

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD OF DIRECTORS MEETING

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

April 10, 2014
9:04 a.m.

MEMBERS:

J. PAUL OXER, Chair
JUAN MUÑOZ, Vice-Chair
J. MARK McWATTERS, Member
LESLIE BINGHAM ESCAREÑO, Member
ROBERT THOMAS, Member
TOM GANN, Member

TIMOTHY K. IRVINE, Executive Director

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

EXECUTIVE

- a) Presentation, Discussion, and Possible Action regarding the Board Minutes Summary for December, 12, 2013; January 23, 2014; February 20, 2014
- b) Presentation, Discussion, and Possible Action superseding Resolution No. 13-012 by the adoption of Resolution No. 14-018, Designating Signature Authority

RULES

- c) Presentation, Discussion, and Possible Action on the proposed amendments to 10 TAC Chapter 25 relating to the Colonia Self-Help Center Program and directing its publication for public comment in the *Texas Register*
- d) Presentation, Discussion, and Possible Action on proposed new 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.24, concerning Protected Health Information, and directing its publication for public comment in the *Texas Register*
- e) Presentation, Discussion, and Possible Action on a proposed repeal of 10 TAC Chapter 5, Community Affairs Programs, Subchapter A, General Provisions, §5.23, concerning Protected Health Information, and directing its publication for public comment in the *Texas Register*
- f) Presentation, Discussion, and Possible Action on an order adopting amendments to 10 TAC Chapter 5, Community Affairs Programs, Subchapter D, Comprehensive Energy Assistance Program, §5.430,

concerning Allowable Subrecipient Administrative and Program Services Costs, and directing its publication in the *Texas Register*

- g) Presentation, Discussion, and Possible Action on proposed amendments to 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.5(e), concerning Previous Participation Reviews, and directing their publication for public comment in the *Texas Register*

COMMUNITY AFFAIRS

- h) Presentation, Discussion, and Possible Action to Grant staff the Authority to Award a contract to one or more responsive bids generated from a previously authorized Request for Proposals that provides organizational assessments and possible associated technical assistance to awardees of programs funded through the Department, primarily nonprofit organizations funded through the Community Affairs Division programs
- I) Presentation, Discussion, and Possible Action on an amendment to the existing Community Services Block Grant contracts awarded to Texas Homeless Network for additional CSBG-D funds
- j) Presentation, Discussion, and Possible Action on the Award of Department of Energy (DOE) Weatherization Assistance Program (WAP) and Low-Income Home Energy Assistance Program (LIHEAP) WAP contracts to Community Council of South Central Texas, Inc. to provide weatherization services in Dimmit, Edwards, Kinney, LaSalle, Maverick, Real, Uvalde, Val Verde, and Zavala counties

BOND FINANCE

- k) Presentation, Discussion, and Possible Action on Resolution 14-019 regarding the annual approval of the Department's Investment Policy
- l) Presentation, Discussion, and Possible Action on Resolution No. 14-020

authorizing the Second Amendment to the Servicing Agreement between the Department and US Bank

LEGAL

- m) Presentation, Discussion, and Possible Action on the adoption of an Agreed Final Order concerning Trails Redevelopment dba Spanish Creek Apartments (HTC 93173)

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- o) Presentation, Discussion, and Possible Action on approval of Housing Tax Credit Amendments

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Nolanville

13196 Emerald Village
San Antonio

12252 Gulf Coast Arms Apartments
Houston

060613/060613B Stonehaven Apartment
Homes Houston

- p) Presentation, Discussion, and Possible Action regarding Resolution No. 14-025 pursuant to Texas Government Code §2306.174 concerning the holding of real estate beyond three year limitation

MULTIFAMILY FINANCE DIVISION

- q) Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with another Issuer
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Austin
- 13430 Parmer Place Apartments
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- 14400 The Point at Ben White 158
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- 14401 Villages of Ben White 158
Austin
- r) Presentation, Discussion, and Possible Action to approve up to a six month extension and take other appropriate

action to facilitate such extensions and completion of HOME Investment Partnership (HOME) Program Multifamily 2011 and 201 Contracts which have not yet cleared their final the Department construction inspection

- s) Presentation, Discussion and Possible Action regarding Resolution No. 14-026 for the Redemption Agreement relating to the Multifamily Housing Revenue Bonds for Tranquility Bay Apartments, Series 2004

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P R O C E E D I N G S

1
2 MR. OXER: Good morning, everyone. I'd like to
3 welcome you and everyone here and those following with us,
4 since we now know that we're online on the webcast, to the
5 April 10 meeting of the Texas Department of Housing and
6 Community Affairs Governing Board.

7 We will begin, as we do, with the roll call.
8 Ms. Bingham is not here, and is not expected, I
9 understand.

10 Mr. Gann?

11 MR. GANN: Here.

12 MR. OXER: Professor McWatters?

13 MR. McWATTERS: Here.

14 MR. OXER: Dr. Muñoz?

15 DR. MUÑOZ: Present.

16 MR. OXER: I'm here, and we expect Mr. Thomas
17 here in a bit, so we have four, we have a quorum so we're
18 in business.

19 Tim, lead us in the salute to the flag.

20 (The Pledge of Allegiance and the Texas Pledge
21 were recited.)

22 MR. OXER: Okay. Thank you everybody for
23 dealing with us for a little bit of a delay. We were
24 having some production trouble here getting on the webcast
25 and getting back out so everybody following along at home

1 can play our game. Captain Tweety over here will be
2 taking messages.

3 MR. LYTTLE: I prefer the Big Twit.

4 MR. OXER: The Big Twit.

5 MS. DEANE: So do we.

6 (General laughter.)

7 MR. OXER: You know, Michael, you can tell who
8 your friends are by what they say about you.

9 Okay. I will turn to the consent agenda at
10 this point. Does any member of the Board have any item
11 they care to pull from the consent agenda?

12 MR. IRVINE: Staff has some.

13 MR. OXER: Okay.

14 MS. DEANE: Mr. Chair, we have three items.
15 1(n), Parks at Wynnewood, is being pulled. They will
16 probably come to next month's Board meeting instead of
17 this Board meeting.

18 MR. OXER: So it's not to be considered.

19 MS. DEANE: Right. It's just being pulled
20 altogether.

21 1(j) is coming off consent -- that's the
22 Weatherization contract -- just so staff can update you on
23 some additional developments.

24 1(q), the two Ben White deals will be
25 considered after executive session.

1 MR. OXER: Okay. Dr. Muñoz, did you have a
2 question or did you have your question satisfied on the
3 item you had for the consent agenda?

4 DR. MUÑOZ: I did. I would like to ask after
5 the vote that maybe Homero can come up and give us just a
6 little bit of quick background on item 1(c).

7 MR. OXER: Do you wish to have that considered
8 before? That's more of an information item?

9 DR. MUÑOZ: Yes.

10 MR. OXER: All right. Then with the exception
11 of 1(j) and 1(q) and 1(n), which is withdrawn -- 1(n), is
12 that correct, Barbara?

13 MS. DEANE: 1(n), and on 1(q), just the two Ben
14 White deals, the other two are still going on consent.

15 MR. OXER: Okay. Motion to consider.

16 DR. MUÑOZ: So moved.

17 MR. OXER: Motion by Dr. Muñoz to approve the
18 consent agenda with the exception of item 1(n) being
19 withdrawn, item 1(j) being pulled, and item 1(q), the two
20 Ben White units.

21 MS. DEANE: Well, actually 1(n) is the one
22 being pulled, 1(j) is being moved to an action item, and
23 then the two Ben White deals.

24 DR. MUÑOZ: After the executive session.

25 MR. OXER: We're not going to consider 1(n),

1 and we're going to consider 1(j) during the action items,
2 and we're going to take 1(q) after the exec session. Got
3 that right?

4 MS. DEANE: Yes.

5 MR. OXER: Okay, good.

6 MS. DEANE: The two Ben White deals.

7 MR. OXER: Any questions from the Board?

8 MR. GANN: I'll second.

9 MR. OXER: Okay. Second by Mr. Gann. Is there
10 any public comment? There appears to be none.

11 And just for the record, a temporary timeout
12 here, to remind everybody once again, this row right up
13 here, these six seats in the front on my left, which is
14 stage right for you guys, are the places for those who
15 wish to speak on any item. Please come up and sit in that
16 row beginning here, for those in that order that you'd
17 like to speak.

18 With that housekeeping out of the way, motion
19 by Dr. Muñoz, second by Mr. Gann to consider the consent
20 agenda. All in favor?

21 (A chorus of ayes.)

22 MR. OXER: Opposed?

23 (No response.)

24 MR. OXER: There are none.

25 Homero, can you come up and give Dr. Muñoz a

1 quick comment?

2 DR. MUÑOZ: Homero, just some background, just
3 a little bit, on why these changes are being made.

4 MR. CABELLO: My name is Homero Cabello, the
5 director for the Office of Colonia Initiatives of the
6 Housing Trust Fund.

7 Just some history on the Colonia self-help
8 center program. It was passed by the Texas Legislature
9 back in 1995 that created five centers along the Texas-
10 Mexico border that concentrates on five Colonias in five
11 counties on the border, which is El Paso, Webb County,
12 Starr County, Hidalgo County and Cameron County which also
13 serves Willacy County. The Department, also in 2000 added
14 two additional centers in Maverick County and Valverde,
15 Del Rio and Eagle Pass.

16 These centers provide concentrated attention to
17 five Colonias. They partner with local non-profits, local
18 housing authorities community action agencies to provide
19 services from a tool lending library where they can go and
20 check out tools to fix their own home, some
21 rehabilitation, new construction, counseling classes,
22 internet access, things of that nature. We also have a
23 small repair program where the center goes to a home,
24 again, it's a third party inspection report, they identify
25 all the deficiencies, they prioritize them, and then the

1 center gives them materials and they utilize the tools
2 from the center to make improvements to their home.

3 The changes that we're making that we're
4 recommending to our program rules is to clarify some
5 definitions, also to clarify overcrowding conditions in
6 the Colonias where they live in the Colonia and we move
7 them out to another subdivision. In Webb County in
8 Laredo, we're moving them out the Colonia and putting them
9 right next door to a Habitat project that's funded with
10 our Texas Bootstrap Loan Program. So we're making a lot
11 of improvements in these targeted Colonias through these
12 centers.

13 Any questions?

14 (No response.)

15 MR. OXER: Thanks, Homero.

16 MR. CABELLO: Thank you.

17 DR. MUÑOZ: Homero, thanks for all you do,
18 thanks for your support of this, not just the Colonia
19 centers but the people down there.

20 MR. CABELLO: Thank you, sir. Appreciate it.

21 MR. OXER: Okay. The first action item which
22 is number 2. Brooke, are you going to handle that one?
23 Time out, Brooke. My mistake. Let's do 1(j) first and
24 get that out of the way. He gets to take the first
25 bullet, Brooke. Don't worry.

1 (General laughter.)

2 MR. GOURIS: Good morning. I'm Tom Gouris, the
3 deputy executive director for Asset Analysis and
4 Management.

5 1(j) was pulled at staff's suggestion because
6 the previous participation review for this award was
7 pending at the time the Board book was posted, but has
8 since been completed. The Executive Award and Review
9 Advisory Committee, EARAC, met on Tuesday to discuss the
10 prior non-compliance issues that, while ultimately
11 corrected or resolved, were not corrected within the
12 corrective action period for their review. While the
13 committee believes the primary issues that led to non-
14 compliance should no longer be present, the committee
15 wanted to ensure that CCSCT had appropriate controls in
16 place to successfully administer this new program to them.

17 Therefore, some benchmark conditions were added
18 and are being recommended for this award, and are read
19 into the record as follows: The award is approved subject
20 to the CCSCT board must adopt a weatherization
21 implementation plan on or before the end of July
22 addressing: 1) the necessary controls, 2) any required
23 procurement, 3) board requirements for management
24 reporting addressing both substance and timing.

25 It's also subject to the board-approved plan

1 that should be provided to the CA staff for formal review.

2 Any necessary procurement will be completed on time in
3 the time frame specified in this plan that they present to
4 their board. CCSCT is expected to be ready for
5 weatherization activity on or before September 30, and
6 CCSCT will notify us of the date on which the
7 weatherization activity will actually commence.

8 In addition, one or more of the interim
9 monitorings of this weatherization contract are
10 anticipated likely in September when the activity starts,
11 as well as followup monitoring to ensure prior findings
12 were properly addressed, as previously reported to staff.

13 So with those award recommendations, we
14 recommend approval of the award.

15 MR. OXER: Questions from the Board? I have a
16 question, Tom. Why was this delayed? Why didn't they
17 deliver?

18 MR. GOURIS: Why did they have compliance
19 issues to start with?

20 MR. OXER: Right.

21 MR. GOURIS: They had an executive team that
22 has several members that have since been replaced that
23 were not doing the things in the way that they needed to
24 be doing them, and they've replaced these folks, the
25 executive director, for example, with someone who has some

1 weatherization experience, and while that wasn't one of
2 their activities previously, it's going to be going
3 forward and we think that they've addressed those issues.

4 DR. MUÑOZ: Which agency was that?

5 MR. GOURIS: Community Council of South Central
6 Texas, CCSCT.

7 MR. OXER: You say they've upgraded their
8 management capabilities?

9 MR. GOURIS: That's correct.

10 MR. OXER: I'll get it over with you early.
11 Okay. They've got a bigger tractor that can pull with
12 now?

13 MR. GOURIS: That's right. Thank you, sir.
14 They have a much bigger tractor.

15 MR. OXER: Check the box for this meeting.

16 MR. GOURIS: We hope so, yes.

17 MR. OXER: Okay. Any questions from the Board?

18 (No response.)

19 MR. OXER: Okay. Motion to consider.

20 DR. MUÑOZ: So moved.

21 MR. OXER: Motion by Dr. Muñoz to approve staff
22 recommendation. Do I hear a second?

23 MR. McWATTERS: Second

24 MR. OXER: Second from Professor McWatters. Is
25 there any public comment? There appears to be none. All

1 in favor?

2 (A chorus of ayes.)

3 MR. OXER: Opposed?

4 (No response.)

5 MR. OXER: There are none.

6 MR. GOURIS: Thank you.

7 MR. OXER: Thanks, Tom.

8 Okay, Brooke. Sorry about the delay.

9 MS. BOSTON: That's okay. Good morning,
10 Chairman Oxe r and Board. I'm Brooke Boston, one of our
11 deputy executive directors.

12 As I did in September and December, I wanted to
13 share with you about more of the behind-the-scenes
14 accomplishments of my teams. As a reminder, these are
15 part of the significant body of work at the agency that
16 either Board action or go forward on consent. Don't get
17 me wrong, we like being on consent, but it does minimize
18 the time that we get to speak directly with you about the
19 program. So on behalf of my management team, I'll share a
20 few more successes and identify some kudos to our staff.

21 For the HOME Program, the last several times I
22 came before you I mentioned how rapidly the Amy Young
23 Program and the HOME Persons with Disabilities funds were
24 reserved upon their release through our reservation
25 system. Well, we did it again. Our strong pool of

1 administrators really did it again, supported by out
2 dedicated staff who helped them get set up and ready.
3 This time our single family HOME funds that were released
4 at \$3 million, that can be used for tenant-based rental
5 assistance, homebuyer assistance, and homeowner
6 rehabilitation, re released and fully reserved in just a
7 few minutes. \$2.5 million of the funds were released in
8 just under two minutes, and the remaining \$500,000 were
9 reserved in about another ten minutes. So that's
10 wonderful.

11 MR. OXER: Didn't waste any time, did you?

12 MS. BOSTON: Our administrators didn't, so
13 we've actually talked to them a good bit about this since.

14 The next thing I wanted to mention to you is I
15 haven't gotten up to talk to you much about community
16 affairs, and for instance, the action you just talked
17 about was a community affairs contract. You often see the
18 allocation and plans come through piecemeal or on consent
19 but I wanted to actually give you some perspective about
20 what they do and how much they actually manage.

21 Excluding our treasury programs, the LIHEAP
22 program, out of Community Affairs, is by far the agency's
23 largest annual grant, with an allocation of \$128 million,
24 and that is only one of the division's six programs.
25 Across the six programs, staff overseas more than \$240

1 million annually and manages 327 separate active
2 contracts, as well as also administering over 800 Section
3 8 vouchers.

4 Those programs are funded by three federal
5 oversight agencies with three separate sets of
6 regulations. Within HUD there are two different branches
7 of HUD that actually oversee the program. The programs,
8 as you can imagine, require knowledge of everything, from
9 homeless policy and prevention, public voucher
10 requirements, weatherization and poverty programs. The
11 data gathering and reporting requirements go through an
12 array of complicated and sometimes less than logical
13 federal systems.

14 The division, which years ago actually was its
15 own state agency, has three sections in it: a fiscal and
16 contracting section, a planning and training section, and
17 a Section 8 area. These units do everything what we would
18 consider front-end work on the programs, such as handling
19 rule changes, drafting NOFAs, reviewing and processing
20 applications, overseeing requests for proposals that have
21 been awarded, providing intensive training and technical
22 assistance, maintaining federal relationships, managing
23 often intensive subrecipient relationships, including
24 going to CAA board meetings when needed, coaching boards,
25 and tracking every dollar for every contract, every unit,

1 every household, and every administrative source. And
2 keep in mind they're doing this for six programs.

3 Not to leave them out, Patricia's area also
4 does the extensive monitoring inspections for these
5 programs as well. So while you don't hear much about us
6 from consent, it is an impressive and significant
7 division. One of the reasons you rarely hear from us is
8 they do a really great job and things are able to go
9 through smoothly on consent, and it's under their
10 management and leadership that that occurs.

11 Michael DeYoung, the director, is our go-to man
12 for working very intensively with the staff and boards of
13 individual community action agencies. Cathy
14 Collingsworth, our manager of fiscal and reporting, who is
15 our money and number guru. Sharon Gamble, the manager for
16 planning and training, who innovation and detail on
17 releasing funds is amazing. Incidentally, she used to be
18 the tax credit administrator at a period in time. And
19 then last, but not least, Andre Adams, our Section 8
20 manager, who has also been instrumental in working with
21 HUD to bring our Section 8 Program to a very ideal status
22 with HUD relating to both our finances as well as our
23 performance.

24 So like the HOME administrators, who really
25 drive the demand and success of the program, the community

1 action programs are similar. It is the subrecipient
2 agencies that are out in the communities delivering the
3 poverty prevention programs, utility assistance,
4 weatherization units, providing homelessness prevention
5 and services, and outreaching and expanding the community
6 continuum of care network.

7 One recent efficiency in the community affairs
8 reporting function is a long-needed change to the way we
9 complete our CSBG national survey. This is a required
10 report by the U.S. Health and Human Services. The
11 reporting detail is extensive and gets down to specific
12 means of assistance at the household level. This report
13 has historically taken three months or more of dedicated
14 staff time, however, as ongoing improvements to systemic
15 data tracking have changed and organizational staffing
16 changes have been made, this year we were able to generate
17 the needed queries to generate that report in roughly four
18 weeks. So major props to Cathy Collingsworth and her
19 fiscal and reporting team, and also to David Johnson for
20 helping with a lot of the database work behind that.

21 Another community affairs thing is with the new
22 organization we want to keep our staff trained with the
23 necessary expertise to successfully run the programs. One
24 of these training needs recently newly required by
25 Department of Energy relates to a change in industry

1 standards. The certification which is the industry's top
2 credential is a quality control inspector certification
3 from the Building Performance Institute. The
4 certification has rigorous written and field exams and
5 work experience requirements. Those with the
6 certifications are considered to meet the global benchmark
7 for quality personnel certification.

8 Generally, the certification process has a pass
9 rate of about 32 percent. Recently several of the
10 Community Affairs Division staff pursued this
11 certification. I was thrilled to learn that all three of
12 the staff in our training area who pursued the
13 certification over the intense five-day testing period,
14 successfully passed the test and achieved the
15 certification. So way to go, and thank you for pursuing
16 the staff excellence to Kevin Glenke, Doug Misenheimer and
17 Marco Cruz. I would also note that this certification is
18 something that's going to be required of all the
19 subrecipients as well, as they'll be required to inspect
20 to this level as well.

21 A couple more things. One is I actually want
22 to brag about a person that's in a different division, so
23 this brag is for someone in David Cervantes's area, but I
24 just had to do it. Internally, it is our time of year to
25 start work on our annual operating budget, and that will

1 be presented to you over the summer. Needless to say,
2 with seven of the agency's divisions reporting to me, I'm
3 in a lot of meetings with them about this. Those meetings
4 are led by Ernie Palacios and Joe Guevera out of the
5 financial administration area.

6 Last year during this time Ernie created a new
7 salary planning tool that provided each manager with a far
8 greater degree of detail in determining when and how much
9 salary action should be taken, so down to the month and
10 looking at specific salaries, specific merit amounts they
11 would have over the course of the year. So this, as you
12 can imagine, was amazingly helpful for financial
13 administration but it also helped managers predict and
14 anticipate what they were going to need to do.

15 Not to be outdone by that prior year, Ernie,
16 over the last few quarters, has rolled out another great
17 tool that allows management to better track and
18 accordingly review the billing or grant coding of our
19 staff. So for instance, if an employee has been working
20 on weatherization and billing 60 percent of their time to
21 DOE WAP and 40 percent to LIHEAP, but they were budgeted
22 40 percent and 60 percent conversely, it actually lets
23 management go in and as soon as we see that showing
24 through on time reporting, we can immediately work to
25 adjust and work with that employee.

1 So in this case, they're both eligible sources,
2 so it's not an issue of not being eligible, it's just an
3 issue of trying to make sure the way we ultimately are
4 having our staff bill their grant time is consistent with
5 the way we budgeted. So that has also been a huge help
6 for all of us, so big thanks to Ernie and his team.

7 One of the last things I want to talk about is
8 the single family activities, and then I'll get down.

9 MR. OXER: Don't get in a hurry. We never get
10 tired of hearing good news, I assure you.

11 MS. BOSTON: Good. You know, when I've come up
12 I like to talk about the joint collaborations across the
13 agency. The last time I was here I talked to you guys
14 about accomplishments of our single family initiative with
15 a focus on training. As you may recall, the single family
16 initiative involves those efforts that cross multiple
17 divisions across the agency. I wanted to update you on
18 that.

19 As we reached the two-year mark from having
20 rolled out that initiative, we wanted to reaffirm the
21 goals and forward-going projects. So Tim and I had talked
22 through what did we want those forward-going goals to look
23 like and we wanted to make sure we communicated that with
24 the external participants in the program who actually do
25 it, so we want our time to be spent on what they think

1 they need most.

2 The forum was a great success. Our biggest
3 accomplishment was that the loan closing process,
4 something that we were strongly criticized and had heard a
5 lot of criticism for years, but particularly at the forum
6 two years ago, was seen as a total success. We asked them
7 several times: Are you sure you don't have anything to
8 say? And everyone just said, It's great, it's going
9 beautifully. So that was huge.

10 There were a lot of other successes that I've
11 briefed you on before. I would note that the position of
12 the single family coordinator, which was an additional
13 duty placed on one of the single family directors, that is
14 a rotating position, and during these first kind of
15 inaugural two years of the position, Homero Cabello -- who
16 you just saw -- led that. So he was backed by a single
17 family implementation leader, Dee Patience. The effort,
18 though, involved the strong coordination of all the single
19 family directors, so Marni Holloway with NSP, Jennifer
20 Molinari with HOME, Homer, of course, with OCI and HTF,
21 and then also getting insight from Eric Pike and Tim
22 Nelson.

23 I'd like to give huge thanks to Homer as we are
24 rotating out of that position and rolling into a new
25 coordinator role, and it has always intended to be a

1 rotation and we decided to tie that with the forum and
2 kind of the reaffirmation with our public, so to speak, of
3 how they wanted to our efforts spent. So Homer did a
4 wonderful job of getting us there, and I want to say thank
5 you in advance because Marni is going to be taking it on
6 for the next two years.

7 And with that, I'm finally done. I could go on
8 forever about a lot of the great things we do, but I'll
9 probably be back in a few more months to share some more.

10 MR. OXER: Great. Sit tight for a second.

11 Any questions from the Board?

12 DR. MUÑOZ: Thanks, Brooke. I just want to
13 take a second of privilege. I want to recognize someone
14 from the South Plains, Bill Powell -- Bill, raise your
15 hand a little bit -- from the South Plains Community
16 Action Association out of Levelland just outside of
17 Lubbock, Texas. I just want to appreciate and recognize
18 Bill for making the long trip. I know how long it is, so
19 thanks. It's one of the great agencies that does so much
20 for that part of the state and appreciate what he does and
21 appreciate what you and your team does. Thank you,
22 Brooke.

23 MS. BOSTON: Thank you.

24 MR. OXER: Just an observation or two here. So
25 what you're saying is in the last two years you've gotten

1 up where you're smoother in distributing the money through
2 the NOFAs, everybody seems to be paying attention, it goes
3 through much more quickly, your accuracy is going up, your
4 speed is going up, and you're doing it with fewer people.

5 MS. BOSTON: Yes.

6 MR. OXER: Anybody see anything wrong with
7 that? Great, Brooke. Thanks very much.

8 MS. BOSTON: Thank you.

9 MR. IRVINE: I have a comment on it.

10 MR. OXER: I'd like to hear from the executive
11 director then.

12 MR. IRVINE: My comment is that we don't live
13 in a static world, things are always changing and we're
14 always trying to recalibrate and stay attuned to
15 conditions on the ground, and some of the great successes
16 that Brooke mentioned, the improvement of the speed with
17 which money is moving under NOFAs and so forth, that is
18 absolutely a resounding success. We have whittled away
19 some huge balances that had built up over time, and it's
20 really terrific to be getting the money out and deployed,
21 but we're also continuing to explore the need for
22 additional recalibration to make sure that people around
23 the state who want to access to these funds have the
24 ability to grab them, and this is not over and done, I
25 imagine the model will continue to evolve.

1 MR. OXER: The pursuit of excellence, which I
2 compliment all of the staff, and I have to say since the
3 time that I showed up and was in this team, everybody has
4 made every effort to continue to escalate their play and
5 to improve the smoothness and efficiency and the quality
6 and level of support that we provide the community that's
7 our direct client community out there. I personally
8 appreciate that and recognize that.

9 As I've said before, I haven't seen any state
10 or federal budget going up in terms of the ability for
11 staffing, so being able to manage these things with fewer
12 people, with fewer staff that operate better and smoother
13 with more systems and a higher degree of accuracy, as an
14 engineer would put it, that's the first derivative, the
15 improvement grade is going up, so we're doing all the
16 right things. So thank you from me.

17 And for those not engineers among us, including
18 the vice-chairman, first derivative means things are
19 improving, Dr. Muñoz.

20 (General laughter.)

21 MR. OXER: Okay. Let's see, 2(b). Hi, Kate.

22 MS. MOORE: Good morning.

23 MR. OXER: So far.

24 MS. MOORE: Good morning, Chairman Oxer, Board.
25 My name is Kate Moore, and I am the Section 811 manager,

1 reporting directly to Brooke Boston, deputy executive
2 director. We're here for agenda item 2(b) to ask for
3 approval to apply for the next round of Section 811
4 project rental assistance funding.

5 As you may recall, in February 2013, the U.S.
6 Department of Housing and Urban Development announced that
7 TDHCA was one of 13 states selected to participate in the
8 first ever Section 811 housing for persons with
9 disabilities project rental assistance demonstration, and
10 we were awarded \$12 million for the program. We were
11 awarded these funds because we successfully applied for
12 them under the 2012 round.

13 Since that time, TDHCA, as well as other states
14 that received awards, have been working with HUD to
15 finalize the contract for that 2012 round. The contract,
16 known as the Cooperative Agreement, is nearing its final
17 draft, and assuming TDHCA and HUD can agree on the final
18 program design, we will begin implementing the 2012 HUD
19 811 Program once it's signed.

20 But today I'm here to talk about the next round
21 of funding that has been made available by HUD through
22 their fiscal 2013 notice of funding availability for the
23 Section 811 Program. This 2013 NOFA was published on
24 March 4, 2014 and has a response deadline of next month,
25 May 5.

1 TDHCA staff has taken a close look at this NOFA
2 and are recommending that the Board authorize us to submit
3 an application. We believe the Department should move
4 forward with an application despite any overarching
5 concerns we may have regarding how HUD will oversee the
6 administration of the program, because the importance of
7 the population to be served warrants pursuit and because
8 the program promotes housing choice. The submission of
9 the application will also be contingent on the ability for
10 the health and human service entities that we are
11 partnering with to also execute the contractual agreements
12 with TDHCA required by HUD.

13 One of the notable changes from the fiscal year
14 2012 NOFA to the fiscal year 2013 program is the increase
15 in the administration fee from 5 percent, the amount
16 initially set forth in the 2012 NOFA, to 8 percent. In
17 our response to the new NOFA, we intend to mimic, to a
18 large degree, our previous 2012 program design for the new
19 2013 program. Our ability to proceed with a new grant
20 will be based on our ability to leverage the work we have
21 done for systems, processes, staff and infrastructure for
22 the existing 2012 grant.

23 HUD is releasing \$120 million under this NOFA
24 and will award between 12 and 18 states, with each state
25 eligible to receive anywhere between \$2 million and \$12

1 million each.

2 Following the 2012 program, TDHCA anticipates
3 serving the same target populations, making 811 units
4 available for placement at multifamily properties that
5 have received funding from the department and are
6 monitored by us, and will serve the same seven
7 metropolitan statistical areas, with the possible addition
8 of four new ones.

9 While the 2012 program design will be similar
10 to the 2012 program design, HUD has made a few changes to
11 the NOFA versus the old one. The new NOFA provides more
12 emphasis on a state commitment to the Section 811 Program
13 for new construction which would most realistically be
14 achieved through incentives in the Department's Qualified
15 Allocation Plan. Although points were not included in the
16 most recent QAP during the November 2013 meeting, it's
17 staff understanding that the Board is open to creating
18 incentives in the next QAP for this program, something
19 that would greatly improve the chances of this program
20 being successfully awarded.

21 So next steps. If the Board approves today's
22 action item, staff will move forward with taking the steps
23 to submit an application to HUD under the fiscal year 2013
24 NOFA. Additionally, TDHCA looks forward to signing the
25 2012 Cooperative Agreement and moving forward with

1 implementing the 2012 program. Assuming TDHCA is awarded
2 funds under the 2013 program, we assume a 2013 cooperative
3 agreement will need to be signed with HUD as well.

4 So for this Board action item we are asking for
5 authority to move forward with submitting an application
6 to HUD under the 2013 NOFA for this program, and I'm happy
7 to answer any questions.

8 MR. OXER: Good. Thanks.

9 Any questions of the Board?

10 MR. THOMAS: Quickly.

11 MR. OXER: Mr. Thomas.

12 MR. THOMAS: Thank you. The increase from 5
13 percent to 8 percent for administration, how broadly are
14 we allowed to use those funds, or are they also fairly
15 earmarked on what constitutes administration?

16 MS. MOORE: To my understanding, it's fairly
17 broad and it's consistent with our other HUD programs.

18 MR. OXER: So it could be used for staff or
19 infrastructure or software upgrades, or whatever.

20 MS. MOORE: Yes, or for contracting. Yes.

21 MR. OXER: So essentially, you're asking to be
22 cut loose to chase this one.

23 MS. MOORE: Exactly.

24 MR. OXER: What's your prospects?

25 MS. MOORE: I think we're less competitive than

1 we were last time because there's a new emphasis on having
2 existing infrastructure in your financing programs, such
3 as the QAP, but I think what's strong for our application
4 is that we have an existing award and we have a really
5 strong existing infrastructure that we can build on, so I
6 think that's our strength for it.

7 MR. OXER: So you're saying the QAP adds or
8 detracts from that strength?

9 MS. MOORE: If we had points in our QAP, it
10 would add to the strength because that's one of the things
11 they're looking for in this NOFA. So what we are talking
12 about is submitting something saying that the staff
13 intends to submit a draft for the Board to consider for
14 2015 that would include points for Section 811.

15 MR. OXER: And, Barbara, tell me if I'm getting
16 off the beam here, but I'm curious if adding any points to
17 consider that in the QAP would alter our QAP with respect
18 to transparency, fairness, any of those. Counsel, do you
19 want to give us a comment first on that?

20 MS. DEANE: I wouldn't think so. I'm sure when
21 staff does the analysis to bring it forward in 2015, we'll
22 be extremely careful to make sure that it's in accordance
23 with the standards that have been set for the QAP already.

24 MR. OXER: Yes, because I get the impression
25 we've got a pretty competitive QAP which has its

1 strengths. I just want to keep it that way.

2 MS. MOORE: Of course.

3 MR. OXER: Do you have something to say, Tim?

4 MR. IRVINE: We will absolutely develop and
5 recommend a compliant QAP with below the line point items
6 for participation in the 811 Program. We'll also analyze
7 the entire matter to ensure that it's in conformity with
8 Fair Housing requirements and other similar requirements,
9 such as the remedial plan.

10 MR. OXER: So there is a way to include that
11 without damaging the strength of the QAP that we have now.

12 MS. MOORE: We believe so.

13 MR. OXER: Okay. All right. Are there any
14 questions of the Board? Motion to consider?

15 MR. GANN: I so move.

16 MR. OXER: Motion by Mr. Gann to approve staff
17 recommendation on this item.

18 MR. THOMAS: Second.

19 MR. OXER: Second by Mr. Thomas. No public
20 comment, nobody sitting in our chairs. All in favor?

21 (A chorus of ayes.)

22 MR. OXER: Opposed?

23 (No response.)

24 MR. OXER: There are none, it's unanimous.

25 Thanks, Kate.

1 Okay, let's see here. Tim, I think you're up.

2 MR. NELSON: Good morning, Mr. Chairman,
3 members of the Board. My name is Tim Nelson, director of
4 Bond Finance.

5 I'd like to begin, first of all, by commending
6 you on your use of the first derivative, noting that that
7 was, no doubt, included as a segue into the batch of items
8 that we're going to cover now, all of which, fortunately
9 or unfortunately, are swap related.

10 MR. OXER: Which are derivatives, in and of
11 themselves.

12 MR. NELSON: Which are derivatives.

13 MR. OXER: Well, as you'll find out, we tend to
14 be data driven, as Dr. Data will soon tell you when he
15 comes up.

16 MR. NELSON: But I promise that, A, you've done
17 nothing wrong to deserve this, and B, I think in
18 particular given the swap survey course that you were all
19 exposed to at the last meeting, I think we can dispense
20 with these with a minimum of fanfare and discussion, but
21 we'll see.

22 The first item that we have here, 3(a), is a
23 presentation, discussion and possible action on resolution
24 14-021, regarding the annual approval of the Department's
25 interest rate swap policy. As outlined in our statute,

1 the Board has to annually approve our swap policy in
2 addition to our investment policy which the Board, thank
3 you, approved in the consent agenda. And actually, before
4 I get too much into these items, I did want to point out
5 that we have with us today, from George K. Baum, our FA
6 and swap advisor, Gary Machak, Barton Withrow, and David
7 Adams, and certainly if you guys ask questions that are
8 too difficult for me, they will be stepping to the podium.

9 But let me just make a couple of comments on
10 our swap policy, and first of all, I'll say that the
11 policy has been out there for about ten years now. There
12 have really been no substantive changes to the policy, I
13 think, during that time period. Last year we did, in
14 order to conform to some of the new Dodd-Frank
15 requirements, we made some changes, the Board may recall,
16 but those were more just to align with these provisions.

17 The Board might remember in some of the
18 discussion from last month -- and certainly in our next
19 Board item we'll be dealing with the 2004-B swap -- as
20 part of that item we needed to locate a new swap
21 counterparty which to assign the 2004-B swap there's,
22 again, some discussion of that in the next item, but I
23 wanted to point that out because I think it underscores a
24 little bit of what staff is talking about on the
25 recommendation on this item, that we went out and surveyed

1 the entire universe and determined that there were four
2 counterparties in the entire universe who met our current
3 swap policy.

4 One of those parties dropped out of our process
5 due to the fact that they had a requirement that our swap
6 needed to be rated, which, for a number of different
7 reasons, that has not occurred on any of our swaps and
8 cannot occur, and so they went to the wayside. We had
9 another provider who, because of some of our downgrade
10 triggers, elected not to move forward. So in the end, we
11 ended up with two providers, and of those two, we selected
12 one.

13 But going through that process, I think staff
14 and our advisors felt like a policy that basically exposes
15 you to two parties in the entire universe is probably one
16 that is out of step with the market. I mean, when we
17 first put this policy in place there were 10 or 15 AAA, we
18 had three or four AAA bond insurance companies. Today's
19 world looks much different than that. Our policy has not
20 evolved to reflect that.

21 So we looked at it, and what we are proposing
22 is amending the policy to really address two things: to go
23 through and lower our rating threshold for the
24 counterparties that we would be willing to accept. Had we
25 done that, we would have had a number of additional

1 parties that potentially we could have worked with on this
2 latest assignment. We might have still selected BNY, who,
3 in fact, is who we ended up with, but we felt like it
4 would have been a more robust process had we had more
5 parties involved.

6 The second thing that we're recommending is
7 that we lower the downgrade trigger that is really done in
8 concert with your rating threshold. And I did want to
9 point out to the Board that in our writeup we did do a
10 comparison with some of the other state agencies here in
11 Texas, in Austin in particular, UT Systems and Veterans
12 Land Board, and that's outlined, again, in the writeup
13 that I think our proposed policy aligns very closely with
14 what those entities are doing, so by no stretch of the
15 imagination are we proposing that we get wild and crazy in
16 terms of what we're doing with swaps.

17 And I would also point out to the Board that we
18 haven't entered into a new swap since 2007, much as we've
19 got with this next item, in terms of managing our swap
20 portfolio, it's very likely that we could have situations
21 where we need to assign one of our existing swaps in order
22 to make adjustments to it over time. Given where we're at
23 right now, that's probably more what we'll be looking at,
24 so it isn't, again, that we're anticipating that all of a
25 sudden we're going to be doing new transactions that would

1 require new swaps, although, certainly this policy would
2 address that if that were the case.

3 And so with that, I would say that staff
4 recommends approval as has been set forth in the
5 amendment, and I'll stop talking and let you ask questions
6 if you got any.

7 MR. OXER: Good. Thanks, Tim.

8 Any questions from the Board?

9 (No response.)

10 MR. OXER: I have a couple. You said lowering
11 the bar, so to speak, to have more come into consideration
12 as a swap counterparty, does that increase our risk, or
13 does that only increase their risk on the swap?

14 MR. NELSON: Well, it's lowering the rating
15 threshold of who we would be willing to accept, so yes, in
16 a way, potentially, to the extent that we end up selecting
17 an entity that has a lower rating.

18 MR. OXER: There is a potential risk on that,
19 but that risk that we would be looking at with those
20 agencies would be no lower than other agencies that the
21 state, like the Land Board and such, that would be
22 consistent with the other agencies of the state.

23 MR. NELSON: That is correct. Again, staff and
24 our advisors, again, you could put in your policy I'm only
25 going to deal with AAA, gilt-edged entities.

1 MR. OXER: Both of them.

2 MR. NELSON: None of them. So yes, there's a
3 tradeoff.

4 MR. OXER: The two in the universe or the one
5 in the universe that we found is sort of a rare gem.

6 MR. NELSON: There's always a balancing act
7 between, again, setting those types of thresholds, and
8 again, as you lower thresholds, definitionally, assuming
9 you believe that ratings accurately reflect risk, and I
10 don't know that I would necessarily correlate those two.

11 MR. OXER: Based on the experiences I've had
12 since 2008 with Standard & Poor's and Moody's ratings, I'm
13 not sure that rating agency ratings constitute much more
14 than a, I'll say, a biased perspective.

15 MR. NELSON: But it is, nonetheless, a litmus
16 test and we use it, as well as other people.

17 MR. OXER: It is a test but it's not the test.

18 MR. NELSON: That's correct.

19 MR. OXER: So how many swaps are coming up that
20 are due to be turned?

21 MR. NELSON: We have the '04-B that's the
22 subject of the next agenda item, we have an '04-D that we
23 will likely be bringing to the next Board meeting, and in
24 a couple of years we'll probably have an '06-H, and as I
25 pointed out to the Board, I think, at the last meeting, we

1 have two matched swaps, our '05-A and '07-A that do not
2 have any optional par termination rights. If all the
3 planets aligned, we might be able to restructure those but
4 those are going to be our most difficult. So very likely
5 we'll be looking at restructuring certainly three out of
6 our five current swaps.

7 MR. OXER: Current swaps.

8 MR. NELSON: Over the next two years, two of
9 them over the next two months.

10 MR. OXER: While I am, obviously, an aggressive
11 proponent of high standards for everything we do, one of
12 the thing -- just to toss in a little aphorism with
13 respect to sentences, admonitions on defensive
14 fortifications, make it too hard to get in and you can't
15 get out.

16 MR. NELSON: Right.

17 (General laughter.)

18 MR. OXER: We want to have plenty of players in
19 this so we've got a choice.

20 Professor McWatters, did you have a thought?

21 MR. McWATTERS: Yes, Tim. Tell me again what
22 the advantage is of going with lower rated
23 counterparties. Is it that there are more counterparties
24 to choose among and that the fees charged by those
25 counterparties are less?

1 MR. NELSON: I would say a qualified yes,
2 because it doesn't take a leap of the imagination to
3 understand that if the two counterparties, who we are now
4 working with, ultimately figure out they are the only two
5 counterparties that we can work with, the deal that we
6 hope to strike this month will not be the deal that we can
7 strike next month, because they're going to recognize that
8 there's no competition here. So I think the idea is --
9 and I did state that earlier -- the fact that we're
10 lowering that threshold doesn't mean that if we have four
11 entities come to us that as part of the extensive vetting
12 process that staff and advisors are going through, that we
13 won't end up selecting the highest rated entity.

14 So that's what I'm saying, had we had the new
15 policy we're proposing and we had gone through the 2004-B
16 process, that we could have still selected BNY, who we
17 selected under the old policy. We just would have had
18 five or six people involved in the mix. That creates more
19 competition and in theory should drive down our cost.

20 MR. McWATTERS: I assume there's also some risk
21 diversification in using more than two counterparties. I
22 mean, you may pick, for example, two counterparties, but
23 if one of those fails, then a lot of swaps may be in
24 trouble, so there could be the advantage in going to lower
25 rated that you can diversify your exposure, systemic

1 exposure across the agency to a lot of different
2 counterparties.

3 MR. NELSON: That's correct. Again, to make it
4 easiest, if we only had one counterparty that we would
5 work with, over time we would end up with all of our swaps
6 being with that one counterparty that that concentration,
7 albeit with a higher rated institution, is, again,
8 probably not good. So yes, there are a multitude of
9 factors that have to be looked at.

10 MR. OXER: Do we have an exposure limit to any
11 entity in that respect? From what I gather, we're trying
12 to avoid -- the ultimate limit to where this was headed
13 was a monopsony situation where you've got one seller --
14 or one buyer. Okay?

15 MR. NELSON: We don't have anything in our
16 policy that sets out specific concentration, or in the
17 reverse, diversification requirements, but, again, that is
18 something that staff and advisors look at in terms of
19 developing a recommendation if we're going to select
20 someone.

21 MR. OXER: And I'm sure the fees come into it,
22 but if you assume that the services are static and it's
23 the fees that are the variant in that, then if you have
24 only two, then you've got a bi-pole choice, there's no
25 graduation in that choice, so a larger diversification

1 gives you a larger gradation in the quality of services
2 you can expect. Is that fair to say?

3 MR. NELSON: And the pricing on those. Again,
4 it's getting a little bit in the weeds, but since we're
5 talking about it, the differential between the bids,
6 between BNY and Wells Fargo, who was our number two
7 candidate, was about a 50 percent difference.

8 MR. OXER: Not insignificant.

9 MR. NELSON: That is not insignificant. Now,
10 again, who's to say if we'd have had six that that would
11 have been better and narrower.

12 MR. OXER: Closer and tighter.

13 MR. NELSON: But that's what we're looking for.

14 MR. OXER: Well, the Jaguar motto is:
15 Competition improves the breed. And I think it's fair to
16 say that the harder standards with more competition, it
17 does, I think, what we've been looking to do.

18 MR. NELSON: And again, as I said, we looked at
19 what other people were doing in the marketplace, in the
20 local marketplace, so this is Veterans Land Board and UT,
21 UT has many multiples more outstanding of these than we
22 do, and certainly Veterans Land Board as well, so they are
23 big users of swaps. Our proposed new policy is in line
24 with what they are doing, so again, certainly we're not
25 looking to step out of what certainly the local market is.

1 We didn't survey the entire country but thought it more
2 relevant what people are doing across the street as
3 opposed to what people are doing in California or New
4 York.

5 MR. OXER: So the two providers have experience
6 here and you have plenty of other individual examples of
7 swaps that are being considered.

8 MR. THOMAS: Mr. Chairman, I'd like to ask a
9 question.

10 MR. OXER: Mr. Thomas.

11 MR. THOMAS: I'm feeling a little bit like this
12 discussion is being directed, and I don't mean that in a
13 bad way, but directed, and I do want to support the staff,
14 but I've got some serious reservations and some questions
15 about how many other state agencies, because the two that
16 you're listing are materially and significantly different
17 than our agency in tremendous ways.

18 MR. OXER: That's fair to say.

19 MR. NELSON: That is a true statement.

20 MR. THOMAS: What are the other agencies that
21 might be similarly situated to ours and have our same kind
22 of constituency issues, as well as funding issues that
23 might be able to compare their ratings?

24 MR. NELSON: I'm going to bring the experts, at
25 least the experts in this room, up to help address that

1 question.

2 MR. ADAMS: Mr. Chair, members of the Board.
3 My name is David Adams.

4 MR. OXER: Welcome aboard, David. Welcome to
5 your first one.

6 MR. ADAMS: Thank you. The other agencies that
7 are in a similar situation, I used to work for Colorado
8 Housing and Finance Authority, and was in a situation
9 where we had one exposure, basically, to Lehman Brothers,
10 and that, obviously, didn't work out very well for us.
11 Broad diversification does help out tremendously and
12 you're definitely faced with a conundrum of do you go with
13 a lower rated counterparty and accept more risk, or do you
14 maintain your standards and limit your resources that are
15 available to you.

16 MR. THOMAS: I understand that. I guess I'm
17 asking about Texas entities, Texas agencies in particular,
18 do we have any others within the State of Texas that would
19 be more comparable to ours?

20 MR. OXER: A brief housekeeping item. Tell us
21 who you're speaking on behalf of.

22 MR. ADAMS: George K. Baum.

23 MR. MACHAK: Gary Machak at George K. Baum,
24 financial advisor, swap advisor. Good morning.

25 In terms of Texas, really the largest users, as

1 Tim mentioned, are the University of Texas and Texas
2 Veterans Land Board, and the amount that they have
3 outstanding is in the billions, over a billion each.
4 Another user, but I don't believe their amounts were that
5 much, is Texas Department of Transportation, I think has
6 used some, but I don't believe theirs is anywhere as large
7 as the Veterans Land Board, and they haven't been doing it
8 as long as University of Texas either.

9 MR. OXER: Hold on just a second. Is that
10 microphone on?

11 MR. MACHAK: How's that, better?

12 MR. OXER: That's better. I want to make sure
13 they can hear you back there.

14 MR. MACHAK: In terms of other issuers across
15 the state, back in the 2005 to 2006 there were some school
16 districts that used swaps to a very limited degree. They
17 have, I think, to some extent exited that business.

18 MR. THOMAS: Why is that?

19 MR. MACHAK: Why is that? Because I don't
20 think that they were working for them. I think that what
21 happened was the market went against them on their swaps
22 and they didn't feel comfortable that it was an instrument
23 for them.

24 MR. THOMAS: So why are swaps such a wonderful
25 tool but potentially dangerous tool?

1 MR. MACHAK: They are tool that can be used,
2 they do have inherent risks in them, and we enumerate
3 those risks in our policy.

4 MR. THOMAS: But just in English, just simple
5 English for folks listening to this, particularly like me,
6 who doesn't have your level of sophistication, anywhere
7 near it, tell me in English what is the magnifier
8 opportunity of this as well as the downside.

9 MR. OXER: It is a magnifier, but it could go
10 potentially in each direction.

11 MR. MACHAK: These are swaps that we entered
12 into, and at that time these swaps offered us a vehicle to
13 reduce the amount of the mortgage rate of our mortgages on
14 the program in order to make sure that we had a
15 competitive product out there, and we entered into various
16 types with various optionality. The optionality on these
17 particular swaps that Tim mentioned offer us opportunities
18 now to restructure that and to do it safely.

19 DR. MUÑOZ: Gary, but generally our use of this
20 tool has been favorable.

21 MR. MACHAK: Yes.

22 DR. MUÑOZ: It has inherent risks but they
23 haven't necessarily expressed themselves in our sort of
24 use of this instrument or this tool.

25 MR. MACHAK: That's right. We have not had

1 counterparties that have been downgraded where we've had
2 to go through a termination process. I believe both
3 agencies, I know one of them for sure, Veterans Land
4 Board, did have to go through that with Lehman Brothers, as
5 David mentioned Colorado had to go through. So that in
6 itself was painful because to some extent they had to
7 negotiate a termination fee with that entity, and it
8 wasn't in the favor of the issuer.

9 MR. OXER: Hold on a second.

10 MR. IRVINE: Mr. Thomas, you raised the
11 question about similarity of situations with respect to
12 other issuers, and it's just my simpleton perspective here
13 that the swap itself, the interest rate swap, really it's
14 characteristics don't necessarily have anything to do with
15 the different types of structures or the size of
16 structures to which they relate. It's simply we issued
17 variable rate debt. We entered into an agreement with
18 somebody else on specified negotiated terms that they
19 would take on the risk that rates would change, and the
20 risk is if that occurs will they be able to perform.

21 MR. THOMAS: I understand. I guess I was
22 talking specifically not to -- I think I understand the
23 nuances on our side and every deal is different, I get
24 that. I think I was more worried about the question of
25 the comparability based upon our particular constituencies

1 in all of them. Let me put it in a context.

2 In the business world we're told that if you
3 have a problem and you have a board that costs are
4 significant and important but that if things go wrong, a
5 la the economic crash, a la Lehman, a la too big to fail,
6 that it is always much easier to go back to your board
7 when you're the chief executive and discuss that you hired
8 the absolute best, the brightest that had the ability,
9 skills, et cetera versus something because you were
10 concerned about costs.

11 That's a very oversimplification, but I guess
12 that's where I'm trying to put my head around what kind of
13 process if we had to turn and look to our constituents and
14 the leaders in our state on these kinds of issues, since
15 we're so differently situated than the entities that we're
16 talking about, our sister entities.

17 MR. OXER: Tim.

18 MR. NELSON: I was going to say I think overall
19 what you're referring to, and we talked about this a
20 little bit last month, is when you do swaps you're
21 introducing yourself to more counterparty risk. We have a
22 swap counterparty, we have a liquidity provider, we have
23 remarketing agents, and that's really out of our control.

24 MR. OXER: That has less to do with us and
25 interest rates than it does with their horsepower.

1 MR. NELSON: Right.

2 MR. OXER: So that's why keeping the standards
3 at a certain level is particularly important.

4 MR. NELSON: And again, there is no doubt that
5 Veterans Land Board, the GO issuer, if they run into a
6 problem they will go to the treasurer and say: I need
7 money to solve that problem. The treasurer and the
8 governor probably are not going to be very happy about
9 that, but nonetheless, that is an outlet that they have
10 that we, as a revenue issuer, do not. And so that
11 certainly places a premium on the management of these
12 things, and as Gary pointed out with the school districts,
13 again, broadly I think you could say we've got the
14 management horsepower, I'm not really sure that they did.
15 And so again, it doesn't eliminate it but it's a
16 mitigating factor, certainly.

17 DR. MUÑOZ: Tim, I've got a question. Gary
18 said that when we enter into these agreements, and now
19 that there's an opportunity sort of to restructure, I
20 mean, I presume that there is some consideration to
21 minimize whatever sort of exposure we do have that we
22 can't control.

23 MR. NELSON: Well, and again, we'll discuss
24 this a little bit on the next item, but yes, when you look
25 at these, our goal, as I outlined at the last meeting, was

1 to: A, reduce the ongoing cost, the rate; second, almost
2 more important or certainly equal, shorten the time
3 period. I think, Mr. Thomas, you had asked last meeting
4 what's our goal or our hope, the restructuring of that
5 '04-B swap, we hope to have 100 percent par termination
6 option in seven years that we currently do not own.

7 Again, you addressed some of these ongoing
8 risks, if I've got that risk in place for 30 years, I'm
9 going to worry about it a little bit more than if I can
10 get out of it in seven years. Again, does it completely
11 eliminate it? No. But again, it's those tradeoffs that
12 you're looking at.

13 MR. OXER: And I think it's an important
14 distinction to make, and your point is well taken and very
15 valid, Robert, that this constitutes a risk but one of the
16 historic issues associated with financial swaps is they
17 got an extraordinarily bad name here. I was at an
18 organization in Houston that didn't do very well at some
19 of those, so they got an extraordinarily bad name, but
20 because of the fact that there were a lot of people that
21 got into that didn't know what they were doing and didn't
22 spend enough time to figure it out.

23 Now, despite the fact that you're probably
24 tired of standing up there and answering questions, I
25 compliment all of the Board for asking those questions

1 because part of our responsibility is to make damn sure
2 that you know what you're talking about.

3 MR. McWATTERS: I have one more.

4 MR. OXER: Professor McWatters.

5 MR. McWATTERS: Let me ask this question, Tim,
6 you and to Gary, moving from two swap counterparties to
7 let's say five swap counterparties, on a systemic basis,
8 does that overall lower our counterparty risk or does it
9 increase our counterparty risk? When you factor in
10 everything, what's the purpose of doing this? It seems
11 like the purpose should be to lower risk at perhaps
12 keeping costs the same or maybe even lowering costs, but I
13 want to hear from you guys, because if you're saying no,
14 if we go from two to five and those extra three have lower
15 credit ratings, we're increasing the overall, then I start
16 getting very nervous.

17 MR. NELSON: Well, first of all, I would say we
18 need to separate -- there's really two concepts involved.

19 The policy addresses minimum qualifications of who we can
20 have discussions with, and then ultimately when we select
21 someone, they may or may not be different than the other
22 counterparties that we already have so it's very possible.

23 Like for instance, right now our biggest counterparty is
24 probably J.P. Morgan. J.P. Morgan does not qualify under
25 our old policy. Do they qualify under our revised? But

1 in any case, they may or may not even be on the list and
2 so they may not be allowed for us to discuss with, and so
3 therefore, we wouldn't increase any of that concentration.

4 And again, the second thing that I would say is
5 even though we are including a larger universe, it does
6 not preclude us from selecting the highest rated entity,
7 irrespective of whether that party might not have had the
8 lowest cost.

9 MR. IRVINE: So really aren't we looking to
10 develop a swap policy that does two things: one, it
11 hedges interest rate risk -- that's the traditional role
12 of the swap counterparty -- but two, it facilitates our
13 negotiation of a structure that lines up with our ability
14 to exit variable rate debt.

15 MR. NELSON: Yes.

16 MR. OXER: And over the long term, this is a
17 step in over the long term managing our short-term
18 interest rate exposure.

19 MR. NELSON: Yes, because ironically, if we
20 want to talk about risk, the third entity who dropped out
21 because our thresholds were too high on downgrade was RBC,
22 the highest rated entity we were talking to.

23 So again, you can't simply align these things
24 up. Had we had this new policy in place, we could have
25 gotten a better bid from RBC and selected a higher rated

1 entity than the one we're bringing you today.

2 MR. OXER: Essentially what you're trying to do
3 is take something that was a fixed point in an organic
4 process and reestablish that point with the whole intent
5 to manage that risk down over time. Is that correct?

6 MR. NELSON: Yes.

7 MR. OXER: Okay. And to the point that I made
8 about making sure, trust me, I trust you and you two up
9 there to know what you're doing, and I continue to believe
10 that's one of the reasons that our entire financial
11 portfolio is in such a strong position right now is the
12 fact that it is intimately and aggressively well managed,
13 and so I compliment both of you, you inside and you
14 outside, for having done such a good job of that.

15 MR. THOMAS: I don't think anybody, including
16 me, questions. In fact, I have great respect. You guys
17 have let me sit at the table with you in mind-numbing
18 detail, and you know how passionately I care about what
19 you do that keeps us safe. I just respectfully have some
20 different opinions, but I respect that you're the experts.

21 MR. OXER: And well stated, and I appreciate
22 that, Robert. And the point is I feel the same way, but
23 that said, we do have a fiduciary responsibility to the
24 state and an obligation to the public, including those
25 people who are sitting out there and the ones who are

1 listening at home, playing it on their board, to make sure
2 that the discussion that we're having gets exposed so
3 everybody understands that.

4 MR. NELSON: And again, certainly from staff's
5 standpoint, we work at the direction of the Board, and so
6 our role in this process is to try to inform you as fully
7 as we can. Ultimately, if you were to come back and say
8 after you have fully informed me and we've had this wide-
9 ranging great discussion, we've decided we would really
10 like to keep our policy and we think the way it was before
11 is fine, that obviously is the state of the world that
12 could occur and there would be nothing wrong with that.

13 MR. McWATTERS: But Tim, I'm still having a
14 difficult time understanding if this new policy, as
15 implemented at your discretion, keeping the same two
16 people, selecting them or selecting new people, if the
17 goal of this is to overall lower the risk, counterparty
18 risk, counterparty failure, September 2008 Lehman weekend,
19 all that stuff, is that the goal to lower the risk, or is
20 the goal to save money and perhaps accept slightly higher
21 risk?

22 MR. NELSON: Again, I don't know because,
23 again, even if we'd had the old policy in place, again,
24 we're recommending BNY, who we don't have any present
25 swaps with, they're highly rated, certainly as highly

1 rated as the other counterparties we currently have, so
2 we're not increasing concentration. And again, that could
3 have been the case, or we could have ended up with a more
4 highly rated entity had we had the new policy in place.
5 So again, I know it probably sounds frustrating but I
6 don't know that they're directly sort of linked that if
7 you do one, ergo that means you're increasing risk.

8 You could potentially be, but again, you have
9 to recognize there's still a vetting process that occurs
10 with staff and advisors that takes into account, I think,
11 all the various things that you're concerned about. All
12 we're saying is that there is a value to the Board and to
13 the citizens of the State of Texas to allow more people to
14 participate in the process.

15 Going back to the old GIC days when we used to
16 bid GICs, the IRS, in their ultimate wisdom, decided you
17 must have three parties bidding. We don't have that
18 requirement on swaps, but if we did, we would have been in
19 violation of it. So all we're saying is that more people
20 involved in the dialogue is going to result in a lower
21 cost, almost certainly, but it does not necessarily mean
22 that we're going to end up with lower rated entities, and
23 therefore, more risk for the Department.

24 MR. OXER: I appreciate the comment from every
25 member of the Board and from staff and our advisors, but

1 what this does, changing the policy simply makes those
2 that we include in the discussion a little wider. Any
3 selection that you would do ultimately would come back to
4 us for corroboration in the first place.

5 MR. NELSON: That is correct. All the policy
6 really does is guide us in terms of the pool of candidates
7 that we are allowed, for lack of a better term, to include
8 in the discussions and ultimately come back to you as a
9 recommendation, and certainly at that point in time, had
10 we selected a lower rated entity, it's certainly within
11 the Board's purview at that point to say: Well, you've
12 brought us Bank B, who had a higher rating than the bank
13 you're recommending, we understand that that other bank
14 had lower cost, we would rather work with Bank B who has
15 got a higher rating. And that is what we would do.

16 So at the point in time that there's a
17 selection made, the Board is still in complete control in
18 terms of managing who we ultimately end up working with.
19 I think it just puts more information in play and almost
20 certainly reduces the cost, whomever we end up dealing
21 with.

22 MR. OXER: Okay. Any other questions? Motion
23 to consider?

24 DR. MUÑOZ: So moved.

25 MR. OXER: All right. Motion by Dr. Muñoz to

1 approve staff recommendation on this item 3(b).

2 MR. GANN: Second.

3 MR. OXER: Second by Mr. Gann. Any more
4 questions?

5 MR. IRVINE: This is 3(a).

6 MR. OXER: That's why I asked. Okay, 3(a).
7 Item 3(a), motion by Dr. Muñoz, second by Mr. Gann on item
8 3(a), there appears to be no public comment. All in
9 favor?

10 (A chorus of ayes.)

11 MR. OXER: Opposed?

12 MR. THOMAS: No.

13 MR. OXER: Okay. Opposed by Mr. Thomas, it's
14 four to one.

15 (General talking and laughter.)

16 DR. MUÑOZ: Mr. Chairman, before we get off
17 point, I just want to say, David, welcome to your first
18 meeting.

19 (General laughter.)

20 MR. OXER: Game face, Tim. Next, 3(b).

21 MR. NELSON: Okay. Having completed 3(a), we
22 will move on to 3(b), which I almost feel like we've half
23 discussed already, but this item we now bring before you
24 is presentation, discussion and possible action on
25 Resolution No. 14-022, authorizing transfer of interest

1 rate swap transactions with respect to single family
2 variable rate mortgage revenue refunding bonds, 2004
3 Series B and single family variable rate mortgage
4 refunding bonds, 2006 Series H. Try saying that ten
5 times.

6 Again, I think we talked about this a little
7 bit last month. As Gary pointed out, we have an
8 opportunity on all of these transactions that we do after
9 a period of time, typically ten years, we can come back
10 and take a look at restructuring them. Staff and advisors
11 took a look at a number of restructuring opportunities on
12 this transaction, doing a taxable or tax-exempt refunding
13 bond, doing an MVS sale which the Board has authorized on
14 a number of prior occasions -- we did two refunding issues
15 last May that ended up saving the Department \$10- to \$12
16 million on a present value basis.

17 In reviewing those here, it was determined that
18 those, either doing a refunding or an MVS sale, did not
19 result in the best deal for the Department, in fact, it
20 ended up increasing costs, and so we started looking at
21 restructuring the existing swap that we have in place.
22 And in order to do so, as is outlined in the writeup to
23 this item, our current provider, UBS, exited the municipal
24 swap business a number of years go and so we entered into
25 discussions with them and very quickly they made it clear

1 to us that we are exiting, or have exited the muni swap
2 business so we are not interested in restructuring a swap
3 with you, we would like that swap to go away.

4 And so we started the process of procuring a
5 substitute swap provider, and again, that process is
6 outlined the writeup. As mentioned earlier, after having
7 completed that process, we selected BNY, based on their
8 being the lowest cost, they're also very highly rated,
9 certainly higher rated, UBS was an AA2 rating, BNY comes
10 to us with a AA2, AA-minus, so in this transfer we
11 actually end up upgrading our rating over the prior
12 counterparty that we were dealing with.

13 MR. OXER: So essentially achieving what Mr.
14 Thomas was looking for, and Professor McWatters.

15 MR. NELSON: That is correct.

16 And so entering into this process, our goal was
17 to do really two things, as I stated earlier, wanted to
18 reduce our swap rate which is currently 3.846, down to
19 what we believe will be something in the 3.60-ish range,
20 3.65, 3.67, and to allow 100 percent par termination in
21 seven years. And as I outlined at the last meeting, we
22 have three different kinds of terminations: we have
23 mandatory terminations that are built into the contract,
24 we have optional par terminations that are rights we
25 negotiate as part of our deal, and we have optional market

1 terminations which cost us money or would cost the
2 counterparty money, depending upon where interest rates
3 were at.

4 So we believe we've been able to successfully
5 put this together, and if the Board gives us the authority
6 to move forward, our game plan would be to try to price on
7 about the 22nd or 23rd of April and close within a day or
8 two of that date. And again, the end result is -- and I
9 went through my discussion last month about optionality --
10 in reordering this optionality, going forward it will more
11 closely align with what we believe the optionality we need
12 to carry out our program. Right now we have much more
13 optionality than we can use today, and that is expensive,
14 so we turned that optionality in and got back 100 percent
15 par termination right in seven years that we did not have
16 before. That is a very valuable right.

17 And I think with that I'll let the Board ask
18 any questions that you have. Obviously, staff recommends
19 approval of this item as set forth.

20 MR. OXER: Great. Any questions, Mr. Thomas,
21 Professor McWatters?

22 MR. McWATTERS: You said BNY Mellon is A2
23 rated. Is that right?

24 MR. NELSON: AA2 Moody's, AA-minus S&P.

25 MR. McWATTERS: Did you consider other

1 potential counterparties that had a higher rating, and was
2 there a cost differential between going with a lower
3 rating and this one?

4 MR. NELSON: We had two parties out of the four
5 that we' started with that ultimately submitted bids, and
6 we selected BNY over Wells Fargo because the cost
7 differential was, again, as I stated, 50 percent
8 difference between.

9 MR. THOMAS: What is that number? That's a
10 relative term. What is the number?

11 MR. NELSON: You're talking hundreds of
12 thousands of dollars, given what we're talking about.

13 MR. OXER: For the same service, essentially.

14 MR. NELSON: For the same service. And again,
15 I don't have Wells Fargo's rating at my fingertips.

16 MALE SPEAKER FROM AUDIENCE: It's AA3, AA-
17 minus.

18 MR. NELSON: So BNY is a better rating than
19 Wells Fargo.

20 MR. OXER: Better rating and less fee.

21 MR. NELSON: Yes.

22 MR. THOMAS: And financial advisor and legal
23 fees are going to be another \$317,500 on top of the
24 savings, plus \$5,000 for insurance costs.

25 MR. NELSON: We've also got rating fees, AG

1 filing fees, and all of those were taken into account, and
2 we generate a present value savings of several million
3 dollars, in addition to picking up these additional par
4 call rights down the road that, again, staff believe
5 sufficient to handle what we need to do, while at the same
6 time, again, giving us this 100 percent par collapse
7 capability in seven years which, as I outlined at the last
8 meeting, that's our goal is to put these together so that
9 at some point in time we will be completely out of those.

10 If we could have done it so we could be completely out of
11 them today, that is what we would have recommended.

12 That resulted in a net cost to the agency of
13 several million dollars present value, so again, unless
14 the Board directs us differently, we believe we should be
15 prudently managing our assets and those risks, and we
16 believe that this recommendation fits within that
17 framework.

18 MR. OXER: So this is just one more step along
19 that ramp down to the point of having zero exposure in
20 swaps.

21 MR. NELSON: That is correct. The Board will
22 remember last month we canceled, March 1 canceled \$13
23 million of the swap notional on this, and moving forward,
24 we will have additional optional par termination rights,
25 and again, ultimately 100 percent par termination right in

1 seven years that we don't currently have. So we have
2 effectively, if this plays out the way that we hope,
3 shortened by eleven years, from like 2033 to 2021 or two,
4 the time that this swap will be outstanding.

5 MR. McWATTERS: Okay. So the two financial
6 institutions that submitted bids, BNY Mellon is higher
7 rated than Wells Fargo and their fee is lower.

8 MR. NELSON: That is correct.

9 MR. McWATTERS: Okay. Is there a reason why a
10 higher rated financial institution, higher rated than BNY
11 Mellon, did not submit a proposal?

12 MR. NELSON: Well, again, we had RBC, who is a
13 better rating than both of these entities, who, because of
14 how they internally look at this, felt that our collateral
15 posting threshold was too high, so they felt given where
16 their rating currently is -- again, their analysis, not
17 mine -- that there would be a higher likelihood they would
18 have to post collateral, therefore, increasing their
19 expected cost, and therefore, they elected not to submit a
20 bid because they felt like our policy framework was too
21 stringent for them to feel comfortable submitting a bid.

22 MR. OXER: So the price that they were going to
23 get for this represented more than they wanted to get for
24 this.

25 MR. THOMAS: More than the risk that they

1 wanted to take.

2 MR. OXER: No. More than the risk they wanted
3 to take, but more than the exposure that they wanted for
4 their balance sheet.

5 MR. NELSON: Correct.

6 MR. McWATTERS: Has there been a change in our
7 posting of collateral positions, or has this been kind of
8 a traditional rule and these guys, RBC, is taking a more
9 conservative approach.

10 MR. NELSON: I will turn that back over to the
11 market experts.

12 MR. ADAMS: Could you repeat the question,
13 please?

14 MR. McWATTERS: Yes. I was told that RBC
15 basically looked at our collateral posting and risk
16 profile and said: It's too much risk here relative to
17 perhaps submitting a bid at the same dollar amount as BNY
18 New York; we could submit a bid but it's going to be at a
19 much higher cost and we know you're not going to want that
20 bid so we're just not even going to submit it.

21 MR. OXER: You have to say who you are and who
22 you represent.

23 MR. ADAMS: This is David Adams with George K.
24 Baum.

25 RBC was looking at the possibility of them

1 being downgraded, and if they were downgraded below that
2 threshold and were exited out of, they would have to exit
3 out of their hedges, and that was a risk that they were
4 unwilling to take. They also don't like the competitive
5 bid process; within a swap they prefer negotiated.

6 MR. OXER: Do tell.

7 (General laughter.)

8 MR. OXER: So the potential was they were
9 looking at the potential exposure for something that was
10 about to happen to them and they didn't know the outcome,
11 so that constituted a risk for them that they weren't
12 willing to take on the bid, as opposed to the fact that
13 their balance sheet wasn't strong enough to cover the
14 collateral posting requirements. Is that fair?

15 MR. MACHAK: This is Gary Machak.

16 And maybe one of the reasons that they looked
17 at it, out of all the institutions that we looked at, they
18 have been downgraded by Moody's from AAA all the way down
19 to AA3.

20 MR. OXER: So was Texas, so what.

21 MR. MACHAK: So RBC, although they are still a
22 strong rated institution, they have been downgraded, and I
23 think it's because they're looking through some of the
24 what they thought was some sovereign backing with Canada
25 to the bank that they may not like that credit as much as

1 they used to.

2 MR. OXER: Right. Anything else, Mark?

3 MR. McWATTERS: No.

4 MR. OXER: Robert, are you good?

5 MR. THOMAS: The bottom line is we don't have a
6 choice. We're being told that our current partner is
7 exiting and we've got to go somewhere, and you're just
8 saying this is who we'd like you to go with.

9 MR. NELSON: Well, we could certainly stay with
10 UBS at the old deal.

11 MR. THOMAS: But they're making it clear they
12 want out.

13 MR. NELSON: Correct.

14 MR. THOMAS: And you never want to be with a
15 partner that doesn't want to dance with you. Right?

16 MR. NELSON: I believe that is correct.

17 MR. THOMAS: So this conversation really begged
18 the question -- and I wish we had almost had this one
19 first -- doesn't the nuances here -- I mean, I appreciate
20 the difficulties that we have, and more importantly, that
21 you all have in trying to make sure that our funds, both
22 from an internal and external perspective, are protected,
23 and the solvency and all kinds of other things, but
24 doesn't this beg the real question that I think Mark and I
25 are trying to get to, that the complexities associated

1 around this, we can spin it any way we really want but the
2 market exposure is market exposure. If we have another
3 Lehman, if we have another issue, it doesn't matter how
4 small or how big, you're all going to be affected. And I
5 guess that was my concern, that I'd like to make sure
6 we're talking about it in the context of all those
7 triggers.

8 My wife happens to be -- Tim, as you know --
9 she spent the better part of her career doing exactly what
10 you all are doing as a bond lawyer, so I probably have sat
11 at the dinner table and listened to the conversation with
12 bond lawyers and bankers way more than I should have, but
13 it just seems like --

14 MR. OXER: Probably more than you wanted to.

15 MR. THOMAS: Probably more, but it certainly
16 prepared me for this. So I guess my concern about that is
17 understanding the nuances that our staff and our advisors
18 have to work within, but also making sure that we
19 appreciate, as our chairman pointed out, that there are
20 some questions we probably need to ask, certainly for the
21 record, so that people are aware of the level of
22 sophistication, the level of concern that your board and
23 your advisors go into on these issues.

24 MR. NELSON: Yes. I'm reminded, a friend of
25 mine once asked me if I wanted to play backgammon, and I

1 said, Well, I don't really know how to play, can you teach
2 me, or how long would it take to teach me. And he said,
3 Well, I could teach you how to play backgammon in five
4 minutes, but it takes a lifetime to master. And I think
5 there's no truer statement, yes, we could do a whole
6 semester course on any one of these very narrow items that
7 we're talking about, they're extremely complex, and all I
8 can say is the best we can do, and I think as people have
9 outlined before, we've got some of the best management on
10 top of this, and again, that's all you can do. Can we
11 prevent a Lehman from happening? No, but we're worrying
12 about this 24 hours a day and trying to manage it
13 accordingly.

14 MR. OXER: In the end, the best you can do is
15 the best you can do. Okay? But we have to ask the
16 questions because that's what our job is to ask those
17 questions. And in the end, you're talking about a
18 probability of occurrence in the future, there are not
19 absolute right answers and wrong answers, there's only
20 good choices, and it may be a good choice amongst a bunch
21 of poor selections, but we have to take the best choice we
22 have available, with the idea that we're managing this
23 risk long term, it's going down.

24 MR. NELSON: That is correct.

25 MR. OXER: Okay. Is that a fair summary of

1 where we stand? Does anybody else have a comment?

2 (No response.)

3 MR. OXER: Well, in that case, let's talk about
4 this and have a motion to consider, please.

5 DR. MUÑOZ: So moved.

6 MR. OXER: Dr. Muñoz is busy today. Okay.
7 Motion by Dr. Muñoz to approve staff recommendation. Do I
8 hear a second?

9 MR. GANN: Second.

10 MR. OXER: Second by Mr. Gann. There appears
11 to be no other public comment. Motion by Dr. Muñoz,
12 second by Mr. Gann. All in favor?

13 (A chorus of ayes.)

14 MR. OXER: And opposed?

15 (No response.)

16 MR. OXER: There are none. It's unanimous.

17 MR. THOMAS: We don't have a choice, we've got
18 to do something.

19 MR. OXER: We've got to do something, so keep
20 the lipstick pretty on this one, Tim.

21 (General laughter.)

22 MR. NELSON: Okay. Moving on to 3(c).

23 MR. OXER: For the record, before we move on,
24 I'd like to summarize the Board's assessment that it's a
25 hard decision, but we know you know what you're talking

1 about, and we know it's hard but you're climbing a
2 mountain of broken glass at certain times, so we're just
3 trying to make sure that we don't get cut up too bad at
4 the end, and we appreciate the effort that you and the
5 rest of your financial team put in on this.

6 MR. NELSON: Stated differently, my gray hair
7 is well earned.

8 MR. OXER: I didn't have any till I took this
9 job.

10 (General laughter.)

11 MR. NELSON: Okay. Moving to 3(c), this item
12 is presentation, discussion and possible action on
13 Resolution No. 14-023, authorizing amendments to the
14 supplemental indentures for the single family variable
15 rate mortgage revenue refunding bonds 2004 Series B and
16 single family variable rate mortgage revenue bonds 2006
17 Series H.

18 In a nutshell, if I could, as part of the
19 discussions with BNY, they looked at our current scheme of
20 what we do as far as trying to set aside money for these
21 swaps in case there is a termination event, a market
22 termination event where we would end up paying money. We
23 have in our existing agreements that we have money sitting
24 in our surplus fund -- right now that's about \$16-1/2
25 million -- and in our current contracts we do a mark to

1 market calculation, and to the extent that that is against
2 TDHCA -- which I think the Board is well aware that all of
3 ours are against the Department to the tune of, I think,
4 about \$25 million currently -- and we're to set aside one-
5 third of that out of that surplus fund.

6 In essence, that basically says that if we were
7 to ever remove -- or work with our trustee who is really
8 the one that manages these trust estates -- remove any
9 money from this trust indenture, that we would have to
10 make sure that that hold-back is held back and we couldn't
11 take an amount that would not meet that requirement.

12 BNY looked at that and said, We would really
13 feel more comfortable if you set aside more money. And I
14 had told them, basically as a management principle, we
15 would never come before the Board and ask to remove money
16 from the single family indenture unless 100 percent of
17 that mark to market was being accounted for. And they
18 said, Well, that's great but that's not in the contract,
19 and so we would like to see something in the contract.

20 And so what we have in 3(c) is a proposed
21 amendment to those two supplemental indentures for '04-B
22 and '06-H. And oh, by the way, we haven't really talked
23 much about '06-H, but it was another UBS swap and so when
24 we went to them to talk about the '04-B, they said, Well,
25 you've got to take the sister transaction at the same

1 time, I don't want to be left with an orphan when you're
2 done with this. And so the last action that you took was
3 really to assign both of those swaps over to BNY and this
4 is to amend both of those indentures to basically allow us
5 to set aside more money in the surplus fund for those two
6 swaps which is, again, something we're already doing, and
7 I don't think anyone would argue that that isn't something
8 that's prudent and that we should be doing. This just
9 codifies it in the contract.

10 And so with that, I will say staff recommends
11 and allow you to ask any questions.

12 MR. OXER: So this essentially continues our
13 current aggressive and intense management of the whole
14 process.

15 MR. NELSON: Yes. Again, it just moves it from
16 a management practice to vis-à-vis these two swaps, it
17 will now be in the contract in the indenture.

18 MR. OXER: Codified and memorialized in the
19 contract.

20 MR. NELSON: That is correct.

21 MR. OXER: Tim.

22 MR. IRVINE: It's consistent with containing
23 all of the legal responsibility within the indenture.

24 MR. NELSON: That's correct.

25 MR. THOMAS: I certainly like it. I really

1 trust our current management and our senior staff, and so
2 within the context and confines of those types of
3 decisions being made, particularly in conjunction and
4 communicating with our current chair -- who I don't know
5 if he's going to stay with us much longer if I keep asking
6 questions -- but in the context of that world, I really
7 like the flexibility and the conservative approach that
8 our senior staff and our executive director and our chair
9 has taken.

10 My concern is codifying something in a contract
11 that might remove the flexibility potentially. And I
12 guess my question is, maybe to you, Tim, and maybe to Tim,
13 what situations or what circumstances might exist in which
14 you might need that flexibility, even short term, of those
15 funds.

16 MR. OXER: It all backstops our financial
17 instruments, anyway. Right?

18 MR. NELSON: Well, again, you have to look at
19 it twofold. The situation they're trying to avoid is us
20 removing money from the trust indenture. This says before
21 you do that, let's make sure we take care of these two
22 swaps. Within the confines of the indenture, especially
23 in a termination fee situation, the swap counterparty is
24 the most junior claim on any of these assets, so if we
25 ever need any surplus fund to pay debt service, to pay

1 department expenses, to pay anything that's in that
2 indenture, every dollar in the surplus fund, including the
3 swap hold-back and including the dollars that we're
4 talking about here for BNY, are all available for those
5 purposes.

6 So this is merely, again, if you were ever to
7 decide, hey, I'd like to have this money to go do
8 something else, they're just saying you might want to make
9 sure I'm taken care of first. Which, again, we are saying
10 from a management standpoint that is what we would do
11 anyway, but they would rather not rely on the kindness of
12 strangers, they would rather have it codified. But I
13 don't think it really reduces any of our flexibility
14 because we can do anything we need to do within the
15 indenture and I don't believe we would ever look to pull
16 money out of this to go do something else if this weren't
17 taken care of first, in any case.

18 MR. OXER: So within the indenture there are a
19 list of things for that money that are specified that we
20 can use that money for right down to the point of
21 exhausting those funds, to the point that the swap hold-
22 back is still exhausted. They don't have an option. But
23 what we're saying is that we wouldn't take money out of
24 this without coming to the Board first. You would
25 certainly come to the Board first.

1 MR. NELSON: Well, we would have to come to the
2 Board to say we would like to take this money out of the
3 indenture and this is what we want to use it for. What
4 this provision would require in the calculation of how
5 much you could potentially take out, they would say not
6 only do you have to take into account the swap hold-back,
7 the one-third that's currently in there, but also take
8 into account these new provisions which, again, in essence
9 would say set aside 100 percent for these two swaps before
10 you start looking to pull any money out. As I said, and I
11 think the Board would agree, we wouldn't recommend doing
12 that even if they didn't have this provision in here, but
13 they just feel this is necessary in order to give them --

14 MR. OXER: So they're trying to climb the
15 ladder to get in first place on the lien.

16 MR. NELSON: Well, they can't get in front of
17 everybody else in the indenture but they can certainly get
18 in front of people outside the indenture, so that's what
19 they're trying to do, say before you remove money from
20 this indenture, make sure you have us properly
21 collateralized.

22 MR. THOMAS: I guess that's not my question.
23 My question is understanding the nuances of the
24 situation -- and I may have indirectly gotten my answer --
25 there's not a situation where we would have balance sheet

1 issues, balance sheet availability or access to funds
2 which our management would be able to manage for short-
3 term immediate issues or needs which wouldn't cause a
4 violation of a contractual provision which is now just
5 managed by good internal fiscal principles and practices.

6 Is that the right answer?

7 MR. NELSON: I suppose we could dwell up a
8 theoretical problem.

9 MR. THOMAS: Not theoretical. I really want to
10 know.

11 MR. NELSON: As a practical matter, I don't
12 believe that there is one.

13 MR. THOMAS: Okay.

14 MR. OXER: And in the long run, whatever comes
15 up, you'd have to come and ask us to approve that
16 exercise.

17 MR. NELSON: That's correct. If we were going
18 to take any money out of the indenture, we would have to
19 come to the Board to do so.

20 MR. THOMAS: Sure, but the point is
21 contractually, then, the Board would have to be voting to
22 violate or breach a contract.

23 MR. NELSON: Yes, that if you went through and
24 staff said here's the amount that's available to withdraw
25 based on the contractual provisions, and you said, well,

1 we have a need that's in excess of that so we want you to
2 pull more than that out, then I guess if you did that,
3 yes, you would be voting to violate the provisions of that
4 indenture.

5 MR. IRVINE: Even if you did not amend the
6 indenture to state that, if you wanted to pull surplus
7 funds out of the indenture, you still have to go to the
8 trustee and ask, and the trustee, in their fiduciary
9 position, has to make a decision as to whether to grant or
10 reject your request.

11 MR. NELSON: So yes, that's why I'm saying I
12 don't know even if we didn't have this provision, the
13 trustee, in their fiduciary role, might say: Well, before
14 you take that money out, you really ought to make sure
15 we've got money set aside for these other obligations
16 because they're there. That's why I'm saying it's a
17 difficult question to answer. All this does is, again,
18 codify it rather than relying on the analysis of staff or
19 the trustee in execution of their fiduciary duty.

20 MR. IRVINE: And I think it's consistent with
21 treating these as revenue bonds that are self-contained
22 and we're not trying to blur the lines between revenue and
23 GO.

24 MR. OXER: Does that answer your question,
25 Robert? Are you good on that?

1 MR. THOMAS: Thank you.

2 MR. OXER: Okay.

3 MR. McWATTERS: Is someone being contractually
4 primed by making this change? I mean, will there be a
5 party that potentially is aggrieved here and will argue
6 that there was no consideration for this, and the contract
7 is not enforceable? I'm trying to think why they would
8 ask for this change if they didn't have some concern that
9 without the contractual change they could be primed or go
10 pari passu with somebody else and have to share. I just
11 don't know.

12 MR. NELSON: They're not so, I think, concerned
13 about that. Again, if there's a default situation, these
14 two swaps, all five of our swaps are the very last in
15 line, and I believe -- and I'm not a legal expert, but I
16 believe they are all pari passu amongst themselves, so I
17 don't think this provision in that situation puts them
18 ahead of the other swaps.

19 But it does, again, just sort of trap more
20 money in this surplus fund which, again, I think the
21 situation they're really more concerned about is if we're
22 downgraded, and therefore, there's a termination event,
23 and so they go, okay, TDHCA, you owe me \$6 million, and we
24 go, well, we had \$6 million in there but we withdrew it
25 last month to go do something else with it. This

1 provision merely says that money would then be sitting
2 there and would be available to make that termination
3 payment and would not have been removed from the indenture
4 potentially. So that's the situation they're trying to
5 avoid.

6 But I don't think this really, again, certainly
7 in a default situation, puts them in front of, certainly,
8 the bondholders and I don't believe it puts them in front
9 of the other swap providers, it just, again, traps some of
10 this money within the surplus fund in the where it could
11 be potentially removed.

12 MR. McWATTERS: I have to suppose they're
13 asking for this for a reason, there's some contingent
14 liability or concern that they're worried about, and my
15 concern is that we may upgrade their priority where
16 another party may, in the future, have an issue with that.
17 And again, I apologize, I cannot come up with a scenario
18 where I can more appropriately articulate that, but I've
19 just seen enough of these deals where someone comes in and
20 says: Oh, can you make this contractual change where it
21 makes sure I get paid? And someone comes in later and
22 says: Whoa, what was that all about?

23 MR. NELSON: Actually, we have George Rodriguez
24 with our bond counsel firm. As I stated earlier, I'm not
25 a lawyer and don't play one on TV, so I will turn it over

1 to him to address legal questions.

2 MR. OXER: George, state your name and who
3 you're with.

4 MR. RODRIGUEZ: George Rodriguez with Bracewell
5 and Giuliani, and we are bond counsel for TDHCA.

6 In response to your question, there is no
7 aggrieved party that I can imagine that could complain
8 about this change because the parties that have a higher
9 priority than Bank of New York Mellon, they do not lose
10 that priority, because all this is doing is creating a
11 sub-account within the surplus fund, but the money is
12 really not dedicated to paying Bank of New York Mellon,
13 it's simply a mechanism to prevent that money from being
14 withdrawn from the indenture for some other purpose and
15 then it turns out later that the money was needed to pay a
16 termination payment.

17 So the persons who would be aggrieved, so to
18 speak, would be people completely outside of the indenture
19 that really have no contractual rights to that money to
20 begin with. And so as a result, this is just simply
21 putting that money where it would be available if it's
22 needed to pay the termination payment, but in a scenario
23 where, let's say, there's a shortfall in cash for the
24 bonds themselves, the bondholders still have a superior
25 claim to that money over Bank of New York Mellon, even the

1 subordinate bondholders do. So it's not priming a claim,
2 all it is simply doing is setting aside money to prevent
3 its withdrawal from under the indenture.

4 MR. McWATTERS: Okay. So it doesn't move the
5 recipient up the food chain to a higher level by including
6 it in the contract. Same right they would have if it
7 wasn't in the contract.

8 MR. RODRIGUEZ: That is correct.

9 MR. McWATTERS: Okay. And as far as you can
10 tell, by putting it in the contract, it does not prime
11 someone else?

12 MR. RODRIGUEZ: That is correct.

13 MR. McWATTERS: Okay. Thank you.

14 MR. OXER: Thanks, George.

15 MR. THOMAS: We're conferring.

16 MR. OXER: I'm allowing the time here; want to
17 make sure it's working.

18 Any other questions?

19 (No response.)

20 MR. OXER: Okay. 3(c), do we have a motion to
21 consider? There's deathly silence in here, by the way.
22 Do the conferees have a point to make?

23 DR. MUÑOZ: So moved.

24 MR. OXER: Motion by Dr. Muñoz to approve staff
25 recommendation on item 3(c). Do I hear a second?

1 MR. GANN: I think if you make a second, you're
2 no more guilty than if you just vote for it. I'll make a
3 second to move it along.

4 MR. OXER: Second by Mr. Gann. Is this one
5 beaten to death, we've got it aired out? Motion by Dr.
6 Muñoz, second by Mr. Gann on item 3(c) to approve staff
7 recommendation. All in favor?

8 (A chorus of ayes.)

9 MR. OXER: Opposed?

10 (No response.)

11 MR. OXER: There are none, it's unanimous.

12 And with that, we're going to close our first
13 three hours on banking and finance 101 and take a short
14 brief session. It is not 10:47, let's be back in our
15 chairs at eleven o'clock straight up and we'll get back to
16 it.

17 (Whereupon, at 10:47 a.m., a brief recess was
18 taken.)

19 MR. OXER: Okay. Thanks, everyone. Tim, I
20 think we're on item 3(d) now.

21 MR. NELSON: Like a bad penny, I have returned.

22 (General laughter.)

23 MR. OXER: We are so glad to have you.

24 MR. NELSON: Item 3(d), presentation,
25 discussion and possible action on Resolution No. 14-024,

1 authorizing certain actions relating to interest rate swap
2 transactions.

3 I will try to summarize this thusly: there are
4 certain situations in our transactions where, and in
5 particular, if a prepayment comes in, that under the IRS
6 tax rules we are required to redeem the bonds. We don't
7 have any choice in that matter. As I discussed on a
8 number of occasions, our swaps have call rights embedded
9 in them, so if we happen to be in a situation where we
10 have to call the bonds, yet I do not have the right to
11 redeem or to reduce the swap in a par optional
12 termination, I then have to do a market termination. And
13 under a market termination I have to go to the swap
14 counterparty, and they say: Okay, based upon where this
15 thing is marked right now, either I owe you money or you
16 owe me money. Obviously, I'm more concerned if we owe
17 them money which is certainly the situation we have now.

18 So what staff is looking for here, and again,
19 this is also exacerbated a little bit by Texas state law
20 which basically tells us that we cannot be in a situation
21 where we're over-swapped. That means we have more swaps
22 outstanding than we have bonds, so that's precisely the
23 situation I just outlined. So staff is asking here for
24 the Board to give them flexibility that were that
25 situation to occur, we could certainly negotiate a market

1 termination -- that' the only option really we have now --
2 or we would like the flexibility to reallocate that
3 portion of the swap which would otherwise have to be
4 terminated to one of our other taxable transactions, and
5 we would look at that and try to arrive at a least cost
6 alternative.

7 We may still arrive at the conclusion that the
8 best thing for us to do is a market termination, we're
9 just asking to have more flexibility so if it's determined
10 we can allocate it to another deal for no cost.
11 Obviously, we would rather do that than to have to pay a
12 market termination.

13 MR. OXER: You just want a bigger box of
14 crayons on this one.

15 MR. NELSON: That's correct. And with that, I
16 can get into a lot more detail, but that is the essence of
17 what we're looking for.

18 MR. OXER: So the thing that would potentially
19 initiate this circumstance would be they're unrelated
20 because you have bonds, you've got swaps against the
21 bonds, and if there's a call on those, then there's not a
22 correlative swap reduction, and it's not something you can
23 control on the bond.

24 MR. NELSON: Yes. All we can do, when I talked
25 about how we've reordered the par termination rights on

1 this revised swap, it's based on our expectations of what
2 we believe could possibly happen, and we think it covers a
3 fairly wide range and we think we are adequately
4 protected. It is not 100 percent certainty, so if we were
5 to experience, basically, a very high prepay, our current
6 protection would take us to somewhere in the 250 to 275
7 PSA range. Our portfolio historically has prepaid at 150
8 to 175, so we have an extensive amount of cushion there.
9 If we were to have prepays that resulted in 400, I'm
10 getting more prepays that I have to use to call bonds, I
11 don't have corresponding optional par termination rights,
12 so I've either got to do a market termination or if I've
13 got this flexibility, I could potentially take a piece of
14 that swap and just allocate it over to another
15 transaction.

16 MR. OXER: Essentially what you're doing, is if
17 current circumstances on the swaps versus the bonds,
18 you're working on the probability of an occurrence in the
19 future, ultimately you've got to allow for -- even though
20 it's a 95 percent probability, for example, you've still
21 got to allow for the occurrence of that other 5 percent
22 derogatory event.

23 MR. NELSON: That's correct.

24 MR. OXER: And in the long term, you need more
25 tools to deal with that, and to my way of thinking, I

1 would like to think the way the Board thinks, is
2 ultimately the best tool in our toolbox is have the best
3 people in the agency that do good management of this. And
4 so to that end, I continue to compliment you based on the
5 discussions we've already had, but I see what you're
6 doing.

7 MR. NELSON: Thank you.

8 MR. OXER: Any questions of the Board? Do you
9 want to state the resolution, Tim? You don't have to read
10 it off, but obviously the staff recommends approval.

11 MR. NELSON: Staff recommends approval of
12 14-024.

13 MR. OXER: Any questions?

14 (No response.)

15 MR. OXER: So it's just like before, we were
16 casting a wider net to be able to talk to more entities as
17 a swap counterparty, and in this one we're looking for
18 more tools in the toolbox to deal with a low probability
19 occurrence.

20 MR. NELSON: Right now we have one tool and it
21 is potentially expensive, so we're looking for other tools
22 that might be potentially less expensive.

23 MR. GANN: I move staff recommendation.

24 MR. OXER: Motion by Mr. Gann to approve staff
25 recommendation on item 3(d). Is there a second?

1 DR. MUÑOZ: Second.

2 MR. OXER: Second by Dr. Muñoz. Are there any
3 other questions from the Board?

4 (No response.)

5 MR. OXER: Okay. There's no public comment
6 requested. Motion by Mr. Gann, second by Dr. Muñoz. All
7 in favor?

8 (A chorus of ayes.)

9 MR. OXER: Opposed?

10 (No response.)

11 MR. OXER: There are none, it is unanimous.

12 Thanks, Tim.

13 MR. NELSON: Thank you.

14 MR. OXER: So the end of our banking and
15 finance class. We now start with, Cari. How are you
16 doing?

17 MS. GARCIA: Good. Cari Garcia, director of
18 asset management.

19 I, too, am going to continue the discussion on
20 swaps, although this is a much easier swap, this is a swap
21 really at the elementary level of a unit designation on a
22 request for an application amendment, so I think everyone
23 will be able to follow along on my swap discussion.

24 MR. OXER: You're not getting into the infinite
25 financial esoterica in the weeds on this?

1 MS. GARCIA: No. So item 4(a) is the
2 presentation, discussion and possible action on a housing
3 tax credit application amendment request for Trails at
4 Carmel Creek Apartments which is 13201.

5 This development was awarded HOME funds and tax
6 credits during the 2013 cycle to construct 61 units of
7 senior housing in Hutto. On January 22, 2014, the owner
8 requested an application amendment to change the income
9 and rent level for one unit at the property which is
10 designated as a 30 percent tax credit and low HOME unit,
11 they would like to change it to a 50 percent tax credit
12 and low HOME unit. Their claim is that this was a mistake
13 made by them during a deficiency response at the time the
14 application was reviewed.

15 So let me just walk you through the timeline a
16 little bit. They applied for tax credits in 2013, and
17 then on May 28 the application was removed by program
18 staff and a deficiency notice was sent identifying two
19 issues, one of which involved the number of HOME that they
20 identified in their application. Based on the 2.21(d)(3)
21 subsidy limits, they were required to have a certain
22 number of HOME units based on their HOME award. In a
23 nutshell, at application the rent schedule identified a
24 total of eight HOME units, and based on their requested
25 HOME funds of \$1 million, nine HOME units were required.

1 So program staff informed the applicant of the
2 issue in a direct request and specifically asked the owner
3 to make appropriate corrections. It's common practice for
4 program staff to identify what the deficiency is and
5 request that corrections be made, but not specifically
6 tell them how to make the correction. That's an applicant
7 decision.

8 The owner was provided five business days to
9 correct the deficient items. The following day the owner
10 submitted a response to the deficiency notice, correcting
11 he rent schedule to identify the nine HOME units. The
12 correction was made by changing a previously designated 50
13 percent tax credit unit to a 30 percent tax credit and
14 HOME unit, and before that they had four units at 30
15 percent, they increased that to five units. The
16 correction could have been made a couple of ways, but
17 again, that was an applicant decision on how they wanted
18 to correct it.

19 The application was later underwritten using
20 this revised rent schedule and found to be financially
21 feasible, and they ultimately received an award of tax
22 credits and HOME funds. The underwriting report was
23 posted on July 25, and on July 29 the owner signed an
24 appeal election form confirming that they had reviewed the
25 report and would not be appealing the recommendation of

1 the underwriting report.

2 On September 16, the owner submitted an
3 executed commitment notice and compliance tracking form.
4 Initially the tracking form did identify only four units
5 at 30 percent, however, the owner identified this
6 discrepancy, made the correction, and on October 1
7 executed a new compliance tracking form showing the
8 correct number of 30 percent units.

9 While staff is empathetic toward the owner in
10 making what they perceive to be the wrong correction to a
11 deficiency notice, it's not staff's responsibility to
12 question the correction as long as the transaction remains
13 financially feasible with our underwriting standards.
14 This application was originally underwritten with the
15 total of nine HOME units, five of which were also
16 designated as 30 percent tax credit units, and under that
17 determination it was found to be feasible.

18 Since that time several other changes have
19 occurred to the financial components: they increased
20 their permanent loan amount; they were able to get a lower
21 interest rate on their permanent loan; the new rent limits
22 for both HOME and tax credit for 2014 are out which
23 increased their ability to get a little bit higher rents;
24 they also have been able to get a higher credit pricing,
25 from 90 cents per credit dollar to 95 cents per credit

1 dollar. All of these positive changes have allowed the
2 previously proposed deferred developer fee to be reduced
3 by approximately \$230,000.

4 During our financial review of this amendment
5 request, these positive changes were taken into account
6 and the transaction continues to be feasible with the
7 underwritten unit mix. In fact, the July 24 underwriting
8 report concluded with a debt coverage rate on our side of
9 1.15, and the owner was estimating 1.20, and currently
10 with these positive changes, including the five units,
11 their debt coverage rate has actually increased to an
12 estimate of 1.20. So there's actually an improvement in
13 the financial feasibility from underwriting back in July.

14 The owner did, during this amendment request,
15 provide letters from their permanent lender and syndicator
16 in support of the amendment request, and these letters
17 stated their opinion that this one unit would jeopardize
18 the feasibility of the transaction. However, staff firmly
19 believes that if there is a debt coverage rate or
20 feasibility issue identified that the sources of funds
21 could be further restructured, the permanent loan could be
22 reduced, deferred developer fee could be increased as it
23 was in the original underwriting report, and those
24 concerns could be mitigated.

25 Currently our Real Estate Analysis Division is

1 looking at the overall structure for HOME closing, and
2 there are some other changes that have happened. There's
3 been some increase in costs, but I've also looked at those
4 numbers and continue to agree with my original
5 recommendation that the deal is still financially feasible
6 with this one unit at 30 percent.

7 There have been several decision points in time
8 where the owner could have identified this correction as a
9 feasibility issue and requested revision via an appeal or
10 an amendment, and they did not do so. However, it is
11 likely that even if they would have done so, the deal
12 would have been determined to be financially feasible with
13 the five units as it was originally underwritten.

14 Section 10.405(a) (7) (A) of the asset management
15 rules requires staff, in making an affirmative
16 recommendation to the Board, to determine whether the unit
17 adjustment is necessary for continued feasibility of the
18 development. In accordance with TDHCA underwriting of the
19 proposed changes in whole, the adjustment of one unit from
20 30 percent to 50 percent is not necessary for continued
21 feasibility of this development. Therefore, staff's
22 recommendation is to deny the application amendment
23 request, as presented in the Board writeup. And I'll be
24 happy to answer any questions you might have.

25 MR. OXER: Thanks, Cari. Any questions from

1 the Board? Yes, Mr. Thomas.

2 MR. THOMAS: Is a representative from DMA here?

3 Okay. No one came up to speak, so I didn't know.

4 Would this have changed had this mistake not
5 been -- had they submitted it the way they're now asking
6 that it be, would staff have approved it or recommended
7 approval at that time? If it was originally the way
8 they're asking for it to be now, would staff have felt
9 comfortable recommending approval to the Board then?

10 MS. GARCIA: Yes.

11 MR. THOMAS: So what is the core essence -- if
12 there's no harm, no foul, what's the core essence here of
13 working with them? Help me understand what is the harm,
14 the specific harm that staff is worried about which should
15 constitute a denial of this request?

16 MR. OXER: I have a partial answer for that,
17 but the essentially ex post facto change to that to be
18 able to upgrade, change the rating, it may have been a
19 difference in competitive nature under the QAP. So as a
20 consequence, if this is allowed to go --

21 MR. THOMAS: The executive director is shaking
22 his head no.

23 MR. IRVINE: I don't think it's a competitive
24 issue, I think the issue is simply should this one
25 household that's at 30 percent of area median income have

1 access to this unit, or should the unit be available to a
2 household at a higher income.

3 MS. GARCIA: That, and plus our rule
4 specifically says that we have to affirmatively determine
5 that it's a feasibility issue and just this one unit to
6 have this one increase is not necessary for feasibility of
7 this development.

8 MR. OXER: So the DSCR changes but it's not
9 materially different from what it would have been as it
10 was originally submitted.

11 MS. GARCIA: Right, and as I've said, because
12 of other changes in the transaction, the debt coverage
13 ratio as presented today is actually better than what it
14 was, including these five units at 30 percent.

15 This is also a senior development -- I think I
16 mentioned that early on -- so as far as being able to find
17 households in that income band, seniors have the lowest
18 income out there so it shouldn't be an issue with
19 marketing or being able to fill the unit.

20 MR. OXER: So there were opportunities, more
21 than a few opportunities before for appeal or a change or
22 a correction, and not unlike what we've said, we've denied
23 several applications based on the fact that they made some
24 mistakes in them and they had to come back next year. So
25 this is what they applied for and got financing for, so

1 what we're saying is they've got to play by what they
2 expected.

3 MS. GARCIA: Right. This is what was
4 underwritten. Their application originally included just
5 four units but then they corrected it through the
6 deficiency and then the five units is what was
7 underwritten and awarded. It was awarded based on these
8 five units.

9 MR. OXER: So essentially we're sticking with
10 the content continuity on the underwriting. Is that
11 correct?

12 MS. GARCIA: Yes.

13 MR. THOMAS: So we're saying that their
14 representations are inaccurate, if I understood you
15 correctly.

16 MR. OXER: If even only marginally so.

17 MR. THOMAS: Right. Having read all the
18 background and information, as well as the staff, that
19 they're indicating that the project would not be feasible
20 without this one unit. Now, how that works, I know these
21 are really tight and it's staff's position that their
22 analysis is such that it absolutely is feasible under the
23 currently submitted and approved form.

24 MS. GARCIA: Yes. And I believe the letters
25 from their syndicator and lender both state that they are

1 underwriting to the highest possible debt coverage ratio,
2 which obviously we have a tolerance of between 1.15 and
3 1.35. But yes, I can't say that this is not feasible as
4 it was originally proposed.

5 MR. OXER: Motion to consider?

6 MR. GANN: I move staff recommendation to deny.

7 MR. OXER: Anything else, Tim? Barbara?

8 MS. DEANE: I was just pointing out the rule
9 that basically it gives the Board discretion to make a
10 determination whether or grant or deny, staff is bound by
11 the feasibility issue. So staff's recommendation is bound
12 by their feasibility determination, but the rule does
13 provide the Board with the ability to make a
14 determination -- its own determination based upon staff's
15 recommendation.

16 MR. OXER: All right. First of all, we have a
17 motion by Mr. Gann to approve staff recommendation which
18 is to deny the appeal. Is that correct, Tom?

19 MR. GANN: That's correct.

20 MR. OXER: Okay. Is there a second?

21 MR. McWATTERS: Second.

22 MR. OXER: Second by Professor McWatters.

23 Now we'll have public comment on this, and I
24 think to oppose staff recommendation, we have to find the
25 reason that this satisfies a need for the State of Texas.

1 Is that correct, Barbara? What would we have to do to
2 allow this to happen?

3 MS. DEANE: I think that's a recommendation
4 related to whether or not to award funding, but I will say
5 that the way the specific rule is written, it says the
6 Board may or may not approve the amendment request,
7 however, any affirmative recommendation to the Board is
8 contingent upon concurrence from Department staff that the
9 unit adjustment is necessary for continued feasibility.
10 In other words, it doesn't appear that the rule binds the
11 Board to the feasibility standard but it binds staff in
12 terms of the recommendation that they must make a
13 feasibility determination.

14 MR. OXER: So essentially, we have more
15 latitude in this decision than we have in another one for
16 awarding financing.

17 MS. DEANE: Under my reading of this specific
18 rule, that appears to be correct.

19 MR. OXER: Okay. Janine.

20 MS. SISAK: Good morning, everyone. Janine
21 Sisak, DMA Development Company.

22 Cari did a really good job of explaining kind
23 of how we got to this point. We did make a mistake. You
24 know, while I appreciate her comments about how staff
25 isn't supposed to kind of lead applicants in how to

1 correct a mistake, we changed the tax credit income
2 targeting somehow. We didn't need to do that in response
3 to the deficiency. The deficiency was about HOME units,
4 layering HOME units with tax credit units. We could have
5 done it by called a 50 percent unit a HOME unit and not
6 changing the income targeting of the tax credit units but
7 we did somehow. I don't know why, I don't know how that
8 mistake was made.

9 But had it been reviewed by a different staff
10 member, that staff member could have very well, under the
11 rules, come back and said, Wait a minute, we just asked
12 you to layer it under a HOME unit, we didn't ask you to
13 change your tax credit income targeting, and that's what
14 you did; you can't do that, you can't change your tax
15 credit units at this point. Had that happened, we
16 wouldn't be here today.

17 We did decide not to appeal the underwriting
18 that had the extra 30 percent unit because we didn't catch
19 it there. When we get our commitment and kind of the
20 summary that TDHCA staff does about kind of what we said
21 in the application in terms of the income targeting, we
22 compared that to underwriting and we caught the mistake.
23 And when we first caught the mistake, I literally told
24 Val, I said, Pick up the phone, this is an administrative
25 error. I never thought that we would have to write a

1 check for \$2,500, go through underwriting again, get staff
2 recommendation, have it be overruled and be here today.

3 And that's kind of where we are, it kind of
4 puzzles me that something like this would take all of this
5 time and all of staff time and all of our staff time for
6 this. It seems silly to me, in all due respect.

7 But we are where we are, and I just want to say
8 big picture, this is a rural deal, a 2013 award. All of
9 the rural deals, if there are developers in here that have
10 2013 rural deals, they will all say that these deals are
11 incredibly tight, incredibly tight. Our lender wants to
12 underwrite this deal at 1.30 debt service coverage, at
13 application we were at 1.20, after underwriting we were at
14 1.15, now we're back to .120, it's still not cushy.

15 We're talking about \$3,000 in income. \$3,000
16 in income can cover an unexpected spike in property taxes,
17 it can make the difference in converting to a perm loan.
18 The way our lender looks at the perm loan conversion test,
19 they're very stringent. \$3,000 is the difference between
20 this property making break even, and I just can't imagine
21 that the state would want to -- you know, it's kind of bad
22 enough that the rules last year resulted in these really
23 tight rural deals, and now at this point to penalize this
24 deal with another \$3,000 hit just doesn't seem like good
25 public policy to further strain the financial resources of

1 this deal.

2 Yes, it might be feasible, keeping that fifth
3 30 percent deal, but in my opinion, it's feasible
4 marginally so, and an extra \$3,000 in income can make all
5 the difference for us when we're out there leasing to
6 people and paying expenses. So that's why we ask that you
7 approve the amendment.

8 We really appreciate everyone's time, and Cari
9 really did an excellent job describing it. And I
10 apologize for the mistake, I mean, we make mistakes. But
11 it didn't have any impact on scoring, we didn't take away
12 tax credits from another applicant, it has no impact on
13 this year's round, it's just a matter of, you know, having
14 a little extra income to make the deal work.

15 MR. OXER: Originally, Janine, the application
16 was for four units, this takes it up to five at the 30
17 percent.

18 MS. SISAK: The error took us up to five. We
19 didn't need to go up to five.

20 MR. OXER: Five at 30 percent. What you want
21 to do is take it back to what the four was and leave the
22 extra unit at 50 percent.

23 MS. SISAK: Yes. Any questions for me?

24 MR. OXER: Hold on a second. Any questions
25 from the Board?

1 (No response.)

2 MR. OXER: Your point about this seeming
3 insignificant, it may seem insignificant to you but we are
4 diligent in trying to make sure that our application of
5 the rules makes sense in every sense, so while it may seem
6 a lot of time spent on one unit for one deal in one rural
7 location, the overall intent is to make sure that our
8 application of the rules is consistent across the state.

9 MS. SISAK: And actually, the point I'm making
10 is the opposite. I mean, I read the writeup and it seems
11 like what real state analysis is saying is \$3,000 is
12 insignificant, and we're saying it's not insignificant,
13 it's very significant to us.

14 MR. OXER: With that extra \$3,000 you could do
15 a lot of things for the residents there.

16 MS. SISAK: Right.

17 MR. OXER: Okay. Any questions of the Board?

18 MR. GANN: I'd make a comment on that. How
19 many applicants did we approve this year, roughly, nothing
20 exact?

21 MR. OXER: Jean, can you give us a number?

22 MS. LATSHA: Sure. Jean Latsha, director of
23 Multifamily Finance.

24 2013 we approved, I believe, it was 67-68
25 applications, at the end of the day, out of 167 that were

1 submitted, out of 300 or so pre-applications.

2 MR. GANN: My point there is being that if we
3 had people -- there's a lot of little mistakes in every
4 one of those applications, if we had people coming back,
5 it would tie up every day for days, and that was my major
6 point on wanting to stick with the rules on that. But I
7 also wouldn't want to be that one 30 percent of income
8 that didn't get that apartment too, and that's why I made
9 my motion. Thank you.

10 MR. THOMAS: Well, for my clarification, I
11 understood staff to not contradict DMA's position that
12 this would not have changed the staff's recommendation,
13 whether it had been four or five. And while I love the
14 idea and appreciate the idea, particularly in a community
15 that is my home area, Hutto, and concerned about making
16 sure that we have homes for the elderly, I'm particularly
17 concerned that our tail is going to wag the dog on
18 understanding how narrow the margins are to success for
19 our developers.

20 And I want to be concerned about that as we
21 clearly do what this Board's leadership has been, and that
22 is to make us have good transparent and accountable rules
23 that we follow and everybody knew what they were to
24 follow, versus penalizing our constituents that are trying
25 to comply and are human as well. I'm not sure where I

1 come out on that other than I don't feel good. In my gut,
2 I feel like staff, if I understood Barbara's analysis of
3 the rule, does not have discretion, they're following the
4 rule of moving to deny the request, and this is an
5 absolute appropriate thing for the Board to be
6 considering -- not appropriate, it's required -- but this
7 is a situation where the Board would be expected to make
8 that judgment call on does this negatively impact our
9 community, does it negatively impact the ability of our
10 agency to deliver the services through our constituents in
11 a way that doesn't seem like the rule is destroying the
12 intent. That's what I'm really struggling with.

13 MR. OXER: There have been examples before
14 where staff was, by virtue of whatever the decision
15 required was, that they had to recommend but with the idea
16 that they were bound by that. There are, as I've said
17 before, and I like to make sure that we do this, is
18 limited application of latitude applied lightly and
19 rarely.

20 But this does seem like an option, and I
21 understand Mr. Gann's point about making sure of the
22 rules, but if it was originally underwritten at four
23 units, five units -- if it was originally underwritten and
24 would survive, and you're bound by the constraints in the
25 debt service coverage ratio evaluation, I see your point,

1 Cari. I'm also trying to make sure, digesting
2 Mr. Thomas's point about making sure that we make this
3 available with the resources available in that community.
4 What other options do they have in the future to come back
5 on this to defray any modification going forward, or are
6 they fixed?

7 Hold on, Janine, I know who you are.

8 MS. GARCIA: I don't know of other options
9 besides an application amendment request to change the
10 unit mix. I will say that because other things have
11 changed in the transaction, as I mentioned previously,
12 they were able to lower their developer fee into their
13 pocket. Now, that may change. Again, it kind of is a
14 fluctuating deal, but if they wanted the \$3,000 back, they
15 could lower their loan amount, increase the deferred
16 developer fee in order to get that money back at the
17 property level.

18 MR. OXER: Any other questions of the Board?

19 (No response.)

20 MR. OXER: Well, if this is easy, you guys have
21 already decided it. Right?

22 Janine, anything else you want to say?

23 MS. SISAK: Just in response to that last
24 comment. We haven't closed this deal yet, we're in the
25 middle of underwriting, and construction costs have come

1 in considerably higher than what we anticipated, so our
2 deferred fee is right back where it was at application.
3 Yes, we got a really good tax credit equity price and it
4 looks like we'll lock an interest rate that's lower than
5 what we anticipated, but we haven't locked it yet, we
6 haven't gone through underwriting. I'm sure as we speak
7 our lender is slashing our rents and increasing our
8 expenses.

9 MR. OXER: That's rent and not risk. Right?

10 MS. SISAK: Right. So this concept of kind of,
11 oh, the deal is in a lot better shape now from a
12 feasibility standpoint than it was at application, it's
13 just not the reality. It is based on what they've seen,
14 and we sent numbers this week with the higher construction
15 costs, but things tend to -- once we get through all of
16 our dealings with TDHCA and we have our numbers, they tend
17 to always get worse and not better when lenders and
18 investors get their hands on it.

19 So I just wanted to respond to that. Thank
20 you.

21 MR. OXER: Okay. Fair enough.

22 Any other questions of the Board?

23 (No response.)

24 MR. OXER: On item 4(a), I have a motion by Mr.
25 Gann, second by Professor McWatters to approve staff

1 recommendation to deny the appeal. Is it an appeal?

2 MS. GARCIA: The amendment request.

3 MR. OXER: The amendment request. Okay. Make
4 sure because there are definitions to these things. To
5 deny the amendment request. All in favor?

6 (A chorus of ayes.)

7 MR. OXER: Opposed?

8 MR. THOMAS: No.

9 MR. OXER: There is one opposition by Mr.
10 Thomas.

11 Okay. Item 5(a). I suspect this is going to
12 take a while, will it not, Patricia? We've got a few
13 adventurous things to look at?

14 MS. MURPHY: I don't know how long it's going
15 to take.

16 Patricia Murphy, chief of Compliance.

17 The next item before you is a discussion item
18 about a possible rule regarding enforcement actions. The
19 Texas Legislature has given us tools to promote compliant
20 behavior, including the ability to assess administrative
21 penalties and the ability to debar people from
22 participation in the programs we administer.

23 Staff drafted a proposed rule, posted it to our
24 website, posted a conference call, opened an online
25 discussion forum, and hosted three roundtables to solicit

1 feedback on the rule, and boy, did we get feedback.

2 MR. OXER: It looks like your fan club is
3 coming up here.

4 (General laughter.)

5 MS. MURPHY: And I very much appreciate the
6 participation and feedback in this process. However, much
7 of the feedback was really not about the content of the
8 rule but really about whether or not we should have such a
9 rule that contemplates administrative penalties for non-
10 compliance with community affairs programs.

11 All of the Department's rules should reflect
12 the policy decisions of this Board, so before staff goes
13 any further, we wanted to bring this to you as a
14 discussion item to get some guidance and to give people
15 the opportunity to address you directly. The writeup in
16 your Board book summarizes the feedback that we've
17 received so far.

18 Staff is very mindful that non-profits and
19 third-party consultants raise special issues. Non-profits
20 and local governments will, more often than not, lack non-
21 federal funds that could be used to pay an administrative
22 penalty. A significant administrative penalty could even
23 jeopardize viability for some of these non-profits. Some
24 believe that, therefore, the possibility of an
25 administrative penalty is not appropriate at all.

1 The Department has had an active administrative
2 penalty process since 2008 for resolving non-compliance
3 with land use restriction agreements under our multifamily
4 programs. The proposed rule would follow the same
5 process. So first of all, that means that except for very
6 egregious non-compliance, the process is not even
7 initiated if people are responsible and fix things within
8 the corrective action period. If people disagree about a
9 compliance matter, there are lots of ways for them to air
10 their issues before any enforcement action occurs at all.

11 But if people don't respond or just don't
12 correct their issues, the idea is that they should get
13 referred to our Enforcement Committee. And the first
14 thing the committee does is offer an informal conference.

15 It's an opportunity to discuss the situation, make sure
16 there's an understanding of the issues, and see if there's
17 a mutually agreeable way to fix the issue. If past
18 patterns hold true, most of the time the initiation of the
19 administrative penalty process will not even result in the
20 assessment or collection of penalty amounts.

21 If an entity and the Enforcement Committee can
22 agree on a time frame for correction, it will usually be
23 placed in the form of an agreed order that goes before
24 you, this Board, for approval. There is an agreed order
25 on today's agenda, item 1(m), which you approved, and I

1 think it pretty clearly demonstrates the effort that the
2 Department takes before considering the assessment of an
3 administrative penalty.

4 Agreed orders can often contain provisions for
5 penalties to be probated, so that as long as the
6 responsible party carries out their responsibility, they
7 won't have the penalty. Even though we're not collecting
8 much in administrative penalties, as we can see from the
9 response we got from just proposing this rule,
10 administrative penalties are a great attention-getter.

11 Regarding the penalty amounts, we have no
12 interest in using a penalty as a way of putting someone
13 out of business. If we truly believe that an entity
14 should not be administering Department programs, we have
15 other more effective tolls, like debarment, or in the case
16 of community action agencies, termination of eligible
17 entity status. When we do assess a penalty, even if it's
18 probated, we take all appropriate factors into account,
19 including the amount necessary to deter future violations.

20 Regarding debarment, we understand it's our
21 most serious action. Third-party consultants pose special
22 issues. They are often in a position where they cannot
23 direct all aspects of programmatic activity and
24 management, however, we strongly believe that there may be
25 instances in which it's not only appropriate but it's the

1 most appropriate tool.

2 For example, assume a development owner hires
3 a third-party management company to operate their
4 property. If we go out to monitor and we identify that
5 the third-party management company is coaching tenants to
6 falsify eligibility documentation, perhaps it's not
7 appropriate to debar the property owner but clearly the
8 third party is engaging in completely inappropriate
9 activity, and depending on the egregiousness of the facts
10 and circumstances, it may be that recommending them for
11 debarment is the most appropriate course of action.

12 There are some peel that would like to make
13 comment. I expect that you may hear comment about
14 inconsistencies and other commentary about Department
15 staff, and perhaps about a lack of training. I heard a
16 lot of this type of comment at the roundtables, and
17 honestly, I did not engage much in dialogue about it.
18 We've heard their issues, we are constantly working to
19 improve, and we're looking at new training ideas, but that
20 the bottom line is that the process is not so broken that
21 people cannot be held accountable for their non-
22 compliance.

23 If there's anything specific that you hear in
24 their public comment that you want me to respond to, I
25 will be glad to respond to you with what's going on. But

1 before you hear comment, are there any questions about the
2 proposed rule that I could answer for you?

3 MR. OXER: Thanks, Patricia.

4 Any questions from the Board?

5 (No response.)

6 MR. OXER: This is an information item?

7 MS. MURPHY: Yes. This is a discussion item;
8 we're looking for guidance, what type of a rule would you
9 like us to bring to you at a future Board meeting.

10 MR. OXER: Okay. So that being the case,
11 there's no requirement for a Board motion to consider on
12 this, we'll simply be hearing public comment.

13 Do you have a comment, Dr. Muñoz?

14 DR. MUÑOZ: I just have a question. Patricia,
15 I read the Board book on this. It seems like we've gotten
16 quite a bit of comment and feedback, it's been very
17 robust. Do you anticipate that we're going to hear any
18 other salient themes right now that aren't captured in
19 your summary?

20 MS. MURPHY: I don't know

21 MR. OXER: She's not speaking for them, they're
22 speaking for them.

23 DR. MUÑOZ: But we've got comment summaries of
24 things that were already brought to your attention. Do
25 you anticipate that those would be generally what folks

1 would be concerned about?

2 MS. MURPHY: I think so.

3 MR. OXER: Tim, you had a question.

4 MR. IRVINE: Yes. I believe we have a couple
5 of letters.

6 MR. OXER: We're getting to those. You're
7 right.

8 MR. IRVINE: And I'd like to have those before
9 we have public comment, and I would also like to raise a
10 few points after those letters.

11 MR. OXER: Those letters, since they come from
12 the lege, they constitute first public comment, so if you
13 want to read those in for us, Michael.

14 MR. LYTTLE: The first letter comes from State
15 Representative Pickett. It reads:

16 "Dear TDHCA Board Members: It has been brought
17 to my attention that you will convene on April 10, 2014,
18 and along with all items posted, you will be considering
19 rule changes to Texas Administrative Code, Chapter 10,
20 Part I, creating Title 2, and I also know that some for
21 the service providers here in El Paso are concerned about
22 the proposed rule changes and are apprehensive about
23 changes that could adversely affect their ability to
24 deliver the services they provide to the community.

25 "I further understand that you have been tasked

1 to ensure the accountability, as well as the efficient and
2 effective expenditure of the taxpayers' monies, while at
3 the same time regulating valuable services that are
4 provided to needy citizens of Texas.

5 "I certainly appreciate the task before you and
6 the job that you do for the Department of Housing and
7 Community Affairs and the professional commitment that you
8 bring to the Department. Hopefully, the vetting process,
9 the Department working with service providers, will
10 develop fair and equitable rules and requirements that
11 increase the efficiency and accountability of services
12 provided, while at the same time not placing any undue
13 burdens on providers.

14 "Thank you for all you do for our state and for
15 the people of Texas. Sincerely, Joe C. Pickett, Texas
16 House of Representatives, District 79."

17 MR. OXER: And for point of clarification,
18 Mike, that district is located where?

19 MR. LYTTLE: It's in El Paso.

20 MR. OXER: Okay. Thank you.

21 MR. LYTTLE: And our second letter is also from
22 an El Paso area member. This is from Representative Naomi
23 Gonzalez in House District 76, again in El Paso. It
24 reads:

25 "On your hearing on April 10, 2014, posted on

1 your agenda you have item 5 pertaining to the adoption of
2 rules. I would like to be on record as saying that I am
3 opposed to the adoption of the rules as they are currently
4 written.

5 "The most concerning of these proposed rules is
6 the enforcement rule, Title 10, Community Development,
7 Part I, Texas Department of Housing and Community Affairs,
8 Chapter 2, Enforcement, Subchapter A through D. I
9 understand the rules applies to municipal governments and
10 community action agencies. It is designed, from a policy
11 perspective, to ensure oversight of the grants that are
12 awarded to single family housing programs. While I
13 believe all accountability is paramount, reaching this
14 goal is problematic under the rule.

15 "As the rule currently reads, it is ambiguous
16 as to when and what triggers the enforcement mechanisms of
17 the rule, yet the possible punishments for aforementioned
18 organizations are debarment, fines ranging in costs that
19 are also ranging in instance, day, violation. Clearly,
20 this is problematic for several reasons.

21 "First, the most obvious is there is no bright
22 line language in the rule that illustrates to the
23 organizations what triggers debarment and when the
24 debarment or fines go in effect, therefore, it will be
25 difficult to know for sure when organizations have

1 violated the rule.

2 "Second, these organizations obviously depend
3 largely on funds disbursed to them by some governmental
4 entity. This rule will require them to pay fines that
5 will essentially come out of their private donation
6 coffers. In small cities, rural communities or for
7 smaller organizations, this could have devastating
8 consequences. Further, if the fines imposed could become
9 so great for those organizations in the smaller cities or
10 rural areas that this may shut down the only organization
11 that provides assistance to single family housing.

12 "Third, this rule does not give the
13 organizations any real due process to address any claims
14 or issues they may have in appealing debarment or fines.
15 A suggestion is to add an ombudsman or a 15- to 20-day
16 appeals process for those being penalized.

17 "Fourth, because this rule is ambiguous and
18 because the policy goal here is to have greater
19 accountability, it would seem that better training for the
20 organizations and their boards would be in order.
21 Ultimately, the buck stops with the board of directors.
22 They are the fiduciaries of the organizations. If they
23 are not aware that a CEO, a CFO or an executive director
24 is not keeping an organization in order, and if they are
25 not asking critical questions, then it is the board of

1 directors that must be held responsible. Board training
2 is key and providing support to organizations is critical
3 to their success and accountability. Penalizing
4 organizations with this rule does not seem like an
5 appropriate route to take.

6 "I understand that these are just proposed
7 rules and that the Governing Board is trying to conform to
8 what the legislature has recommended, but the rule as
9 currently written should not be adopted.

10 "Thank you very much for your time and
11 indulging me in this opportunity to address these issues
12 with you. Sincerely yours, Naomi Gonzalez."

13 MR. OXER: Good. Thank you.

14 Any questions from the Board?

15 (No response.)

16 MR. OXER: I've got a couple, Patricia.

17 With respect to the due process, none of this
18 sneaks up on anybody. Right?

19 MS. MURPHY: That is correct. There is an
20 announcement that we're coming to monitor, there's a
21 monitoring visit, there's an exit interview, there's a
22 monitoring letter, there's a corrective action period. So
23 all of those processes are outlined in the Department's
24 compliance monitoring rules.

25 MR. IRVINE: Mr. Chairman.

1 MR. OXER: Yes.

2 MR. IRVINE: If I might enlarge on that a
3 little bit. This may get repetitive and tedious, and I
4 apologize, but I think due process is really, really
5 important.

6 After all of those things that Patricia has
7 mentioned have occurred, a monitoring letter is issued and
8 it says: We've concluded there was some violation. There
9 are opportunities, first of all, to question that and sort
10 that out with the monitor who performed the monitoring, to
11 go to the chief of Compliance if you're still unsatisfied
12 with the result, and now to a newly created Compliance
13 Committee for yet another, shall we say, level for review,
14 perhaps, to a degree, mediation. So all of those things
15 occur.

16 MS. MURPHY: And then they can go to the Board.

17 MR. IRVINE: And then they can go to the Board.
18 Then they've got the remainder of their 90-day corrective
19 action period, during which they're effectively safe. As
20 long as you fix things within your corrective action
21 period, we don't consider you to have been in non-
22 compliance. So we're talking about someone who's had all
23 of those notices, all of those opportunities and has gone
24 beyond their 90-day corrective action period. So all of
25 that's occurred before the matter even gets referred for

1 the initiation of the administrative penalty process.

2 That entire process is a multi-layer process.
3 It begins, first of all, with a letter that says: Hey,
4 this process has started; one of the possible outcomes of
5 this process is a proceeding to assess administrative
6 penalties. But the first thing that occurs after that
7 formal announcement of the referral is an invitation to an
8 informal conference. At that informal conference you sit
9 down with the Enforcement Committee, and you see, first of
10 all, is there a common understanding of what's occurred,
11 are there matters that we did not properly take into
12 account or consider in understanding your situation. It's
13 a dialogue, it is not admissible if this matter can't be
14 sorted out, it's, like I said, an informal opportunity to
15 get pretty candid about what's occurred and what can be
16 done to fix it.

17 And often in that process the committee
18 launches into some ideas on ways that corrective action
19 might be achieved. Sometimes they require additional
20 training, variety of mechanisms. And that committee has
21 got a fair amount of discretion in and of itself: it can
22 dismiss the matter, it can try and negotiate a framework
23 for an agreed resolution, or if agreement can't be
24 reached, then it can refer it for further measures under
25 the administrative penalty process.

1 If an agreed order is negotiated, that comes
2 back to this Board and it requires Board action and
3 there's an opportunity to comment on it as a posted action
4 item. Typically, when penalties are assessed and there is
5 an agreed order, we provide for probation of all or a
6 significant portion of the penalties because in fashioning
7 the penalties, the last thing that we want to do is be
8 disproportionate or punitive or take actions over and
9 above what's necessary to prevent recurring violations or
10 to deter recurring violations. So all of that occurs.

11 If all of that has occurred and we can't reach
12 some sort of agreed resolution, then we come back to this
13 Board again as another posted action item to say: We're
14 recommending that this be referred for an independent
15 administrative law judge, at the State Office of
16 Administrative Hearings, to hold a hearing. And the Board
17 can decide then if it wants to say yes or no to that. So
18 there's one more protection in which people have a right
19 to come and address this Board about it.

20 It goes to a SOAH ALJ, that's an administrative
21 law judge, and that person hears the matter. They have a
22 variety of measures that they can use in appropriate
23 settings at SOAH, such as mediation, but typically they go
24 to hearings, and after the hearing this ALJ looks at the
25 entire record and they create what's called a proposal for

1 decision. That's a document that comes back to this Board
2 and it's got findings of fact and conclusions of law, and
3 that document from the ALJ would form the basis for your
4 issuance of a final order.

5 In fashioning their proposals for decisions,
6 ALJs take into account the reasonableness of the
7 penalties, they take into account a whole number of
8 factors, and so it's a process that's just replete with
9 due process. It's strictly in accordance with Chapter
10 2001 of the Texas Government Code, which is our
11 codification of the Administrative Procedures Act. These
12 are the due process mechanisms that work for all State of
13 Texas regulatory agencies when they are taking these kinds
14 of actions.

15 After it comes back to this Board, if the Board
16 enters a final order assessing penalties, then people who
17 are affected by those orders also have the possibility of
18 taking them to district court for further action. So I
19 just want to be unambiguous, this is a very accommodating
20 process, it is something that I think is set up to
21 optimize and maximize participatory resolution of
22 problems, and if it can't achieve that result, it does
23 have penalty mechanisms in place that I think are
24 completely in accordance with due process standards.

25 MR. OXER: Good.

1 MS. MURPHY: Do you have any other questions
2 for me?

3 MR. OXER: No. Thanks, Patricia.

4 Here's what we're going to do. I can tell this
5 is going to be an item that we can't finish before lunch.
6 It's now right at twelve o'clock, or coming up on it
7 quickly. We're going to take a quick lunch break. I want
8 everybody to sit still until I get finished with this
9 because I've got to put this on the record. We're going
10 to make this quick, and you folks up here in the front row
11 will have an opportunity to come back, and we'll start
12 with you when we come back in making comment on this.

13 The Governing Board of the Texas Department of
14 Housing and Community Affairs will go into closed session
15 at this time, pursuant to the Texas Open Meetings Act, to
16 discuss pending litigation with its attorney under Section
17 551.071 of the Act, to receive legal advice from its
18 attorney under Section 551.071 of the Act, to discuss
19 certain personnel matters under Section 551.074 of the
20 Act, to discuss certain real estate matters under Section
21 551.072 of the Act, and to discuss issues related to
22 fraud, waste or abuse under Section 2306.039(c) of the
23 Texas Government Code.

24 The closed session will be held in the anteroom
25 of this room. The time is 11:59. We'll be back in our

1 chairs here at one o'clock and ready to fire up on this,
2 so have some lunch and come back, be ready to fight.

3 (Whereupon, at 11:59 a.m., the meeting was
4 recessed, to reconvene this same day, Thursday, April 10,
5 2014, following conclusion of the executive session.)

1 A F T E R N O O N S E S S I O N

2 MR. OXER: The Board is now convened in open
3 session at 1:04. We had a discussion, we made no
4 decisions, and we received guidance from our counsel and
5 information on current litigation.

6 So with that, it looks like we have some folks
7 who want to have a few things to say about what Patricia
8 mentioned before lunch. Do we need a summary, Patricia,
9 or are you ready to have them come up?

10 And I remind everybody, and just for the
11 record, that this is an informational discussion, there's
12 no Board action required. We're here to have input into
13 this discussion.

14 With that, first comment, come to the mic and
15 we'll give you three minutes to start.

16 MS. RODRIGUEZ: Good afternoon, Mr. Chairman,
17 members of the Board, and Mr. Irvine. I'm Stella
18 Rodriguez, executive director of the Texas Association of
19 Community Action Agencies. With me today are
20 representatives from community action agencies across the
21 State of Texas.

22 I want to comment about community action
23 agencies which are also referred to as Community Services
24 Block Grant eligible entities, or CSBG entities. There
25 are 42 in the State of Texas, covering all 254 counties.

1 Some are private non-profit, others are city or county
2 governments, and others are local units of government. As
3 mandated by federal law, each agency is governed by a
4 local tripartite board of directors comprised of one-third
5 elected officials, one-third from the private sector, and
6 one-third low income. This defining legislation is what
7 makes community action agencies unique.

8 In fact, there are no two community action
9 agencies in the State of Texas exactly alike. That is
10 because each agency, through a local community needs
11 assessment, determines the programs they will administer
12 in their community. Programs are administered by the
13 agency or in partnership with other local organizations,
14 maximizing resources. Community action agencies
15 administer a wide range of services, ranging from Head
16 Start, youth programs, senior nutrition, energy
17 conservation, utility bill payment assistance, housing,
18 transportation, and on and on and on.

19 In my almost 35 years at the state association,
20 I've seen many executive directors come and go, a few are
21 still around. Never have I ever heard from the leadership
22 of a community action agency, or the network as a whole,
23 to say that they do not want to be monitored or comply
24 with the rules. However, the proposed enforcement rules,
25 we are highly concerned with what is proposed which is why

1 we have some CEOs from the agencies representing the
2 network here to speak about some specific issues.

3 And at this time I thank you, and if you have
4 any questions, if not, I may want to comment later.

5 MR. OXER: Okay. Thanks. Any questions from
6 the Board?

7 (No response.)

8 MR. OXER: Thanks, Stella.

9 MS. SHAW: I had good morning, but I guess I'll
10 say good afternoon to all of you. My name is Tama Shaw.
11 I'm the CEO of Hill Country Community Action Association
12 in the little town of San Saba. We cover nine counties,
13 we're incorporated in nine counties, but we do something
14 in 17 counties in Central and North Central Texas. And I'm
15 also the president of the Texas Association of Community
16 Action Agencies, proud to be that.

17 I've worked for Hill Country for 37 years and
18 I've been the CEO for the last 18. I'm passionate about
19 what we do in community action for the low income and
20 those at need that we serve in our communities. So what
21 should be foremost in our minds are those folks struggling
22 from day to day.

23 It's so easy for us to get caught up in rules
24 and regulations that sometimes we forget about our
25 mission. In my opinion, all of our time could be better

1 spent on doing the best job we can with the limited
2 resources available. Why spend so much time, effort and
3 money on fixing something that isn't broken?

4 I attended the first enforcement rule
5 roundtable held here in Austin, and I was the first to
6 speak, and during the course of the conversation that day,
7 we were informed that currently only four of the 42
8 community action agencies would meet the criteria for
9 possible enforcement of fines and/or debarment. So the
10 question becomes: Why is the Department proposing this
11 compliance rule when less than 10 percent of the agencies
12 have compliance issues so serious that the rule might even
13 apply?

14 Rather than adding another layer of
15 administrative rules for us all to deal with, why don't we
16 focus on some other, in our opinion, important issues,
17 like preparing for the implementation of soon to be
18 federally mandated organizational standards. They come up
19 next year. We aren't really gearing up, haven't heard
20 anything about that at the state level.

21 Providing consistent training and technical
22 assistance for all community action agencies, not just
23 those in trouble. When they get in trouble, they get
24 attention, but we all want to do it right but we need to
25 know how to do it right.

1 More coordination between the training and
2 technical assistance side and the monitoring section
3 within the Department. The left hand needs to know what
4 the right hand is doing for it to run smoothly.

5 And releasing contracts in a timely manner
6 would make all of our lives out in the field easier.
7 On February 28 we received two DOE weatherization
8 contracts, both with termination dates of March 31, one
9 month. TDHCA did get an extension, but we weren't
10 notified of the extension until a couple of days ago on
11 April 8.

12 It's difficult enough to run our agencies with
13 more rules and regulations than you can even imagine,
14 because we don't just do your programs, we do a lot of
15 other programs. It's very difficult to keep this boat
16 afloat. We don't need any more burdens to worry about, to
17 think about, to contemplate. And some others are going to
18 speak to the monitoring issues.

19 In February in your Board book you received the
20 results of a survey regarding the Compliance Division
21 which reflected the need for improvement. Monitoring can
22 be very inconsistent from one agency to the next, and
23 findings resulting in the violations listed in the
24 enforcement rule can be subjective. The disconnect
25 between TNTA and monitoring sometimes results in findings

1 that are no fault of the agency. It seems to me that if
2 time was spent by all parties involved in prevention
3 rather than remedies, the people in need of our services
4 would be better served.

5 I was asked at the roundtable if I had a
6 suggestion other than fines to force agencies into
7 compliance. In my opinion, there are enough rules and
8 regulations already in existence, from both the state and
9 federal level, to handle any non-compliance situation
10 serious enough to have fines imposed, based on my
11 understanding that fines will not be imposed as long as
12 the agencies are communicating with TDHCA and making an
13 effort to comply. Surely there are already remedies in
14 place for any situation that would fall in that category.

15 We ask that you not support a rule that we feel
16 is burdensome for all concerned and unnecessary. Thank
17 you very much.

18 MR. OXER: Great. Thanks, Ms. Shaw.

19 Any questions from the Board?

20 (No response.)

21 MS. PONCE: Good afternoon. My name is Laura
22 Ponce, and I'm the executive director for Project Bravo,
23 the community action program for the County of El Paso.
24 I'm here to talk about the finance provision in the
25 enforcement rule and hope that it's stricken because of

1 its unhelpfulness as a deterrent for non-profit agencies
2 and government agencies.

3 Fines are a bad economic model when applied to
4 non-profit and government entities. In the private
5 sector, profit margins are the clear indicator used to
6 measure the success of an organization. Some
7 organizations choose to decrease the quality of their
8 products and services in order to maximize their profits.

9 Fines are the most common way state and federal agencies
10 keep for-profit entities in check by making it risky to
11 skimp on materials and services for the customer, thus
12 protecting the customer's rights. Fines affect the
13 profits of the organization and ultimately the owner, the
14 owners, the stockholders pay for the fines through their
15 profit losses.

16 Only non-profit or government agencies may
17 administer CSBG and other related funds. Non-profits and
18 governments exist to provide programs and services to the
19 public that have a value to the community. In our case,
20 community action programs are the safety net for hundreds
21 of thousands of low-income Texans, especially the elderly,
22 people with disabilities and children. Elected officials
23 and volunteer boards oversee these programs and we define
24 success by how many people we serve and whether or not
25 we're able to transition people out of poverty.

1 When financial penalties are assessed to non-
2 profits and government agencies, the costs are passed
3 along to the donors and the taxpayers because only non-
4 federal funds can be used to pay these costs. Let me
5 repeat this point: only donors and taxpayers, that is you
6 and me, will end up paying for these fines if you allow
7 this provision of the enforcement rule to move forward
8 towards becoming the rule in the Texas Administrative
9 Code.

10 There are other ways to make non-profit and
11 government entities better comply with TDHCA rules. For
12 example, back in 2010 my own organization was at risk of
13 being shut down due to mismanagement of the organization
14 and its funds by the executive director and bad oversight
15 by the board of directors. The board terminated the
16 executive director, and TDHCA worked closely with the
17 board and interim executive director to correct all the
18 deficiencies in the agency. The board was held
19 accountable by TDHCA for providing proper oversight for
20 the agency. Michael DeYoung, the current assistant deputy
21 executive director, attended every Project Bravo board
22 meeting for almost a year to ensure that the board was
23 doing all their due diligence

24 I was hired by the board through a fair and
25 open process where qualifications, such as education and

1 experience, were considered, not political connections. I
2 have a master's in public administration and almost 20
3 years of experience in the non-profit sector, and that
4 makes a difference when managing an organization with
5 typically a \$10 million a year budget and 45 to 100
6 employees. Last year our organization helped over 40,000
7 people in the County of El Paso, with utility assistance,
8 weatherization, GED classes, and other programs and
9 services.

10 I can honestly say that if these fines existed
11 back in 2010 when my organization was in trouble, we would
12 not be here today. The fines would have burned through
13 our unrestricted funds and distracted the board from
14 addressing the real problem: mismanagement and lack of
15 proper oversight. Maybe another agency would have
16 eventually stepped in but this would have happened after a
17 couple of years of paying fines and going through the
18 process of termination as an eligible agency. The
19 community would have suffered, not an owner or a
20 stockholder.

21 The key to compliance for community action
22 programs is good training and technical assistance.
23 Esteemed members of the TDHCA Board, consider investing
24 more resources in training and technical assistance if you
25 really want to address the problem at hand. Thank you

1 very much.

2 MR. OXER: Thank you, Laura.

3 Questions? Comment, Mr. Thomas?

4 MR. THOMAS: Just a quick question. You gave a
5 great example about your specific board. In light of the
6 communications that our executive director talked about
7 before our lunch break about the due process, how would
8 your organization have been affected if your organization
9 had been able to avail itself to that type of a very
10 lengthy due process to allow you to maybe get compliant
11 before it got so bad that your board had to take the
12 actions and that we had, as you said, I guess have a
13 former member go to all of your meetings? There's got to
14 be a healthy balance in there. Because what you described
15 was pretty bad, and that terrifies me, honestly.

16 MS. PONCE: Yes. And to tell you the truth, I
17 think that how our agency got to that point really was the
18 oversight that was given to the organization didn't really
19 kind of educate the agency as to how to be compliant. I
20 think that some of the issues back then were that ARRA
21 funding was underspent, and so I remember back then when I
22 first started at Project Bravo, it was November of 2010,
23 at that point we were 50 percent through the whole
24 contract time but we'd only spent 30 percent of the
25 contract funds, and so we were very, very far behind in

1 our spending.

2 We went from a four-person weatherization
3 program to a 20-person weatherization program, so just
4 imagine trying to ramp up a weatherization program within
5 a year to try to spend these really huge amounts within
6 the non-profit and with all the rules and with being
7 monitored. And so in other words, this is just a very
8 complicated agency to work with, at least in my
9 experience, because there's so many different levels of
10 things going on.

11 So for example, what ended up happening is that
12 once I came in, I really worked on the resources that the
13 department had. For example, they were so busy trying to
14 weatherize homes that they didn't even have a photocopy in
15 place in their office, so they were printing stuff out of
16 their printers. So it was just all of these kind of very
17 simple solutions, but it really takes somebody who
18 understands process management, and I think that the
19 executive director before just was not very skilled in
20 that area.

21 MR. THOMAS: And multiply what you just
22 described across all of our state and all of the service
23 entities that are either direct funnelers of federal and
24 state dollars, or they're the actual end-provider, and/or
25 both. How do you help the Board understand that while

1 your agency was so very fortunate to get you, how do you
2 help the Board figure out how to give training to the
3 myriad -- this is an area I'm very passionate about -- how
4 do you help the Board figure out if it's not an
5 enforcement action with real teeth to get the attention of
6 those boards?

7 MR. OXER: Here's the real question, Laura.
8 The real question is Tim outlined before lunch, Patricia
9 has mentioned before on this, there is an extensive
10 process with, what, 12-15 gates in it you had to get
11 through, and you said this finally happened when your
12 board got the attention and recognized that there was a
13 misplacement of resources, they needed somebody with more
14 horsepower in doing this.

15 MS. PONCE: Correct.

16 MR. OXER: At what point in this process that
17 we have did we finally get your board's attention?

18 MS. PONCE: I would say that probably with this
19 particular situation, part of the problem was that the
20 executive director they were the ones that were completely
21 funneling the information to the board of directors, and I
22 think that if there was a more direct line, kind of like a
23 report card given to the board of directors letting them
24 know is this agency turning in their reports on time. And
25 for me, I go through all of the monitoring reports with my

1 board of directors. Are you being briefed on the
2 monitoring reports that you are receiving?

3 I know that the board chair is supposed to get
4 CC'd on these monitoring letters, but one time when I
5 first started I had one board chair and then she stepped
6 off, and then for a year and a half they kept sending the
7 letter to her instead of the current board chair. It
8 wasn't until her father died, and she called me three days
9 after her father's death saying I have another monitoring
10 letter, what do I do with it, that we were finally able to
11 get the attention of the TDHCA staff to change the name
12 that was being CC'd on that.

13 And I can only imagine, let's say the board
14 chair dies, let's say the board chair is no longer at that
15 address and so letters are coming over, and because of
16 just administrative glitches that are happening at the
17 state level, an agency could lose their funding.

18 MR. OXER: Fair enough. And the point about
19 all this is there needs to be, just as there is with this
20 board and any other board of directors in the private
21 sector on a company or that sort of thing, there needs to
22 be an independent auditor -- like we have an independent
23 auditor here -- that gets information to us, there needs
24 to be another independent source of communication for your
25 board. And I'm sure Patricia has got that in mind.

1 MS. PONCE: I don't see it written anywhere in
2 the rules.

3 MR. OXER: Well, that's a process, it won't be
4 a rule. But the whole idea is to be able to keep that
5 data updated. So that's good input to make, to make sure
6 that there's communication with your board, because the
7 last thing we want to do is have the communication from us
8 to your board having to go through your executive
9 director, who may not want to expose him- or herself to
10 the things that the board is saying about it.

11 MS. PONCE: And whenever TDHCA gets involved,
12 for me, my experience with the training and technical
13 assistance side has been excellent, and really for us, we
14 never would have spent all of our ARRA money, plus the
15 extra allocation that we got if it wasn't for the training
16 and technical assistance that we received.

17 I went to this three-day training given by
18 Marco Cruz, and pretty much that was my blueprint for
19 being able to move forward and understand weatherization
20 and be able to spend the money correctly. Brooke Boston
21 provided the most amazing spreadsheet that we use to
22 monitor our production. Sharon Gamble, whenever we had
23 any questions, she was very available and she would answer
24 our questions as to what was allowable, what wasn't. You
25 have a great team.

1 MR. OXER: We appreciate you enumerating that,
2 but we already know we've got a great team.

3 MS. PONCE: Yes. And the thing is like you
4 need to use them more.

5 MR. OXER: I can fairly confidently state that
6 training and technical assistance is going to be a key
7 component of all this, because the last thing we want to
8 do is impose a rule without giving you some training about
9 how to meet the impact of it.

10 Any other questions from the Board?

11 (No response.)

12 MR. OXER: Thanks, Laura.

13 MS. PONCE: Thank you so much.

14 MS. SWANSON: Mr. Chairman, members of the
15 Board. I'm Karen Swanson. I'm the executive director for
16 Greater East Texas Community Action Program, based in the
17 most beautiful section of the Great State of Texas, the
18 home of dogwoods and roses and azaleas, and also the
19 Lufkin-Nacogdoches area of our beautiful state. I've been
20 the executive director for Greater East Texas for
21 approximately 16 years. I also come before you today as
22 the president of the Region VI Association of Community
23 Action Agencies which encompasses New Mexico, Oklahoma,
24 Arkansas, Louisiana and Texas. Of course, Texas is the
25 best and I tell Oklahoma that real frequently.

1 Today, as I come before you, I also want to
2 share with you that on a national scale we are well
3 represented and that we also are engaged on a national
4 level on many issues that are very important to community
5 action agencies. Along with myself as a regional
6 president, Mr. Brad Manning, who will be speaking to you
7 shortly, is the treasurer of the National Community Action
8 Partnership, Mr. Bill Powell serves on the NCAF national
9 board. Please know that we are engaged on a national
10 level and issues that are of concern to community action
11 agencies nationwide, we are on the forefront of that and
12 want to stay ahead of the curve rather than being behind
13 the curve.

14 I also am in agreement that these rules are a
15 great concern. These enforcement rules are not being
16 imposed in other states. I know from the Region VI
17 Association that this is unique. There is nowhere in the
18 country that we are aware that such sorts of enforcement
19 conditions are being even considered.

20 Currently, to answer a little bit of your
21 question, there are national performance indicators that
22 are being looked at right now. This is a great indicator.
23 There is an overall effort for these national standards,
24 and these national standards are going to address many of
25 the issues that you are talking about that these

1 enforcement rules would actually, in fact, be a part of.
2 These national indicators will actually begin next year.
3 We have to be addressing these right away, and quite
4 honestly, we need to be considering how we're going to
5 deal with these national indicators now.

6 These indicators, our state will have to be
7 addressing, and there's 56 of these indicators nationwide
8 that all community action agencies and our state agency
9 will be reporting on that will, in fact, address many of
10 the things that these enforcement rules will be looking
11 at. But again, these indicators, we're going to have to
12 be doing right now. We need to be already establishing a
13 work group or something to begin to prepare for this
14 implementation.

15 These national indicators are going to be for
16 all over the nation, so this is something that is going to
17 be good, it is going to happen, this is something that is
18 happening, even as we speak. So I would encourage you to
19 consider the fact that there already is a mechanism in
20 place that is coming down the pike, and in 2016 the state
21 has to report on it anyway, and we have to implement this
22 in '15.

23 Additionally, I know Brooke Boston talked about
24 the Department of Energy inspector guidelines, those
25 certifications. We're delighted that the Department

1 already has three individuals who have gone through this
2 training, but we need the Department to give us guidance
3 right away. We need to have actual training statewide
4 because we have to do this in weatherization. This begins
5 next year. So again, this is very, very important.

6 The Department already has an established way
7 to work with us as a network. Recently we looked back at
8 the ROMA implementation, the Results Oriented Management
9 and Accountability indicators that are required to do
10 nationwide. The Department stepped forward at our
11 regional conference, our Region VI conference, they came
12 to the table and said, We need to figure out how we're
13 going to implement this in Texas. And we established a
14 very critical work group that continues to work together
15 to establish the ROMA mandates and to make certain that
16 Texas was indeed up to snuff and that we are indeed
17 accountable to those national requirements.

18 This has worked beautifully. This is a
19 partnership that we have with the TDHCA staff. You well
20 know that you have some very skilled and passionate
21 individuals who want to work with the network. I would
22 encourage you to continue to consider that as we look to
23 the future, because this is critical. Quite honestly, we
24 have too many required federal mandates that are imminent,
25 things that are happening as we speak. These enforcement

1 rules, we don't have time for this; we've got federal
2 mandates that are going to cover this no matter. So I
3 encourage you to consider that.

4 And in addition to that, one last thing,
5 because Texas is the best in Region VI, we will be hosting
6 the Region VI conference in beautiful San Antonio, Texas
7 in October. I would encourage you to come and join us as
8 we share how wonderful Texas is and the marvelous things
9 that we are doing in Texas, because quite honestly,
10 nothing thrills me more than to tell Oklahoma how great we
11 are.

12 MR. OXER: Thank you, Ms. Swanson. Any
13 questions?

14 (No response.)

15 MR. OXER: Good. Thank you.

16 MR. POWELL: Mr. Chairman, members of the
17 Board. My name is Bill Powell and I was previously
18 introduced this morning by Dr. Muñoz, and I appreciate his
19 kind remarks.

20 I'm from West Texas, Levelland, and we have
21 sand. I don't know what an azalea is, but we have lots of
22 sand in West Texas, and we've had plenty of that this
23 spring. Nonetheless, I wanted to just take a few minutes
24 and just talk to you about my consideration on these
25 proposed rules.

1 If I can digress just a little bit. I turned
2 66 last year and the woman at the Social Security office
3 told me that I was entitled to say anything that I could
4 remember.

5 (General laughter.)

6 MR. POWELL: I'm working on that. Hearing is a
7 problem too. Nonetheless, in 1967-68 -- and I hope I can
8 tie all this together -- '68-69, I went as a draftee to
9 Vietnam -- and probably not too many but some of you, may
10 have been in that era -- came back, went to school and
11 finished school and went to work the next week for a
12 community action agency. My wife at the time asked me
13 where did you get the job, and I couldn't even remember
14 the name of the organization that had hired me, but that
15 was 40 years ago, and I've seen lots and lots of things in
16 that period of time.

17 MR. OXER: For the record, I get my Medicare
18 card next year.

19 MR. POWELL: Do you really? Great. I can
20 address Part A, B and C for you, if you'd like, sir.

21 (General laughter.)

22 MR. POWELL: At any rate, we've probably done
23 business with the Texas Department of Housing and
24 Community Affairs now for 35 years, that I know of, and I
25 can probably tell you the lineage of the executive

1 directors, Mr. Irvine, and you may know that too. But
2 nonetheless, my concern, I guess, as much as anything is
3 over those years we've seen a lot of things come and go,
4 we've seen a lot of changes, we've seen a lot of personnel
5 come and go. We've always, as a statewide organization,
6 and speaking from my organizations perspective, we've
7 always maintained a very good professional working
8 relationship.

9 I think we've had a lot of the state, the state
10 has done an excellent job, and I'm in total agreement with
11 Brooke Boston this morning, I think we've had a very good
12 relationship in terms of working together, but more than
13 that, the benefactors of all that work has been the
14 citizens of the State of Texas, and particularly those in
15 need, and that's our great concern.

16 We've got lots of rules and regulations that we
17 all have to live by currently. I don't see that we need
18 additional rules and regulations that can be used to beat
19 us over the head with. After all, we are, after the fed
20 and the state, we're the recipient of the final and we're
21 the smallest chicken in the barnyard, you might say, so
22 we're the ones that are going to get beat up the most. I
23 don't see adding another layer or another hammer or club
24 to beat us over the head with is going to be all that
25 profitable. I don't see there's really a need for that

1 sort of thing.

2 On a personal or on a local level, my
3 organization, we've looked at those, I've taken these
4 proposals to our attorney. She read them and advised me
5 not to sign any contract that had anything to do with
6 this. Now, she also advised me not to sign the first
7 contract, so that's kind of where it's at.

8 MR. OXER: Most attorneys don't want you to
9 sign anything, as it turns out.

10 MR. POWELL: Well, that's true, but
11 nonetheless, we have to have attorneys. Right?

12 MR. OXER: We do? Oh, yes, that's right.

13 (General laughter.)

14 MR. POWELL: You're really putting me on the
15 spot on that.

16 Nonetheless, I've got to go to my board, and I
17 think all the community action agencies have got to go to
18 their boards and talk to them in terms of what do we do,
19 should we or should we not enter into this, realizing that
20 it's probably a small risk on the one hand, on the other
21 hand, you've already heard of one agency that has gone
22 through a process, and there was a process in place at the
23 state level to take care of that problem.

24 I went through a similar process with Head
25 Start 15 years ago. The federal agency, HHS, sent in a

1 squad of people they had programmed and I was written up
2 for 600-and something thousand dollars in
3 misappropriation. Well, we went to appeals court, it was
4 all thrown out. So I have a real fear of these kinds of
5 rules and regulations. We had a clean bill of health, and
6 in fact, the regional office was reprimanded for even
7 drumming up those kinds of charges.

8 Again, my concern is our relationship with the
9 state, with the state office and whether or not we, as an
10 organization, can continue to operate with these kind of
11 risks, and I don't see these risks going away, I don't see
12 them getting any smaller, I think we're going to continue
13 to shoulder these kinds of things if we stay in business.

14 My agency operates about \$2- to \$2-1/2 million
15 in funds from TDHCA, on top of that we've got another \$40
16 million, so we're having a lot of difficulty justifying --
17 or I'm having difficulty justifying that kind of exposure
18 for my organization as opposed to the rest of the money
19 that we've got under contract.

20 I'll be glad to respond to any kind of
21 questions or concerns that you might have.

22 MR. OXER: Thank you, Mr. Powell.

23 Any questions?

24 (No response.)

25 MR. OXER: Thanks very much, sir.

1 MR. POWELL: Thank you, sir.

2 MR. MANNING: I'll bet you're hoping I'm the
3 last guy.

4 MR. OXER: You're the last one in that row,
5 anyway.

6 MR. MANNING: Last one on that row, true. My
7 name is Brad Manning, and I am the executive director for
8 Texas Neighborhood Serviced, Weatherford, Texas, just west
9 of Fort Worth. And I do need to correct Mr. Powell, he
10 doesn't have all the sand because about half of it blows
11 into us in the springtime.

12 MR. OXER: Careful, my wife is from Fort Worth.

13 MR. MANNING: I like Fort Worth, I just wish we
14 could keep the Lubbock sand out.

15 You've heard a lot of people talk today about a
16 lot of issues, very near and very dear to their heart, and
17 both from Tim's side and his passionate plea before we
18 took our break for the due process, to each one of our
19 individuals and their passionate plea. And the voice of
20 experience from Mr. Powell told you a lot, and that is
21 specifically that we are concerned as a network about
22 where this could lead.

23 We understand that there is a discussion about
24 due process, we understand that there is a multi-step
25 process. We also know that it is the desire -- because

1 we've heard it said -- of the Department to see fewer
2 agencies. We know that that desire is not only at the
3 state level but it's at the national level, because in the
4 CSBG Reauthorization Act, House bill 3548 from the U.S.
5 House of Representatives -- the CSBG Reauthorization Act
6 was issued in it there is money that is dedicated
7 specifically for shrinking the number of community action
8 agencies.

9 Our concern is we would like to see this Board
10 take the time and not rush through to put through
11 penalties. If that truly is your position in using these
12 to reduce the number of agencies, we'd like to see you
13 take the time to go through and make sure that all of
14 these rules coming through, including the CSBG Act, that
15 you're incorporating everything into it. That is our
16 concern, or is my concern, and that's one I want to share
17 with everybody because I want to make sure that you know
18 the concerns.

19 I don't want to leave you with the impression
20 that our concerns are we don't like penalties, we don't
21 like debarment, just because we don't want to be held
22 accountable. That is not the case. Every individual that
23 has stood up before you today has a passion for what they
24 do. They recognize that to be able to fulfill that
25 passion they must be held accountable. No one standing up

1 before you today believes anything different, and if they
2 do, I'll be the first one to help you get rid of them.

3 Because at the end of the day, 50 years ago LBJ
4 went to fight for us and created the Economic Opportunity
5 Act and so many of these other acts -- which, of course,
6 our president is here today in Austin as we're celebrating
7 the Civil Rights Act.

8 MR. OXER: Good luck on you guys trying to fly
9 home this afternoon.

10 MR. MANNING: You know, actually I'm driving,
11 but it's interesting because as I came into your fair city
12 today, I thought that surely they must really not want me
13 to come to this meeting. There is a patrol car at every
14 intersection. Teach me to come in late. Right?

15 But seriously, we want to be able to work with
16 this Department, we want to be able to not have concerns
17 and fears, and we want to work together with you to find
18 solutions. And so we ask that in your deliberations and
19 in your advising your staff what to do, we ask, we implore
20 you to be sure that we are considering all of our
21 legislation. Thank you.

22 MR. OXER: Thanks, Mr. Manning.

23 Any questions from the Board?

24 (No response.)

25 MR. OXER: Patricia, come on up. You knew it

1 wasn't going to be that easy. I have a couple of
2 questions, one of which is these federal mandates coming
3 out through the ROMA evaluation, that whole process, are
4 we in the process of making what we were trying to do
5 consistent with that?

6 MS. MURPHY: I don't see them as exclusive; I
7 don't see a conflict between the two.

8 MR. OXER: Okay.

9 MS. MURPHY: Do you, Tim?

10 MR. IRVINE: I don't on their face see any
11 conflict. One of the things that I'm hoping is that when
12 and if we do get into a formal proposal for a rule that
13 we'll get the kind of detail level commentary that will
14 point out any places where language needs to be corrected
15 or tightened up to conform things.

16 You know, we already have an administrative
17 penalties rule in place. Right?

18 MS. MURPHY: Correct.

19 MR. IRVINE: And are community action agencies
20 subject to it?

21 MS. MURPHY: Yes.

22 MR. IRVINE: All right. So you're already
23 subject to administrative penalties. What we're trying to
24 do is to take existing rule and make it better, make sure
25 that it addresses those types of potential disconnects and

1 inconsistencies, make sure that it provides for as much
2 engagement and collaboration as possible. Nobody here
3 seems to be aware of the fact that you are subject to an
4 administrative penalty rule right now because you haven't
5 had any problems under it.

6 We have had some agencies that have had
7 compliance issues and we really would like to find a way
8 to get them into a more engaged process to figure out
9 what's wrong and how do we fix it.

10 MR. OXER: Which includes getting the attention
11 of the agency's board sooner so that they can be bringing
12 their judgment to bear on the operation of the individual
13 agency.

14 Brad, to your point, we're not looking for
15 fewer agencies out there, we'd like to have as many as we
16 can, but we also want every one of them to have the
17 horsepower to be able to do what they need to do. And the
18 accountability, recognize that you're accountable. We
19 have an accountability issue we've got to deal with too,
20 and part of that is making sure that the subrecipients for
21 the funds that we have are being given every opportunity
22 to do so in as robust an administrative manner as they can
23 generate. Otherwise, we get dinged for your problem.
24 That's part of why this is a discussion point and we're
25 airing this out here. So that said, I think there's going

1 to be considerable training and technical assistance.

2 To your point, Mr. Powell, where this
3 constitutes \$2 million out of another \$40 million worth of
4 funding that you have, I understand that, but we've also
5 got rules, and I suspect the other contributors to that
6 funding will have their rules of compliance. And we all
7 have our rules we have to play by. If you'd like to speak
8 again, come up. We have a lot of rules, the agency has to
9 meet a lot of rules for more than one agency of the
10 federal government too, that contribute to our funds. So
11 there's a lot of things that Patricia has, a lot of things
12 on her list of boxes that she has to check off when we go
13 out and take a look at these things.

14 Is there any other comments from the Board?
15 Mr. Powell, would you like to make one more short comment?
16 I'll give you 30 seconds.

17 MR. POWELL: Just to follow up on your comment,
18 we have to, as responsible parties for our organizations,
19 have to make these kinds of judgments all the time, and
20 you have to measure the risk apart from what you're going
21 to gain at some point, and all that factors in. But it's
22 a very difficult situation a lot of times for us to
23 determine how much risk we really do want to take and how
24 much risk and exposure we want to have and have placed on
25 our boards, and you all understand that.

1 MR. OXER: Well, since you were here this
2 morning, you heard our adventure through risk and reward,
3 so we have that balancing act to do every day too.

4 MR. POWELL: That's true.

5 MR. OXER: Thank you for signing in, thank you
6 for all your comments. Is there anybody else who would
7 like to comment on this item? We have four items to be
8 read in. Terry, microphone so we can tell who you are.

9 MS. ROEBER: Hi. I'm Terri Roeber with Texas
10 Department of Housing.

11 I have four opinions that were given, they're
12 all on 5(a), they're all against staff recommendations.
13 The first one is Mark Bethune with Concho Valley Community
14 Action Agency; next is Juan Vargas with Webb County
15 Community Action Agency; Christy Smith with Economic
16 Action Committee Matagorda County; and Vicky Smith with
17 Community Action Committee of Victoria, Texas.

18 MR. OXER: Good. Thank you.

19 Any last thing we need to have on this, Tim, to
20 sum it up?

21 MS. RODRIGUEZ: If I may. Stella Rodriguez
22 with Texas Association of Community Action Agencies.

23 I just wanted to clarify a statement that you
24 made about if you all don't do your job, then you get
25 dinged. But technically, HHS does not have a fine

1 structure for CSBG or LIHEAP or DOE for the Weatherization
2 Program, so you won't get fines dollar-wise like the
3 agencies will.

4 MR. OXER: Fair point. Noted.

5 All right. Anything else on this item?

6 MR. THOMAS: Yes.

7 MR. OXER: Okay, Mr. Thomas.

8 MR. THOMAS: When I joined this Board, this was
9 an issue that I felt very passionate about and spent a lot
10 of time getting additional training from the senior staff
11 on. I have deep, deep roots in this particular area and
12 it's one of the areas, quite frankly, as important as
13 housing is to me. The community affairs side, as far as
14 I'm concerned, has not had the level of involvement
15 engagement that it needs. I'm very concerned about taking
16 care of all aspects of all people in our community and all
17 of those various needs.

18 Having an extensive background in this form of
19 community service, not rivaling anything that you
20 wonderful community servants have talked about, but from
21 Neighborhood Centers, Inc. in the Greater Houston Area, to
22 Safe Place here which is the merger of the Battered
23 Women's Center and the Sexual Assault and Domestic
24 Violence Center, to the Austin Child Guidance Center, and
25 being a steward of governance and having served on those

1 boards and been a very active volunteer, we have some
2 real, real holes in how these public trust fund monies, as
3 well as the funds that are gifted to us by private donors,
4 the fiduciary duty to make sure that those dollars get
5 delivered in a way -- I'm preaching to the choir.

6 I guess what I'd like to see is I hear people
7 saying that they're very concerned about the fines, and
8 I've read very carefully all of the comments that were
9 provided, but I haven't heard anything about how we're
10 going to address the issues. And forgive me, ma'am, I
11 don't remember your name, but my biggest concern is our
12 subrecipients have almost no oversight, particularly the
13 smaller.

14 When we start talking about the number of
15 entities that are providing services in our community, the
16 subrecipients in particular, that come nowhere near the
17 \$10- to \$40 million size agencies that you're talking
18 about, we run into situations where we have executive
19 directors who are not communicating with their board, or
20 boards who don't appreciate the significant
21 responsibilities they have, and we have executive
22 directors, worst case scenarios that you all have heard
23 of, leaving with money, recently in Austin in the last
24 couple of years.

25 So I hope we do something around this. I hope

1 that our Board has as many things on our agenda for
2 community affairs as we have on housing and that we start
3 a real robust dialogue about making sure that that side of
4 our house is leading into the century for our community,
5 but that means that we're going to have to move away from
6 NIMBY approach from our social services agencies to a
7 partnership, and we're going to sometimes make mistakes.

8 Fines may not be the way to go, I'll look
9 forward to what comes out of this from our staff, but I
10 want you to know you have a champion on this Board in me
11 on this issue, but you also have someone who, as others
12 have, having been in the streets with you, if you will, to
13 provide these services, I'm very concerned with the fraud
14 and the abuse, and even if it's not fraud, just the lack
15 of oversight that results in an absolute violation of the
16 trust and the fiduciary obligation that we have from our
17 funders. So please know that.

18 MR. OXER: One of the things that I think
19 you'll find is that none of us up here, none of the Board,
20 Dr. Muñoz and Ms. Bingham included -- I'll add them in
21 their absence -- none of this take this for granted. When
22 I got appointed on this, I had an obligation and a certain
23 amount of interest that I was obliged to pay attention to
24 this. Being on a board, one of the things that I think
25 Mr. Thomas is making a point about is being on a board for

1 a community action agency doesn't come as a gratuity or as
2 something you can stick on your resume, it comes with a
3 hook, you're now responsible. So to all of you out there,
4 if you're the president of the community action agency for
5 the state or you're representing the ones for Region VI,
6 don't take this casually, because we don't, and we're
7 going to expect them to take it as seriously as we do.

8 Any other questions? Any other contributions?

9 Laura.

10 MS. PONCE: I think that to address what Mr.
11 Thomas was saying, the new organizational standards
12 actually cover -- will create a lot of avenues for making
13 the board more accountable. So for example, one of the
14 organizational standards is making sure that clients are
15 surveyed about the services that they receive and making
16 sure that that information is reported to the board,
17 making sure that there's proper governance in the
18 organization.

19 So in other words, really, right now I guess
20 part of my frustration is that we're spending a lot of
21 time talking about fines and just kind of these penalty
22 structures but the truth is that if we properly implement
23 the organizational standards, we will have more compliance
24 at the local level. And that's going to be part of the
25 job of TDHCA to make sure that the agencies at a local

1 level have all 56 standards in effect in their
2 organization.

3 MR. OXER: Good. Thank you.

4 That's the last item on our formal agenda.
5 Thank you for your comments. We've reached the point --

6 MS. DEANE: We need to go back and pick up
7 1(q).

8 MR. OXER: Oh, that's right, we do need to pick
9 up 1(q) since it was post exec session. Let's see, 1(q),
10 is that Jean?

11 MS. LATSHA: Jean Latsha, director of
12 Multifamily Finance.

13 I believe we took off the Villages of Ben White
14 and Point at Ben White. Is that correct?

15 MR. OXER: Correct.

16 MS. LATSHA: I can simply state that staff
17 recommends approval of both of these developments, that is
18 approval of both determination notices. If you have any
19 questions about them, I'm happy to answer them.

20 MR. OXER: And as a reminder, this was delayed
21 till this point till after the executive session so we
22 could have information provided by legal counsel that had
23 potential bearing on these two. So your point is now,
24 just to recount, staff recommends approval.

25 MS. LATSHA: Of both determination notices, for

1 Point at Ben White and Villages of Ben White.

2 MR. OXER: Great. Okay. That being the case,
3 I'll entertain a motion to consider. I know it's getting
4 late but somebody has got to say something.

5 MR. GANN: I'll make a motion.

6 MR. OXER: Thank you, Mr. Gann. Motion by Mr.
7 Gann to approve both of these -- what were they again,
8 Jean, staff determinations?

9 MS. LATSHA: The issuance of a determination
10 notice for both.

11 MR. OXER: Okay, good. And there is a second
12 by? By the chair. Are there any other questions? Any
13 other questions of Ms. Latsha?

14 (No response.)

15 MR. OXER: Okay. Motion by Mr. Gann, second by
16 the chair to approve the determination notices. All in
17 favor?

18 (A chorus of ayes.)

19 MR. OXER: Opposed?

20 (No response.)

21 MR. OXER: There are none. Thank you.

22 We have now reached the point in this agenda
23 where we have the opportunity for public comment on
24 matters other than items that were listed formally on the
25 agenda. This is for information only and will be used to

1 build the agenda for future Board meetings. Does anybody
2 care to have comment?

3 (No response.)

4 MR. OXER: Good. Is there any staff that has
5 comment? Anybody want to say anything out there?

6 (No response.)

7 MR. OXER: Anybody on the dais want to say
8 anything? Mr. Irvine wants to say something.

9 MR. IRVINE: I just want to say with respect to
10 the further efforts to develop and refine the enforcement
11 rules, I greatly appreciate the sentiments that were
12 shared, but I do strongly believe that the existing rules
13 do need refinement and improvement, and as we move ahead
14 with that and bring something back to this Board for
15 consideration to launch the rulemaking process formally, I
16 hope we'll get really good engagement and detailed comment
17 to ensure that whatever we do finally recommend is as
18 consistent as possible with best practices, federal
19 requirements and so forth.

20 And I want to make a personal assurance, I
21 cannot speak for anyone on my team or my Board to whom I
22 report, but it is my sincere intention that we have the
23 strongest possible community action agencies, whether
24 there are 42 of them or 22 of them. As long as they are
25 strong and they are focused on their mission and they are

1 compliant, I'm a happy guy.

2 I also would share with you a personal
3 commitment. If the assessment of an administrative
4 penalty would put someone out of business, it's not the
5 kind of action I'm inclined to pursue. To me, that is
6 something that the Community Services Block Grant Act
7 spells out a very clear process in terms of hearings on
8 eligible entity status, and it would be my intention that
9 that would be the way that those kinds of issues would be
10 pursued.

11 MR. OXER: Good. Any members of the Board care
12 to make a comment?

13 (No response.)

14 MR. OXER: I get the last word, like I always
15 do. Thanks for all your input. This is a good thing that
16 we do and I appreciate the effort on everybody's behalf.
17 We'll see you on May 8. We're adjourned.

18 (Whereupon, at 1:56 p.m., the meeting was
19 concluded.)

C E R T I F I C A T E

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MEETING OF: TDHCA Board of Trustees

LOCATION: Austin, Texas

DATE: April 10, 2014

I do hereby certify that the foregoing pages, numbers 1 through 162, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Housing and Community Affairs.

/s/ Nancy H. King 04/16/2014
(Transcriber) (Date)

On the Record Reporting
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