Previous Participation Reviews
Previous Participation Reviews

- Why do them?
  - Required by **TEX. GOV’T CODE §2306.057**

  - Sec. 2306.057. COMPLIANCE ASSESSMENT REQUIRED FOR PROJECT APPROVAL BY BOARD. (a) Before the board approves any project application submitted under this chapter, the department, through the division with responsibility for compliance matters, shall:
    - (1) assess:
      - (A) the compliance history in this state of the applicant and any affiliate of the applicant with respect to all applicable requirements; and
      - (B) the compliance issues associated with the proposed project; and
    - (2) provide to the board a written report regarding the results of the assessments described by Subdivision (1).
    - (b) The written report described by Subsection (a)(2) must be included in the appropriate project file for board and department review.
    - (c) The board shall fully document and disclose any instances in which the board approves a project application despite any noncompliance associated with the project, applicant, or affiliate.
    - (d) In assessing the compliance of the project, applicant, or affiliate, the board shall consider any relevant compliance information in the department's database created under Section 2306.081, including compliance information provided to the department by the Texas State Affordable Housing Corporation.
The Department has developed the previous participation review rule to fulfill this requirement.

Currently found in 10 TAC, Chapter 1, Subchapter C.
Background / EARAC

- The Executive Award Review Advisory Committee ("EARAC") is required by Tex. Gov’t Code §2306.1112
  (a) The department shall establish an executive award and review advisory committee to make recommendations to the board regarding funding and allocation decisions.
  (b) The advisory committee must include representatives from the department's underwriting and compliance functions and from the divisions responsible for administering federal housing funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. Section 12701 et seq.) and for administering low income housing tax credits.
  (c) The advisory committee is not subject to Chapter 2110.
  (d) Expired.
Background / EARAC

- Prior to each Board meeting EARAC meets and considers proposed awards under any program (Multifamily, single family, community affairs etc.) that may be presented to the Board for approval.
- EARAC is advised of the results of the previous participation review.
- EARAC also reviews the compliance history for certain ownership transfers.
Background / EARAC (as of 11/2016)

- Brooke Boston, Deputy Executive Director
- Brent Stewart, Director of Real Estate Analysis
- Marni Holloway, Director of Multifamily Finance
- Michael Lyttle, Chief of External Affairs
- Patricia Murphy, Chief of Compliance
- Raquel Morales, Director of Asset Management
- Sharon Gamble, Competitive HTC Administrator
- Teresa Morales, Manager of Multifamily
- Tim Irvine, Executive Director
- Tom Gouris, Deputy Executive Director
Background / events of noncompliance

- A complete list of events of noncompliance can be found in a chart in 10 TAC §10.624. The “events” are all the things we monitor for.

- Examples: household income above income limit upon initial occupancy, units leased to ineligible students, violations of the Uniform Physical Condition Standards, gross rents above the limits, utility allowance violations, failure to provide social services, etc.
Background / events of noncompliance

- When we monitor, if an event of noncompliance is identified, the monitoring letter indicates the finding and provides a corrective action period of 90 days for most events. The corrective action period can be extended upon request for a total corrective action period not to exceed 6 months.

- Requests for extensions must be made in writing during the corrective action period, and they can only be granted if there is good cause.
Background / events of noncompliance

- During previous participation reviews, the number of events of noncompliance is determined.
- Some events of noncompliance are not taken into consideration:
  - Events of noncompliance that are corrected during the corrective action period.
  - Events of noncompliance (that were not corrected during the corrective action period) and have been corrected for more than 3 years.
  - Casualty loss if the restoration period has not expired.
Background / events of noncompliance

Continued

- Failure to provide Fair Housing Disclosure Notice if the household has vacated and the date of noncompliance was within the first 6 months of 2013.

- Household income above income limit upon initial occupancy if the household moved into the unit prior to award of Department funds and the issue cannot be corrected because of other federal regulations.

- Events of noncompliance that are still within the corrective action period.

- Events of noncompliance with an out of compliance date prior to the applicant’s period of control (if corrected).
Background / events of noncompliance

- Events of noncompliance are considered by category, not by unit.
- For example,
  - Suppose a property was monitored in 2014 and 6 units were identified with the event of noncompliance “household income above income limit upon initial occupancy.” If the noncompliance was corrected for 2 during the corrective action period but 4 units were still out of compliance at the time of the previous participation review, that would be 1 event, not 4.
Background / portfolio size

- The rule has different tolerance levels for larger and smaller portfolios.
- Larger portfolios can have more “events of noncompliance” before there is any consequence.
## Background concepts / portfolio size

<table>
<thead>
<tr>
<th>Portfolio Size</th>
<th># of properties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small</td>
<td>5 or fewer</td>
</tr>
<tr>
<td>Medium</td>
<td>6 to 12</td>
</tr>
<tr>
<td>Large</td>
<td>13 to 19</td>
</tr>
<tr>
<td>Extra large</td>
<td>20 or more</td>
</tr>
</tbody>
</table>
The rule looks at the portfolio size of the applicant group. So, if developer A controls 2 properties and partners with developer B who controls 24 properties, for the previous participation review the application will be considered a extra large portfolio.

If developer A applies by themselves, they will be considered a small portfolio.
Once the portfolio size of the application and the number of events of noncompliance are known, the application is classified as a category 1, 2, 3 or 4.

The chart on the next slide explains how this is done.
<table>
<thead>
<tr>
<th>Portfolio</th>
<th># of developments controlled</th>
<th># of events to be a category 1</th>
<th># of events to be a category 2</th>
<th># of events to be a category 3</th>
<th># of events to be a category 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small Portfolio</td>
<td>5 or fewer</td>
<td>0</td>
<td>1</td>
<td>More than 1, fewer than 6</td>
<td>6 or more</td>
</tr>
<tr>
<td>Medium portfolio</td>
<td>6 to 12</td>
<td>0</td>
<td>More than 0, fewer than 3</td>
<td>More than 2, fewer than 8</td>
<td>8 or more</td>
</tr>
<tr>
<td>Large Portfolio</td>
<td>13 to 19</td>
<td>0</td>
<td>More than 0, fewer than 5</td>
<td>More than 5, fewer than 11</td>
<td>11 or more</td>
</tr>
<tr>
<td>Extra large portfolio</td>
<td>20 or more</td>
<td>0</td>
<td>More than 0, less than 7</td>
<td>More than 6, 14 or fewer</td>
<td>15 or more</td>
</tr>
</tbody>
</table>
Other matters EARAC may consider

- Uncorrected issues
- Non-responsiveness
- Past enforcement action
- Unpaid Fees
- Past due loans
- Failure to provide evidence of property taxes paid
- Failure to provide evidence of insurance
• If any of the following are present the application will be considered a category 3 regardless of portfolio size:
  ❖ There are three (3) or fewer events of noncompliance that are currently uncorrected at the developments affiliated with the application;
  ❖ No response was received during the corrective action period for three (3) or fewer monitoring events that occurred within the last three (3) years; or
  ❖ A Development affiliated with the application that is or was controlled by the applicant or proposed incoming owner has been the subject of a final order and the terms have not been violated.
If any of the following exist the application will be considered a category 4 regardless of portfolio size:

- There are more than three events of noncompliance that are uncorrected at the Developments affiliated with the application;
- No response was received during the corrective action period for more than three (3) monitoring events that occurred within the last three (3) years;
- A Development affiliated with the application that is or was controlled by the applicant or proposed incoming owner has been the subject of a final order and the terms have been violated;

(continued)
Continued....

- The applicant or proposed incoming owner failed to meet the terms and conditions of a prior approval imposed by the EARAC, the Governing Board, voluntary compliance agreement, or court order;
- Payment of principal or interest on a loan due to the Department is past due beyond any grace period provided for in the applicable loan documents;
- The Department has requested and not been provided evidence that the owner has maintained required insurance on any collateral for any loan held by the Department;

(continued)
Continued…

- The Department has requested and not been provided evidence that property taxes have been paid or satisfactory evidence of a tax exemption on any collateral for any loan held by the Department; or

- Fees or other amounts owed to the Department are thirty days or more past due.
Category 1 and 2 applications clear the previous participation review with no additional action.

Category 3 applicants are contacted and provided a 5 business day period to comment on their compliance history.

Category 4 applicants are contacted and provided a 5 business day period to propose terms and conditions to address concerns raised by their compliance history.
Ownership Transfers

- Prior to approval of an ownership transfer, the Department performs a previous participation review to determine the compliance status of the incoming owner.

- If the proposed incoming owner is a category 3 or 4, they are notified and provided a 5-day period to respond and/or propose terms and conditions.
If I’m contacted what should I say?

- If there is something on the compliance record that you don’t agree with, contact the Chief of Compliance.
- For example, if you believe the initial response submitted during the corrective action period was sufficient and should have been accepted, request a review. This process is described in the compliance rule 10 TAC §10.605.
Some things you should ask yourself

- Why was our property not in compliance the day TDHCA showed up to monitor?
- Was it just human error or is there a systemic problem?
- Does our onsite staff have all the training and resources they need?
- Are they keeping up with changes in program rules?
If the event of noncompliance is still uncorrected, figure out why.

Commit to a date certain for resolution.
Responding to EARAC

- If you see ways that you can improve your internal operations, explain that. How will that be measured?
- If you have already made changes to avoid the issues in the future, explain those changes.
- If recent monitoring visits have resulted in “no findings” in your response, let EARAC know.
Responding to EARAC

- Responses that are not helpful:
  - No response or acknowledgement of the email
  - “That event of noncompliance was corrected last year”
  - Sending us copies of monitoring and/or close out letters
• After reviewing your response EARAC will
  - recommend award with no conditions;
  - recommend award with conditions; or
  - not recommend award
If recommended with conditions, the applicant contact will receive an email explaining the recommended conditions.

If you have questions or want to request a change to the conditions, reply to the email as soon as possible.

The language in the Board book is controlling, not the staff email, so be sure to read the Board write up carefully.
If not recommended, the applicant contact will receive an email.

If the applicant wants to appeal they must within 7 days:

- File a written appeal
- State in the appeal that they disagree with the EARAC recommendation and explain why, providing specific supporting information
- Applicants can also request an in person meeting with EARAC
- EARAC only makes recommendations
- The Board makes awards
- If you disagree with EARAC’s recommendation, you may make public comment on the posted action item. If you wish to provide any written materials in support of your position you must follow the requirements in 10 TAC §1.10 regarding Public Comment Procedures.
There is an online forum open to solicit input about ways to improve the previous participation review process.

Questions or prefer to not post on forum contact:

- Patricia Murphy (512) 475-3140
- patricia.murphy@tdhca.state.tx.us