicable utility allowance.
- g) An applicant is not eligible to apply for funds or any other assistance from the Department unless audits are current at the time of application or the Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application deadline for funds or other assistance per 10 TAC §1.3(b).
- h) Layering funds with other funding sources, including but not limited to other program funds (HOME, USDA, etc.), LIHTC, and private equity or debt is encouraged but not required. If other sources are used, the requirements of those other sources must be met, but regardless of the use of other sources all proposed awardees MUST meet the following minimum requirements:
 - i) List income limits and affordability requirements;
 - ii) Must meet HQS;
 - iii) Accessibility;
 - iv) Must execute a Land Use Restriction Agreement for affordability; and
 - v) Environmental clearances.
- i) Applications must meet all the Threshold requirements in the 2009 Qualified Allocation Plan and Rules in 10 TAC § 49.9(h), excluding:
 - i) (3) regarding set-asides;
 - ii) (4)(K), and (4)(L) regarding certifications;
 - iii) (6)(C) and (D) which relate to tax credit syndication;
 - iv) (8) regarding notifications;
 - v) (11)(B) regarding non-profit set-aside for tax credits; and
 - vi) (15) regarding self score.

8) Selection Criteria

- a) All Applications will be scored and ranked using the point system identified in this subsection. Unless otherwise stated, do not round calculations. Points other than those provided in this subsection

will not be awarded. All Applications final score totaling a minimum of ____ to be eligible for an allocation of Disaster Recovery Funds. Maximum Total Points: _____.

- i) The Income Levels of Tenants of the Development. Applications may qualify to receive up to 34 points for qualifying under only one of subparagraphs (A) - (F) of this paragraph. To qualify for these points, the household incomes must not be higher than permitted by the AMGI level (must round to the next highest whole Unit, no less than one Unit). The Development Owner, upon making selections for this exhibit, will set aside Units at the levels of AMGI and will maintain the percentage of such Units continuously over the five year compliance period as specified in the LURA. These income levels require corresponding rent levels that do not exceed 30% of the income limitation in accordance with §42(g), Internal Revenue Code.
- (A) 34 points if at least 80% of the Low-Income Units in the Development are set-aside with incomes and rents at or below 50% of AMGI; or
 - (B) 34 points if at least 40% of the Low-Income Units in the Development are set-aside with incomes and rents at or below a combination of 50% and 30% of AMGI in which at least 5% of the Low-Income Units are at or below 30% of AMGI; or
 - (C) 32 points if at least 60% of the Low-Income Units in the Development are set-aside with incomes and rents at or below 50% of AMGI; or
 - (D) 24 points if at least 10% of the Low-Income Units in the Development are set-aside with incomes and rents at or below 30% of AMGI; or
 - (E) 22 points if at least 40% of the Low-Income Units in the Development are set-aside with incomes and rents at or below 50% of AMGI; or
 - (F) 20 points if at least 35% of the Low-Income Units in the Development are set-aside with incomes and rents at or below 50% of AMGI.
- ii) Quality of the Units (Development Characteristics). Applications may qualify to receive 14 points. Applications in which Developments provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in clauses (A) – (S) of this subparagraph, not to exceed 14 points in total. Applications involving scattered site Developments must have all of the Units located with a specific amenity to count for points.
- (A) Covered entries (1 point);
 - (B) Nine foot ceilings in living room and all bedrooms (at minimum) (1 point);
 - (C) Microwave ovens (1 point);
 - (D) Self-cleaning or continuous cleaning ovens (1 point);
 - (E) Ceiling fixtures in all rooms (light with ceiling fan in living area and all bedrooms) (1 point);
 - (F) Refrigerator with icemaker (1 point);
 - (G) Laundry connections (2 points);
 - (H) Storage room or closet, of approximately 9 square feet or greater, which does not include bedroom, entryway or linen closets - does not need to be in the Unit but must be on the property site (1 point);
 - (I) Laundry equipment (washers and dryers) for each individual unit including a front loading washer and dryer in required UFAS compliant Units (3 points);
 - (J) Thirty year architectural shingle roofing (2 point);
 - (K) Covered patios or covered balconies (1 point);
 - (L) Covered parking (including garages) of at least one covered space per Unit (2 points);
 - (M) 100% masonry on exterior, which can include stucco, cementitious board products, concrete brick and mortarless concrete masonry, but not EIFS synthetic stucco (3 points) (Applicants may not select this item if item (xiv) of this subclause is selected);
 - (N) Greater than 75% masonry on exterior, which can include stucco and cementitious board products, concrete brick and mortarless concrete masonry, but not EIFS synthetic stucco (1 point) (Applicants may not select this item if item (xiii) of this subclause is selected);

- (O) Use of energy efficient alternative construction materials (for example, Structural Insulated Panel construction) with wall insulation at a minimum of R-20 (5 points);
 - (P) R-15 Walls / R-30 Ceilings (rating of wall system) (3 points);
 - (Q) 14 SEER HVAC or evaporative coolers in dry climates for New Construction, Adaptive Reuse, and reconstruction or radiant barrier in the attic for Rehabilitation (excluding reconstruction) (6 points);
 - (R) High Speed Internet service to all Units at no cost to residents (2 points); or
 - (S) Fire sprinklers in all Units (4 points).
- iii) The Commitment of Development Funding by Local Political Subdivisions; or for Leveraging of Private, State, or Federal Resources. Applications may qualify to receive 29 points for this item.
- (A) Evidence must be submitted in the Application that the proposed Development has received or will receive loan(s), grant(s) or in-kind contributions from a Local Political Subdivision or a private, state or federal resource. Funding commitments include but are not limited to Capital Grant Funds and HOPE VI funds, tax exemptions, or waivers of fees such as building permits, water and sewer tap fees, etc...
 - (B) Basic Submission Requirements for Scoring. Evidence of the following must be submitted in accordance with the Application Submission Procedures Manual (ASPM).
 - (1) The loans, grant(s) or in-kind contribution(s) must be attributed to the Total Housing Development Costs, as defined in the 2009 QAP, unless otherwise stipulated in this section.
 - (2) An Applicant may submit enough sources to substantiate the point request, and all sources must be included in the Sources and Uses form. For example, if an Applicant is requesting 18 points, five sources may be submitted if each is for an amount equal to 1% of the Total Housing Development Cost.
 - (3) An Applicant may substitute any source in response to a Deficiency Notice or after the Application has been submitted to the Department.
 - (4) A loan does not qualify as an eligible source unless it has a minimum term of the later of 1-year or the Placed in Service date, and the interest rate must be at the Applicable Federal Rate (AFR) or below (at the time of loan closing).
 - (5) In-kind contributions such as donation of land, tax exemptions, or waivers of fees such as building permits, water and sewer tap fees, or similar contributions are only eligible for points if the in-kind contribution provides a tangible economic benefit that results in a quantifiable Total Housing Development Cost reduction to benefit the Development. The quantified value of the Total Housing Development Cost reduction may only include the value during the period the contribution or waiver is received and/or assessed. Donations of land must be under the control of the Applicant, pursuant to subsection 49.9 (h)(7) of the 2009 QAP to qualify. The value of in-kind contributions may only include the time period between award, or September 18, 2009 and the Development's Placed in Service date, with the exception of contributions of land. The full value of land contributions, as established by the appraisal required pursuant to clause (viii) of this subparagraph. Contributions in the form of tax exemptions or abatements may only count for points if the contribution is in addition to any tax exemption or abatement required under statute.
 - (6) To the extent that a Notice of Funding Availability (NOFA) is released and funds are available, funds from TDHCA's HOME Investment Partnerships (HOME) Program will qualify if a resolution, dated on or before the date the Application Acceptance Period ends, is submitted with the Application from the Local Political Subdivision authorizing the Applicant to act on behalf of the Local Political Subdivision in applying for HOME Funds from TDHCA for the particular Application. TDHCA's HOME funds may be substituted for a source originally submitted with the Application, provided the HOME funds substituted are from a NOFA released after the Application Acceptance Period ends and a resolution is submitted with the substitution documentation from the Local

Political Subdivision authorizing the Applicant to act on behalf of the Local Political Subdivision in applying for HOME Funds from TDHCA for the particular Application.

- (7) Development based rental subsidies may qualify under this section if evidence of the remaining value of the contract is submitted from the Local Political Subdivision. The value of the contract does not include past subsidies.
 - (8) Evidence to be submitted with the Application must include a copy of the commitment of funds or a copy of the application to the funding entity and a letter from the funding entity indicating that the application was received and when a decision is expected. Decision date must be within one month of application submission. For in-kind contributions, evidence must be submitted in the Application from Local Political Subdivision substantiating the value of the in-kind contributions. For in-kind contributions of land, evidence of the value of the contribution must be in the form of an appraisal.
 - (9) If not already provided, one month after application submission the, the Applicant must provide evidence of a commitment approved by the Governing Body of the Local Political Subdivision or the Authorized Representative of the funding entity for the Development Funding to the Department. If the funding commitment from the Local Political Subdivision has not been received by the required date, the Application will be evaluated to determine if the loss of these points would have resulted in the Department's not committing the CDBG Disaster Recovery Funds. If the loss of points makes the Application noncompetitive, it will not be recommended for funding. If the Application would still be competitive even with the loss of points then the loss will not impact the recommendation for an award, the Application will be reevaluated for financial feasibility. If the Application is infeasible without the Local Political Subdivision's Development Funding, it will not be recommended for funding.
 - (10) Funding commitments from a Local Political Subdivision, private, state or federal source or third-party funder from outside the census tract of the development will not be considered final unless the funding source attests to the fact that any funds committed were not first provided to them by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application, unless the Applicant itself is a Local Political Subdivision or subsidiary.
 - (11) For third-party funds the source cannot be a commercial lender.
- (C) Scoring. Points will be determined on a sliding scale based on the percentage of the Total Housing Development Costs of the Development, as reflected in the in the Development Cost Schedule. If a revised Development Cost Schedule is submitted to the Department in response to a deficiency notice at anytime during the review process, the Revised Development Cost Schedule will be utilized for this calculation, and Applicants will be notified of the revised score, consistent with subsection 49.9(e) of the 2009 QAP. Do not round for the following calculations. The "total contribution" is the total combined value of qualifying loan(s), grants or in-kind contributions from a Local Political Subdivision pursuant to subparagraph (A) of this paragraph.
- (1) A total contribution equal to or greater than 1% (for Urban Developments) and 0.5% (for Rural Developments and Developments located in non-participating jurisdictions) of the Total Housing Development Cost of the Development receives 12 points; or
 - (2) A total contribution equal to or greater than 2.5% (for Urban Developments) and 1.5% (for Rural Developments and Developments located in non-participating jurisdictions) of the Total Housing Development Cost of the Development receives 18 points; or
 - (3) A total contribution equal to or greater than 5% (for Urban Developments) and 3% (for Rural Developments and Developments located in non-participating jurisdictions) of the Total Housing Development Cost of the Development receives 29 points.
- iv) Demonstration of community support or opposition of a Development. Points will be awarded based on written statements of support or opposition from Neighborhood Organizations on record

- (A) An Application may receive 6 points (maximum of 18 points) for each letter of support submitted from a community or civic organization, Neighborhood Organization on record with the city, elected city or county official that represents the district where the development is located, or a State Representative or State Senator that serves or represents the community in which the Development Site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. The community, civic, property owners and Neighborhood organizations must provide some documentation of their existence in the community in which the Development is located to include, but not be limited to, listing of services and where they are provided and/or members, brochures, annual reports, etc showing addresses. Letters of support from organizations that are not active in the area that includes the location of the Development will not be counted. For purposes of this subparagraph, acceptable organizations do not include governmental entities, taxing entities or educational activities. Organizations that were created by a governmental entity or derive their source of creation from a governmental entity do not qualify under this item. For purposes of this item, educational activities include school districts, trade and vocational schools, charter schools and depending on how characterized could include day care centers; it would not include a PTA or PTO as that is a service organization even though it supports an educational activity. Should an Applicant elect this option and the Application receives letters in opposition by July 17, 2009, then 6 points will be subtracted from the score for each letter in opposition, provided that the letter is from an organization serving the community. All letters must be received by July 17, 2009 for the Application to receive these points.

The organization's letter (and enclosures) must:

- (1) State the name and location of the proposed single Development;
- (2) Certify that the letter is signed by the persons with the authority to sign on behalf of the neighborhood, community, civic organization. State Representative or Senators and city and county official letters must be signed by that official and all letters must provide:
 - (-a-) the street and/or mailing addresses;
 - (-b-) day and evening phone numbers;
 - (-c-) and e-mail addresses and/or facsimile numbers for the signer of the letter and one additional contact if the letter is from an organization;
 - (-d-) the type of organization
- (3) Certify that the organization has boundaries or that the State Senator or Representative represents the area, and that the boundaries in effect July 17, 2009 contain the Development Site;
- (4) Include documentation showing that the organization is on record as of July 17, 2009 with the state, county or city in which the Development is proposed to be located. The receipt of a QCP letter, by the Department on or before July 17, 2009, that meets the requirements outlined in the QCP neighborhood information packet and the 2009 QAP, will constitute being on record with the State. The Neighborhood Organization letter must be signed by two officials or board members of the Neighborhood Organization and must include in its letter, a contact name with a mailing address and phone number of the persons signing the letter; one additional contact for the organization a written description and map of the organization's geographical boundaries; and proof that the boundaries described were in effect as of July 17, 2009. This request must be received no later than July 17, 2009. Acceptance of this documentation will be subject to Department approval. The Department is permitted to issue a deficiency notice for this registration

process and if satisfied, the organization will still be deemed to be timely placed on record with the state;

- (5) Accurately certify that the organization was not formed by any Applicant, Developer, or any employee or agent of any Applicant, that the organization and any member did not accept money or a gift to cause the Neighborhood Organization to take its position of support or opposition, and has not provided any assistance other than education and information sharing to the organization to meet the requirements of this subparagraph for any Application in the Application Round (i.e. hosting a public meeting, providing the "TDHCA Information Packet for Neighborhoods" to the Neighborhood Organization, or referring the Neighborhood Organization to TDHCA staff for guidance). Applicants may not provide any "production" assistance to meet these requirements for any Application in the Application Round (i.e. use of fax machines owned by the Applicant, use of legal counsel related to the Applicant, or assistance drafting a letter for the purposes of this subparagraph). Any deficiency notices issued to the organization will also be sent to the Applicant for information purposes only. Applicants may not provide delivery assistance of any communication between the organization and the Department and Applicants may not assist the organization in preparing its response to a deficiency notice. Applicants may provide information about the deficiency notice process or deadlines to a organization;
 - (6) While not required, the organization is encouraged to hold a meeting to which all the members of the organization are invited to consider whether the organization should support, oppose, or be neutral on the proposed Development, and to have the membership vote on whether the organization should support, oppose, or be neutral on the proposed Development. The organization is also encouraged to invite the Developer or Applicant to this meeting; and
 - (7) Letters from organizations, and subsequent correspondence from organizations, may not be provided via the Applicant which includes facsimile and email communication.
 - (8) Letters from State Representative or State Senator will be accepted with the Application or through delivery to the Department from the Applicant or the State Representative or Senator on or before 5:00 p.m. (CDT) June 1, 2009. A State Representative or State Senator may withdraw (in writing) a letter that is submitted by the June 1st deadline on or before July 17, 2009 but may not submit a new letter. The previous position of support or opposition that is withdrawn will be scored as neutral (0 points). State Representatives or Senators to be considered are those State Representatives or Senators in office at the time the Application is submitted. Letters of support from State Representatives or Senators that do not represent the district containing the proposed Development Site will not qualify for points under this Exhibit. Neutral letters, or letters that do not specifically refer to the Development, will receive neither positive nor negative points. Letters from State of Texas Representative or Senator: support letters are + 6 points; opposition letters are - 6 points for a maximum of either + 6 or - 6 points. If one letter is received in support and one letter is received in opposition the score would be 0 points.
- v) The Cost of the Development by Square Foot (Development Characteristics). Applications may qualify to receive 10 points for this item. For this exhibit, costs shall be defined as construction costs, including site work, direct hard costs, contingency, contractor profit, overhead and general requirements, as represented in the Development Cost Schedule. This calculation does not include indirect construction costs. The calculation will be costs per square foot of net rentable area (NRA). For the purposes of this paragraph only, if a building is in a Qualified Elderly Development or is an age restricted building in an Intergenerational Housing Development with an elevator or a high rise building with four or more stories serving any population, the NRA may include elevator served interior corridors. If the proposed Development is a Single Room Occupancy Development, the NRA may include elevator served interior corridors and may include up to 50 square feet of common area per Unit. As it relates to this paragraph, an interior corridor is a corridor that is enclosed, heated and/or cooled and otherwise finished space. The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown

in the Rent Schedule of the Application. Developments qualify for 10 points if their costs do not exceed \$95 per square foot for Qualified Elderly, single family design, transitional, and Single Room Occupancy Developments (transitional housing for the homeless and Single Room Occupancy units as provided in the Code, §42(i)(3)(B)(iii) and (iv)).

- vi) The Services to be Provided to Tenants of the Development. Applications may qualify to receive up to 6 points. The Applicant must certify that the Development will provide a combination of special supportive services appropriate for the proposed tenants. The provision of supportive services will be included in the LURA as selected from the list of services identified in this paragraph. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to off-site services must be provided (maximum of 6 points).
- (A) Applications will be awarded points for selecting services listed in subparagraph (B) based on the following scoring range:
- (1) Two points will be awarded for providing two of the services; or
 - (2) Four points will be awarded for providing four of the services; or
 - (3) Six points will be awarded for providing six of the services.
- (B) Service options include child care; transportation; basic adult education; legal assistance; counseling services; GED preparation; English as a second language classes; Notary Public Services, vocational training; home buyer education; credit counseling; financial planning assistance or courses; health screening services; health and nutritional courses; organized team sports programs or youth programs; scholastic tutoring; any other programs described under Title IV-A of the Social Security Act (42 U.S.C. §§601 et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of out-of wedlock pregnancies; and encourages the formation and maintenance of two-parent families; or any other services approved in writing by the Department.
- vii) Green Building Initiatives. Application may qualify to receive up to 6 points for providing green building amenities (points under this paragraph may not be requested for the same items utilized for points under subsection (h)(4)(A)(ii)(XXV), Threshold Amenities):
- (A) evaporative coolers (for use in designated counties listed in the Application Materials, 2009 Housing Tax Credit Site Demographics Information) (1 point);
- (B) passive solar heating/cooling (3 points maximum)
- (1) Two points if the glazing area on the north- and south-facing walls of the building is at least 50% greater than the sum of the glazing area on the east- and west- facing walls; and the east-west axis of the building is within 15 degrees of due east-west.
 - (2) One point if in addition to the east-west axis of the building oriented within 15 degrees of due east-west, utilize a narrow floor plate (less than 40 feet), single loaded corridors and open floor plan to optimize daylight penetration and passive ventilation (note: to qualify for this particular point, application must also implement the 15 degree building orientation option above); and 100% of HVAC condenser units are shaded so they are fully shaded 75% of the time during summer months (May through August); and solar screens or solar film on all East, West, and South Windows with building oriented to east-west axis within 15 degrees of due east-west, west-south axis within 15 degrees of due west-south, and south-east axis within 15 degrees of due south-east.
- (C) water conserving features (2 points maximum, 1 point for each):
- (1) Install low-flow toilets using less than or equal to 1.6 gallons per flush, or high efficiency toilets using less than or equal to 1.28 gallons/flush.
 - (2) Install bathroom lavatory faucets and showerheads that do not exceed 2.0 gallons/minute and kitchen faucets that do not exceed 1.5 gallons/minute. Applies to all fixtures throughout development. Rehab projects may choose to install compliant faucet aerators instead of replacing entire faucets.
- (D) solar water heaters (Solar water heaters designed to provide at least 25% of the average energy used to heat domestic water throughout the entire development.) (2 points);

- (E) irrigation and landscaping (must implement both of the following) (2 points)
 - (1) collected water (at least 50%) for irrigation purposes;
 - (2) selection of native trees and plants that are appropriate to the site's soils and microclimate and locate them to allow for shading in the summer and allow for heat gain in the winter
 - (F) sub-metered utility meters (2 points maximum);
 - (1) Sub-metered utility meters on rehab project without existing sub-meters or new construction senior project (2 points); or
 - (2) Sub-metered utility meters on new construction project (excluding new construction senior project) (1 point)
 - (G) energy efficiency (4 points maximum);
 - (1) Three points if Energy Elements include Energy-Star qualified windows and glass doors; and Exterior envelope insulation, vapor barriers and air barriers greater than or equal to Energy Star air barrier and insulation criteria; and HVAC, domestic hot water heater, or insulation that exceeds Energy Star standards or exceeds the IRC 2006;

OR
 - (2) Four points if the project promotes energy efficiency by meeting the requirements of Energy Star for Homes by either complying with the appropriate builder option package or a HERS score of 85.
 - (H) thermally and draft efficient doors (SHGC of 0.40 or lower and U-value specified by climate zone according to the 2006 IECC) (2 points);
 - (I) photovoltaic panels for electricity and design and wiring for the use of such panels (3 points maximum);
 - (1) Photovoltaic panels that total 10 kW (1 point);
 - (2) Photovoltaic panels that total 20 kW (2 points);
 - (3) Photovoltaic panels that total 30 kW (3 points)
 - (J) construction waste management and implementation of EPA's Best Management Practices for erosion and sedimentation control during construction (1 point);
 - (K) recycling service provided throughout the compliance period (1 point);
 - (L) water permeable walkways (at least 20% of walkways and parking) (1 point).
 - (M) bamboo flooring, wool carpet, linoleum flooring, straw board, poplar OSB, or cotton batt insulation (50% of flooring on the ground floor of the development must be finished concrete and/or ceramic tile. 50% of the flooring on upper floors must be ceramic tile and/or a flooring material that is Floor Score Certified (developed by the Resilient Floor Covering Institute), applied with a Floor Score Certified adhesive and comes with a minimum 7-year wear through warranty. (2 points);
- ix) Development Size. The Development consists of not more than 36 Units (3 points).

9) Tie Breakers

In the event that two or more applications receive the same number of points the Department will utilize the factors in this paragraph, in the order they are presented, to determine which Development will receive a preference in consideration for an award. The Department may also make a partial funding recommendation.

- a) The application located in the municipality or, if located outside a municipality, the county that has the lowest number of units per capita supported by Housing Tax Credits at the time the application round begins.
- b) The application with the lower amount of CDBG funds per square foot of net rentable area.
- c) Applications that leverage the highest number of alternate funding sources.

10) Application Review Process

- (a) **Phase 1 – Review and Assessment of Competitive Applications.** Applications submitted for competitive consideration for CDBG Disaster Recovery funding under this NOFA will be reviewed according to the process outlined in this subsection. An Application, during any of these stages of review, may be determined to be ineligible as further described in §4(a) of this NOFA. Applicants will be promptly notified in these instances.
- i) **Eligibility Criteria Review.** All Applications will first be reviewed as described in this paragraph. Applications will be confirmed for eligibility for funding. Then, each Application will be preliminarily scored according to the Eligibility Criteria under §49.5(a)(7)-(9), (b)-(f), and §49.6 of the 2009 Qualified Allocation Plan (QAP).
 - ii) **Qualified Allocation Plan.** When a particular scoring criterion involves multiple points, the Department will award points to the proportionate degree, in its determination, to which a proposed Development complied with that criterion. As necessary to complete this process only, Administrative Deficiencies may be issued to the Applicant. This process will generate a preliminary Department score for every Application.
 - iii) **Application Review Assessment.** Each Application will be ranked based on the Department's preliminary score and priorities within each region, consistent with priorities set forth in section 2(c). Those Applications identified to be most competitive will be evaluated for Threshold Criteria and Financial Feasibility.
 - iv) **Threshold Criteria Review.** The most competitive applications will be evaluated against Threshold Criteria. The same portions of the Threshold Criteria review may be performed in the Underwriting Evaluation for financial feasibility by the Department's Real Estate Analysis Division. Applications not meeting Threshold Criteria will be notified of any Administrative Deficiencies, in each event the Applicant will be given an opportunity to correct such deficiencies. Applications not meeting Threshold Criteria after receipt and review of the Administrative Deficiency response will be terminated and the Applicant will be provided a written notice to that effect. The Department shall not be responsible for the Applicant's failure to meet the Threshold Criteria, and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled. Not all Applications will be reviewed in detail for Threshold Criteria. To the extent that the review of Threshold Criteria documentation, or submission of Administrative Deficiency documentation, alters the score assigned to the Application, an Applicant will be notified of its final score.
 - v) **Administrative Deficiencies.** If an Application contains Administrative Deficiencies pursuant to §49.3(2) of the 2009 QAP which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Selection, Threshold Criteria, and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made several times. The Department staff will request clarification or correction in a deficiency notice in the form of an email, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call (only if there has not been confirmation of the receipt within 24 hours) to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted. If Administrative Deficiencies are not clarified or corrected to the satisfaction of the Department by 5:00 p.m. on the fifth business day following the date of the deficiency notice, then for competitive Applications under this NOFA, five points shall be deducted from the Selection Criteria score for each additional day the deficiency remains unresolved. If Administrative Deficiencies are not clarified or corrected by 5:00 p.m. on the seventh business day following the date of the deficiency notice, then the Application shall be terminated. The time period for responding to a deficiency notice begins at

the start of the business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period. This Administrative Deficiency process applies to requests for information made by the Real Estate Analysis Division review.

vi) Subsequent Evaluation of Applications and Methodology for Award Recommendations to the Board. The Department will assign, as herein described, Developments for review for financial feasibility by the Department's Real Estate Analysis Division--in general these will be those Applications identified as most competitive and that meet the requirements of Eligibility and Threshold. This procedure will also be used in making recommendations to the Board as follows:

- 1) Recommendations will be determined by identifying the Applications with the highest scores in each region as set forth in the priorities in Section 2 (c) of this NOFA. Staff will recommend award up to amounts available in each region without going over the amount.
- 2) Any remaining funds in each region will be combined and recommendations will be made for the next highest scoring application in the region that is most underserved by CDBG Disaster Recovery Funds. This will be referred to as the Recovery Collapse. Collapsed funds will be awarded to applications located in the most underserved regions that can be fully funded with the remaining CDBG Disaster Recovery Funds until all funds are exhausted.

b) **Phase 2 - Underwriting Evaluation and Criteria.** The Department shall underwrite an Application to determine the financial feasibility and amount of need of the Development to arrive at an appropriate level of CDBG Disaster Recovery Funds. In determining an appropriate level of CDBG Disaster Recovery Funds, the Department shall, at a minimum, evaluate the estimated cost of repairs needed by the development based on insurance estimates from the development owner's insurer, and if applicable verifiable estimates from reputable contractors. The Department shall evaluate acceptable cost parameters as adjusted for inflation and as established by historical final cost certifications for similar work done in previous Housing Tax Credit developments in the county in which the Development is located; if certifications are unavailable for the county, then the metropolitan statistical area in which the Development is to be located; or if certifications are unavailable under the county or the metropolitan statistical area, then the Uniform State Service Region in which the Development is to be located. Underwriting of a Development will include a determination by the Department, pursuant to the Code §42, that the amount of CDBG Disaster Recovery Funds recommended for commitment to a Development is necessary for the financial feasibility of the Development and its viability as a qualified rent restricted housing property. In making this determination, the Department will use the Underwriting Rules and Guidelines, §1.32 of this title. An Applicant may not change or supplement any part of an Application in any manner after the filing deadline, and may not increase their funding amount, or revise their unit mix (both income levels and bedroom mixes), except in response to a direct request from the Real Estate Analysis Division to remedy an Administrative Deficiency as further described in §49.3(2) of this chapter or by amendment of an Application after a commitment or allocation of tax credits as further described in §49.17(d) of this chapter. To the extent that the review of Administrative Deficiency documentation during this review alters the score assigned to the Application, Applicants will be re-notified of their final score. Receipt of feasibility points under §49.9(i)(1) of this chapter does not ensure that an Application will be considered feasible during the feasibility evaluation by the Real Estate Analysis Division and conversely, a Development may be found feasible during the feasibility evaluation by the Real Estate Analysis Division even if it did not receive points under subsection (i)(1) of this section. (§2306.6710 and §2306.11).

c) **Compliance Evaluation.** After the Department has determined which Developments will be reviewed for financial feasibility, those same Developments will be reviewed for evaluation of the compliance status by the Department's Portfolio Management and Compliance Division, in accordance with Chapter 60 of this title.

- d) **Site Evaluation.** Site conditions shall be evaluated through a physical site inspection by the Department or a third party designated by the Department. Such inspection will evaluate the Development Site based upon the criteria set forth in the Site Evaluation form provided in the Application and the inspector shall provide a written report of such site evaluation. The evaluations shall be based on the condition of the surrounding neighborhood, including appropriate environmental and aesthetic conditions and proximity to retail, medical, recreational and accessibility via the existing transportation infrastructure and public transportation systems shall be considered. "Unacceptable" sites include, without limitation, those containing a immitigable environmental factor that may adversely affect the health and safety of the residents.
- e) **Phase Three - Environmental Review.** The environmental review will only entail the completion of the environmental review of the Application. The Department will ensure review of these materials and issue notice of any Administrative Deficiencies within 30 days of the Application entering Phase One. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into the final review phase of the Application process. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds. Only upon satisfaction of all Administrative Deficiencies will the Application be forwarded to the final phase of the Application process. Upon completion of the applicable final review phase, the Application will be reviewed for recommendation to the Board by the Committee.
- i) The Department may decline to consider any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications which are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department strives, through its loan terms, to securitize its funding while ensuring the financial feasibility of a Development. The Department reserves the right to negotiate individual elements of any Application.
- ii) In accordance with §2306.082 Texas Government Code and 10 TAC §53.6, it is the Department's policy to encourage the use of appropriate Alternative Dispute Resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 TAC §1.17.
- iii) An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

11) Submission and Review Process

- a) Applicants must attend one of the Departments Application Workshops. Additionally, applicants are *encouraged to familiarize themselves and/or consult appropriate specialists (i.e. attorneys, accountants, etc.) with regard to any local, state or federal regulations which may apply if these*

- b) The application acceptance period for this NOFA will begin on May 18, 2009. All applications submitted under this NOFA must be received on or before **5:00 p.m. (CST) on July 17, 2009**. The Department will accept applications from 8 a.m. to 5 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site **until the deadline**. For questions regarding this NOFA please contact Elizabeth Henderson at 512-463-9784 or via e-mail at Elizabeth.henderson@tdhca.state.tx.us.
- c) If an Application is submitted to the Department that requests funds from two separate housing finance programs, the Application will be handled in accordance with the guidelines for each housing program. The Applicant is responsible for adhering to the deadlines and requirements of both programs.
- d) All applications must be submitted, and provide all documentation, as described in this NOFA and associated application materials.
- e) Applicants must submit the Application materials as detailed in the Final ASPM in effect at the time the application is submitted. All scanned copies must be scanned in accordance with the guidance provided in the Final ASPM in effect at the time the application is submitted.
- f) The application consists of several parts as described in the Final ASPM. A complete application for each proposed development must be submitted in an electronic PDF format on a recordable compact disc (CD-R). Incomplete applications or improperly compiled applications will not be accepted. Applicants must submit the application materials as detailed in the Final ASPM in effect at the time the application is submitted.
- g) Development Owners may not proceed or allow a contractor to proceed with construction, including demolition, on any Activity, Project or Development without first completing the required environmental clearance procedures and Loan closing with the Department
- h) Third party reports – If all applicable third party reports are not received at the time of application submission, the Application will be terminated.
- i) If a development has an existing Housing Tax Credit or HOME contract with the Department and construction on the development has not begun, an abbreviated application for a CDBG award can be submitted under this NOFA. An application qualifying for the abbreviated application process may be considered by staff to have already met the threshold requirements of this NOFA without additional review unless staff determines additional documentation is required in accordance with Paragraph (h) below.
- j) The requirements of the abbreviated application will be reflected in the Application Submission Procedures Manual (ASPM). In addition to the application requirements in the ASPM, staff may use discretion to determine if additional information that is typically required in the full application (including third party reports) is necessary or prudent in order to review for compliance with state or federal rules or due to changes in the market since last reviewed by the Department. Full application and an amendment may be required for any application that includes changes to the previous Board approved application beyond those that are directly related to the development costs, financing structure or additional CDBG program related requirements or that affect an existing allocation of Housing Tax Credits.
- k) All Application materials including manuals, NOFA, program guidelines, and all applicable CDBG rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the CDBG Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

l) Applications must be submitted by one of the following delivery methods:

via overnight delivery to:

**Texas Department of Housing and Community Affairs
Attn: Disaster Recovery Division
221 East 11th Street
Austin, TX 78701-2410**

or via the U.S. Postal Service to:

**Texas Department of Housing and Community Affairs
Attn: Disaster Recovery Division
Post Office Box 13941
Austin, TX 78711-3941**

***NOTE:** This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular CDBG Rental Housing Development Program. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable State and Federal regulations.*

Additional Public Comment received
after initial posting of Board Book

Reasoned Response to Public Comment on the Texas Neighborhood Stabilization Program (Texas NSP) Notice of Funding Availability (NOFA)

The Texas Department of Housing and Community Affairs (TDHCA or "the Department") received public comment through email and direct communication at a roundtable discussion held on February 27, 2009 that was also available via webinar. This roundtable discussion was an opportunity for staff to present the proposed NOFA parameters for the Texas NSP and receive feedback from potential applicants. The comments and responses include substantive comments on the Texas NSP NOFA, administrative clarifications by staff and general questions and staff responses. Where available, numbers are shown in parenthesis; these numbers represent the person or entity that made the comment. A corresponding list of commenters is included at the end of the comments.

Comment:

In order to further the obligation of TDHCA and program recipients to affirmatively further fair housing in compliance with the HUD regulations I recommend that an absolute priority be given to applications for activities involving the purchase of rental housing in "high opportunity" and non-minority segregated communities for use in conjunction with a "moving the opportunity" or other affirmative fair housing marketing program. (1)

Staff Response:

While an affirmative marketing program is required, additional restrictions on the use of these funds is not recommended by staff at this time due to the uniqueness of the program and the extremely limited timeframes for commitment and expenditure. The TDHCA Governing Board may consider more targeted approaches to fair housing as suggested. For comparison, the following provision for affirmative fair housing marketing as included in Section 11(c)3 of the NOFA:

Recipients must adopt affirmative marketing policies and procedures in furtherance of Texas' commitment to non-discrimination and equal opportunity in housing. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, gender, religion, familial status or disability. Records should be maintained describing actions taken by the Administrator to affirmatively market units and assess the results of these actions.

Comment:

In lieu of a down payment, families purchasing homes under the program that have incomes below 50% of the area median family income should be allowed to participate in a state certified self-help housing program for Habitat for Humanity program through which they could substitute "sweat equity" in lieu of a down payment. The cash down payment requirement for families with incomes below 50% of the area median family income should be reduced to \$500. (1)

Staff Response:

Staff has subsequently revised the NOFA to allow for a \$500 down payment and for a minimum amount of sweat equity, through a self-help program approved by the Department, to substitute for the down payment.

Comment:

Homeownership counseling should be required of all families purchasing homes under the program. The counseling should be provided by a HUD certified housing counselor. The Department should prescribe minimum requirements for pre-purchase homebuyer counseling. The quality of the counseling is essential to the success of the program and the Department should invest the necessary funds to ensure the quality of the homebuyer counseling. (1)

Staff Response:

The Department received public comment in roughly equivalent amounts suggesting that counseling should be required to be HUD-certified and conversely, that non-HUD certified counseling be allowed. Staff has retained the original mandate from HUD that housing counseling be provided by a HUD-approved housing counseling agency before obtaining a mortgage loan.

Comment:

In instances where the local sponsor has a demonstrated capacity to successfully service mortgage loans of extremely low or very low income borrowers the Department should allow the local sponsor to provide loan servicing. (1)

Staff Response:

The Department received abundant public comment requesting that capable entities be permitted to service loans. Staff believes that this issue is correlated with the retention of program income for local recycling. When potential subgrantee advocates for local servicing have been asked if they would still be willing to service the loan if all program income returned to the Department to ensure its appropriate CDBG eligible re-use, subgrantee advocates have been, at best, hesitant to be willing to maintain the servicing. The Department expects to receive additional guidance with regard to the reuse of program income and should the liability associated with the ineligible reuse of that program income be diminished, staff would recommend revisiting this issue. Therefore, staff has not recommended that loans be allowed to be serviced locally at this time.

Comment:

In all cases involving loans to families earning less than 50% of the area median family income, special provisions should be made within the structure of the loan to allow flexible terms to avoid future foreclosure. The borrower should be made aware of these special loan terms through the pre-purchase homeownership counseling. The Department should establish procedures that recognize the precarious situation of a borrower at 50% of median family income. Any temporary loss of work, caused by the broader economic circumstances our nation faces or by family illness or family break up will likely place the borrower in loan default. The way to accommodate these situations and to prevent foreclosure is to build into the loan a process for loan abatement or payment reduction triggered by specific circumstances identified by the Department. Upon application by the borrower the Department would automatically agree to abate loan payments for a reasonable period of time or reduce payments by extending the loan term. This could operate in a manner similar to the US Department of Agriculture Section 502 loan. We strongly believe that a failure to build these type of accommodations into the loan product and make the borrower is aware of and encourage them to quickly communicate changing financial circumstances to the Department will result in an excessively high rate of foreclosures among this borrower population. (1)

Staff Response:

Staff acknowledges the challenges that providing permanent financing to households earning 50% or less AMI presents and will explore adopting similar provisions to those of the USDA 502 loan; however, staff believes that these provisions should not be included in the NOFA, but rather developed as internal loan default policies in coordination with existing Department loan servicing policy and procedure.

Comment:

TDHCA should ensure that funding recipients successfully carry out the income targeting requirements under the program by requiring each recipient to demonstrate, at regular intervals, that sufficient progress has been made on that portion of their plan directed at providing assistance to families earning below 50% of median family income as a pre-requirement for being able to expend any funds received from the Department for programs assisting higher income households. (1)

Staff Response:

Staff acknowledges the necessity to track and report progress toward meeting the 25% requirement to serve 50% and below AMI households and stressed the requirement in the NOFA. However, rather than including the requirement as an activity benchmark in the NOFA, staff believes that this requirement is a contract management issue and should be tailored to the selected activities and dollar amounts awarded as a result of the application and contract writing process.

Comment:

City acquires property and rehabs but cannot sell it or must sell it for a very big discount due to issues such as increased crime – who takes the loss and liability? (2)

Staff Response:

There are several ways the program can address that situation. The most basic way is to be as choosy as possible when acquiring properties; however, property values can drop for unforeseen reasons. The NSP has a requirement that a property must be purchased at a discount from the current market appraised value – this is a federal requirement that has some drawbacks, but the advantage in this situation is that if the property continues to decline in value before you can sell, you'll have a 5-15% buffer before the declining value hits the price you paid for it.

In the NSP eligible activity of land banking, the Department is considering a mark-to-market provision as properties may be held off the market for up to 10 years and there is no guarantee that the value of the purchased property will not go down significantly over that period. This provision would allow for a forgiveness of the difference between the purchase price and the current market price when the property is returned to the market. It is not anticipated that such a provision would be necessary for an acquisition and rehab scenario where a property is expected to be returned to the market much more rapidly.

The NSP eligible activity of financing mechanisms will also give some flexibility in a bad market where households cannot get approved easily. There is an NSP upper limit to sales price (you can't make a profit off of a sale), but there is more room to discount the sale to the end beneficiary through homebuyer assistance.

Comment:

Is there a limit to homebuyer assistance?

Staff Response:

Homebuyer assistance may not exceed an amount equivalent to the total amount of priority lien financing provided to the homebuyer or 50% of the appraised value at the time of purchase.

Comment:

The city has many blighted properties that are just being held by absentee owners and are willing to deed over for us to demolish and find another better use. However, it is abandoned but not being foreclosed on. Anyway to make this work? (2)

Staff Response:

It is not required for a structure to be foreclosed in order to be demolished with NSP funds. One suggestion for your situation might be a combination of the NSP eligible activities (d) Demolition and (e) Redevelopment. Also, NSP eligible activity (b) Purchase and Rehabilitation does not require that the home or residential property to be acquired actually be foreclosed. The home may be abandoned; however abandoned has a specific NSP definition for homes and residential properties: mortgage or tax foreclosure proceedings have been initiated; vacant for at least 90 days and payments on the mortgage or taxes have not been made for at least 90 days.

Comment:

The Texas NSP should utilize grants and not loans.

Staff Response:

Staff understands that most cities, counties and nonprofits would prefer grants; however, the structure of the NSP, as interpreted by HUD from HERA of 2008, is clearly designed to generate program income and loans are interpreted to have a greater impact on stabilizing home values than grants. Furthermore, the loan terms to the end user established in the Texas NSP are extraordinarily affordable at 0% interest with the ability to reduce the principal through homebuyer assistance forgivable loans (loans which transition to grants over time if certain conditions are met).

Comment:

Are there any pure grant programs and if so, which ones and please describe with some detail how to use them? (2)

Staff Response:

The only pure grant activity in the draft NSP NOFA is Demolition for removal of blighted structures.

Comment:

As Municipal Development Director for the City of Terrell I am very interested in the opportunities this new NOFA represents for our community. Our biggest issue here is not foreclosures per se but the decline of our core housing stock. We currently have approximately 4,500 single family homes of which 30% are rentals and over the past few years we have been on a campaign to mitigate substandard and dangerous structures and last year we took 60 cases to the Buildings and Standards Commission to have dilapidated houses condemned. We currently have over 1,200 vacant lots that are

sitting idle needing to have new housing built on them. These vacant lots are a real maintenance burden for the city as most have been abandoned by the owners. We are trying very hard to create incentives for builders to utilize these infill lots. I would sincerely appreciate it if there would be an option to use these funds entirely to build new affordable housing in blighted areas where these vacant lots have created holes in the neighborhood and have contributed to the neighborhood destabilization and decline. Without some new housing starts seeded in these areas it is almost impossible to get any private investment as the banks do not have any market comparables to use in the financials for a builder. (3)

Staff Response:

NSP Eligible Use (E) Redevelopment may provide an avenue for your community to utilize NSP funding. The Redevelopment activity does not require the property to be foreclosed; it just has to be a demolished or vacant property. Vacant, for this purpose, means vacant land or a vacant structure; however in order to redevelop the property it must have been developed (had a structure) at one time. It would appear that you may have access to properties that meet this description. New construction of homes or residential properties is an eligible redevelopment activity.

The Texas NSP can loan the City of Terrell funds to purchase the properties and construct new housing on those properties; the loan would be repaid to the Department as homebuyers are located and conventional financing is secured. (In the draft NOFA, the repayment is scheduled to occur within 3 years). If the properties that are to be acquired are also foreclosed or meet the NSP definition of abandoned, the city may also take advantage of the Texas NSP Financing Mechanisms to provide permanent financing at 0% interest for 50% and below AMI households and homebuyer assistance for households at or below 120% AMI.

Tax foreclosed properties also qualify as foreclosed; however, state law allows some reclamation rights by the foreclosed upon owner for 2 years.

Comment:

Who is eligible to apply? Are applicants required to coordinate with county governments in developing an application?

Staff Response:

Any unit of local government in the county, including the county and cities, are eligible to apply for part or all of the funds allocated to county geographical areas in the Direct and Select Pools. A nonprofit organization may also apply for part or all of the allocated funds if they receive permission to apply on behalf of an eligible unit of local government. These entities may apply on their own or as joint-applicants. County geographical boundaries to which funding was allocated were simply the smallest area down to which "greatest need" could be ascertained through available foreclosure data with an adequate level of confidence.

HUD has stressed the concept of collaboration in distributing funds; to this end it was the Department's intention that all eligible entities within the counties to be allocated funding would coordinate among themselves. Staff understands that this is a very short timeframe in which to form partnerships so it is not a requirement, but our scoring criteria will favor applications that demonstrate coordination among eligible entities. If we

receive multiple applications from eligible entities in the county that show duplicative or contradictory information, it will likely take longer to sort out and award funding.

Comment:

In order to allow rural/select counties to have a better opportunity to expend proceeds in "select" county areas, I suggest allowing regional qualified applicants to apply for a multi-county allocations. This would minimize work load and oversight as well by allowing a number of counties to participate while minimizing authorized applicants. This would also increase likelihood of fund utilization within the short prescribed period by having a number of counties to draw upon to use the funds. (4)

Staff Response:

Staff acknowledges that it may be difficult for many of the counties in the select pool to individually show \$500,000 worth of need; however, regionalization was determined to be too imprecise for HUD which requested that "greatest need" (as a threshold to receive NSP funds) be demonstrated at the smallest possible level. Therefore, staff has maintained in the NOFA that the largest area the state will contract to undertake a scope of work will be a county's geographical boundaries.

Comment:

Can NSP Eligible Use (E) Redevelopment be used to acquire vacant lots in a developed neighborhood and construct new housing on those lots through self-help methodologies? The vacant lots have never had a structure on them, but they have been graded, surveyed and have water/wastewater service stub-outs to the vacant lots. If it can, will the 25% requirement for 50% and below AMI only be met if the vacant lots have also been abandoned or foreclosed? (5)

Staff Response:

HUD has defined vacant to include both vacant land and properties with vacant structures on the land for the purposes of the NSP eligible activity of Redevelopment. However, HUD understands redevelopment to imply that properties were once developed; therefore undeveloped or "greenfield" sites may not be acquired under Eligible Use (E). The Department is currently seeking guidance from HUD to determine whether or not vacant lots in a developed neighborhood may be considered to be developed properties. If allowable, the properties will only meet the 25% requirement for 50% and below if the properties can also meet the NSP definition of abandoned or foreclosed.

Comment:

Upon resale of the home, how is the sales price determined? So if we purchase a home from the lender at \$100,000, does it have to be resold for that amount (or more if rehabilitation has occurred) or can we essentially "grant" some of it so it is resold to a household for \$75,000? Is there any calculation or restrictions from TDHCA/HUD on how the resale price is calculated? (6)

Staff Response:

The maximum sales price for a home or residential property is determined by aggregating all costs of acquisition, rehabilitation and redevelopment and certain activity delivery costs (such as costs related to the sale of the property). Profit cannot be realized on a sale to the end beneficiary. The sales price can be reduced from actual costs incurred through NSP Eligible Use (A) Financing Mechanisms. However, the

mechanism of homebuyer assistance may not exceed an amount equivalent to the total amount of priority lien financing provided to the homebuyer or 50% of the appraised value at the time of purchase.

Comment:

How will the actual funding occur? Will the money come in a lump to the recipients so that we can proceed with rapid acquisition if necessary? Is it a reimbursement process where we will submit evidence after purchases of properties? (6)

Staff Response:

The Texas NSP will utilize a reimbursement process that follows the precedent established by the Texas CDBG Program.

Comment:

What is the limit on Administrative funds?

Staff Response:

Each Texas NSP contract will contain a general administrative line item not to exceed 5% of the non-administrative contract total. However, this is not the only source of funds to reimburse administrative costs. Activity delivery costs which range from 5-20% depending on activity will be available to reimburse direct project delivery costs (soft costs).

Comment:

Are tax foreclosed properties eligible?

Staff Response:

Tax foreclosed properties are eligible in the NSP; however, it is recommended that potential applicants consult an attorney if tax foreclosed properties are to be acquired. State law includes some provisions for foreclosed upon property owners to make restitution on tax liens and reclaim property within a two-year time period. A restriction on the use of tax foreclosed properties is if the seller is the entity to which the taxes are owed. It is not permitted for an entity to use NSP funds to pay itself in a tax foreclosure scenario for anything other than reasonable costs related to the appraisal and transfer of title.

Comment:

We can spend NSP funds for up to 120% of the area median income. Our not-for-profit serves Low Moderate income (80%). Are we risking our IRS not-for-profit status if we spend NSP funds for the middle income range customers? Do we record the sales as part of an Unrelated Business Income Tax (UBIT)? (7)

Staff Response:

Staff recommends that any entity that fears loss of non-profit status though participation in the Texas NSP contact an attorney. However, even though the Texas NSP allows participants to serve households earning up to 120%, local plans may be more restrictive.

Comment:

Does HERA prohibit NSP funds for counseling tenants affected by foreclosure? If not, please carve out a small portion which could be used for this purpose. (8)

Staff Response:

The NSP is not a direct foreclosure prevention program and funds can not be used for counselling tenants affected by foreclosure except where they may be otherwise eligible for program benefits to acquire a new home. Eight hours of homebuyer counseling from a HUD-approved housing counseling agency is required before an NSP-assisted homebuyer may obtain a mortgage loan.

Comment:

Will the environmental reviews be reimbursed to the awardee if it turns out that there are issues that cannot be resolved and so the property will not be purchased? (9)

Staff Response:

Administrative costs associated with the failed acquisition of a NSP-eligible property that were incurred in good faith, subject to Department review and approval, may be reimbursed. Typically, these costs will be spread out across the allowable amount of activity delivery costs for a portfolio of acquired properties.

Comment:

Can you address Texas NSP funds for use of supportive housing, transitional housing, etc. (housing for the homeless)? (9)

Staff Response:

The NSP is not specifically designed to address transitional housing needs; however, within certain parameters, it is allowable if it contributes to the stabilization of neighborhoods. As defined by CDBG regulations, transitional housing is considered a public facility. The creation of such a public facility is allowable under NSP Eligible Use (E) Redevelopment; however, because such facilities are not defined as permanent housing, they cannot be utilized to count towards the requirement for 25% of the \$102M allocated to the State to serve 50% or below AMI. Since the Texas NSP allows for activities such as demolition of blighted structures, land banking and administration that do not provide a direct benefit, contracts between the State and subgrantees will contain a restriction that 35% of contract funds must serve 50% and below AMI. If an applicant is able to demonstrate that at least 35% of contract funds will be utilized for eligible activities that directly benefit 50% and below AMI households, the applicant may be able to expend 65% of contract funds on a public facility.

Comment:

In reference to the acquisition of real property, loans that will convert to 0% will be through TDHCA, rather than held by the county or entity doing the acquisition? Is the county or the individual responsible for repaying the loan? (10)

Staff Response:

Once the loan has been closed, the individual is responsible for repaying the loan to the Department.

Number	Commenter
1	John Henneberger, Co-Director, Texas Low Income Housing Information Service
2	Jeff Wall, Director, Housing & Community Development, City of Waco
3	Terry Capehart, Municipal Development Director, City of Terrell

4	Robert Johnson, Senior Vice-President, Housing, First Southwest Company
5	Barbara Smith, Montgomery County Habitat for Humanity
6	Brooke Boston, Assistant Director, Neighborhood Housing and Community Development Office, City of Austin
7	Terry Shaner, Director, Galilee CDC
8	Sandy Rollins
9	Andrea Tirres, City of El Paso
10	Kelly Opot