

**BOARD BOOK OF  
January 16, 2020**



**Leslie Bingham Escareño, Vice-Chair**

**Paul Braden, Member**

**Sharon Thomason, Member**

**Leo Vasquez, III, Member**

## Texas Department of Housing and Community Affairs

### PROGRAMMATIC IMPACT IN FISCAL YEAR 2018

The Texas Department of Housing and Community Affairs (TDHCA) is the State of Texas' lead agency responsible for affordable housing and administers a statewide array of programs to help Texans become more independent and self-sufficient. Short descriptions and key impact measures for these programs – including the total number of households/individuals that were served and total funding either administered or pledged for Fiscal Year 2018 (September 1, 2017 through August 31, 2018) – are set out below:

#### **Multifamily New Construction & Rehabilitation:**

Provides mechanisms to attract investment capital and to make available significant financing for the construction and rehabilitation of affordable rental housing through the Housing Tax Credit, Multifamily Bond, and Multifamily Direct Loan programs.

**Total Households Served: 14,832**  
**Total Funding: \$1,460,067,840**

#### **Single Family Homebuyer Assistance, New Construction, Rehabilitation, Bootstrap, and Contract for Deed:**

Assists with the purchase, construction, repair, or rehabilitation of affordable single family housing by providing grants and loans through the HOME Single Family Development, HOME Homeowner Rehabilitation Assistance, HOME Homebuyer Assistance, Amy Young Barrier Removal, and Texas Bootstrap programs. Stabilizes homeownership in colonias through the HOME Contract for Deed program.

**Total Households Served: 257**  
**Total Funding: \$15,545,196**

#### **Single Family Homeownership Program:**

Provides down payment and closing cost assistance, mortgage loans, and mortgage credit certificates to eligible households through the My First Texas Home and Mortgage Credit Certificates programs.

**Total Households Served: 8,018**  
**Total Funding: \$1,279,041,464**

#### **Rental Assistance:**

Provides rental, security, and utility deposit assistance through HOME Tenant Based Rental Assistance, and rental assistance payments through HUD Section 8 Housing Choice Vouchers and Section 811 Project Based Rental Assistance.

**Total Households Served: 1,729**  
**Total Funding: \$10,145,027**

#### **Weatherization Assistance Program:**

Provides funding to help low-income households control energy costs through the installation of energy efficient materials and through energy conservation education.

**Total Households Served: 2,667**  
**Total Funding: \$21,395,454**

#### **Homelessness:**

Funds local programs and services for individuals and families at risk of homelessness or experiencing homelessness. Primary programs are the Homeless Housing and Services program and the Emergency Solutions Grants program.

**Total Individuals Served: 48,886**  
**Total Funding: \$12,811,075**

#### **Comprehensive Energy Assistance Program:**

Provides energy utility bill assistance to households with an income at or below 150% federal poverty guidelines.

**Total Households Served: 151,141**  
**Total Funding: \$108,351,163**

#### **Community Services Block Grant:**

Provides administrative support for essential services for low-income individuals through Community Action Agencies.

**Total Individuals Served: 385,869**  
**Total Funding: \$37,322,167**

Sources: this data comes from the TDHCA 2019 State Low Income Housing Plan and Annual Report draft. Multifamily New Construction & Rehab data come from the most recent award logs from FY2018 for 4%, 9%, and Direct Loan Applications. Because Multifamily logs are updated on a monthly basis to reflect the changing status of Applications, this impact statement will also be updated on a monthly basis.

Note: Some households may be served by more than one TDHCA program.



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

**A G E N D A  
9:00 AM  
JANUARY 16, 2020**

**Dewitt C. Greer State Highway Building  
Ric Williamson Hearing Room  
125 E. 11th Street  
Austin, Texas 78701**

CALL TO ORDER

ROLL CALL

Leslie Bingham Escareño, Vice Chair

CERTIFICATION OF QUORUM

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

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

**CONSENT AGENDA**

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

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

**EXECUTIVE**

- a) Presentation, discussion, and possible action on Board meeting minutes summaries for October 10, 2019, and November 7, 2019

**J. Beau Eccles**  
General Counsel

**ASSET MANAGEMENT**

- b) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement

**Rosalio Banuelos**  
Director of  
Asset Management

01057	Beckley Townhomes	Dallas
09007	Mill Stone Apartments	Fort Worth
060062	Enclave at Parkview Apartments	Fort Worth

- c) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Exchange Land Use Restriction Agreement

07131/09914	StoneLeaf at Dalhart	Dalhart
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**COMMUNITY AFFAIRS**

- d) Presentation, discussion, and possible action regarding authorization to release a Notice of Funding Availability for Program Year 2020 Community Services Block Grant Discretionary funds for education and employment initiatives for Native American and migrant seasonal farm worker populations

**Gavin Reid**  
Manager of  
Planning and Training

**RULES**

- e) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 10 Subchapter E, Post Award and Asset Management Requirements, and an order adopting new 10 TAC Chapter 10 Subchapter E, Post Award and Asset Management Requirements, and directing their publication in the *Texas Register*
- f) Presentation, discussion, and possible action on the adoption of the repeal of 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule; the adoption of new 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule; and directing their submission for adoption to the *Texas Register*
- g) Presentation, discussion, and possible action on the adoption of the repeal of 10 TAC Chapter 28, Taxable Mortgage Program; the adoption of new 10 TAC Chapter 28, Taxable Mortgage Program; and directing their submission for adoption to the *Texas Register*

**Rosalio Banuelos**  
Director of  
Asset Management

**Monica Galuski**  
Director of  
Bond Finance

**HOME AND HOMELESSNESS PROGRAMS**

- h) Presentation, discussion, and possible action on awards for the 2019 HOME Investment Partnerships Program Single Family Development Open Cycle Notice of Funding Availability

**Abigail Versyp**  
Director of HOME and  
Homelessness Programs

**CONSENT AGENDA REPORT ITEMS**

**ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:**

- a) Outreach and Activities Report (Dec. 2019-Jan. 2020)
- b) Report on the Department’s Swap Portfolio and recent activities with respect thereto

**Michael Lyttle**  
Director of  
External Affairs

**Monica Galuski**  
Director of  
Bond Finance

**ACTION ITEMS**

**ITEM 3: COMMUNITY AFFAIRS**

Presentation, discussion, and possible action regarding authorization to reprogram Community Services Block Grant discretionary funds towards the procurement of one or more providers to provide fiscal and cost allocation related training and technical assistance for Community Services Block Grant eligible entities

**Michael DeYoung**  
Director of  
Community Affairs

**ITEM 4: FAIR HOUSING, DATA MANAGEMENT AND REPORTING**

Presentation, discussion, and possible action authorizing the Department to submit an application for Fair Housing Initiative Program – Education and Outreach Initiative (FR-6300-N-21-A) released by the U.S. Department of Housing and Urban Development, and if successfully awarded to operate such program

**Brooke Boston**  
Director of Programs

**ITEM 5: OCI, HTF, AND NSP**

Presentation, discussion, and possible action on an amendment to the Neighborhood Stabilization Program 1 Agreement 77090000601 and associated loan documents with City Wide Community Development Corporation and authorization to award additional funding from Neighborhood Stabilization Program – Program Income

**Raul Gonzales**  
Director of  
OCI, HTF, and NSP

**ITEM 6: MULTIFAMILY FINANCE**

- a) Presentation, discussion, and possible action regarding the issuance of Determination Notices for 4% Housing Tax Credit Applications
  - 20422 Brush Country Cottages Dilley
  - 20423 Chula Vista San Diego
  - 20424 Cielo Lindo Edcouch

**Teresa Morales**  
Director of  
Multifamily Bonds

20425	La Estancia	Sebastian
20426	La Posada I & II	Elsa
20427	La Reina	La Villa
20428	La Sombra	Donna
20429	Las Palmas	La Feria
20430	Leuty Avenue	Justin
20431	Los Laureles	Edcouch
20432	Los Naranjos	Alton
20433	Oak Haven	Donna
20434	Raintree	Alamo
20435	Seagraves Garden	Seagraves
20436	Silver Trail	Menard
20437	The Village	Tomball
20438	Valley View	Valley View
20439	Villa Vallarta	Rio Grande City
20440	Vista Verde	Cotulla
20441	Willowick	Gainesville
20442	Windmill	Giddings
20423	Windwood I & II	Kingsland
19471	Austin Manor	Austin ETJ

- b) Presentation, discussion, and possible action regarding a waiver of certain requirements in 10 TAC §11.1(d)(122) regarding the definition of Supportive Housing

**Marni Holloway**  
Director of  
Multifamily Finance

**ITEM 7: RULES**

- a) Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review Advisory Committee; an order proposing new 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review Advisory Committee; and directing their publication for public comment in the *Texas Register*
- b) Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 90, Migrant Labor Housing Facilities, an order adopting new 10 TAC Chapter 90, Migrant Labor Housing Facilities and directing publication in the *Texas Register*

**Patricia Murphy**  
Director of Compliance

**Tom Gouris**  
Director of HOME and  
Special Initiatives

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

**EXECUTIVE SESSION**

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

**Leslie Bingham Escareño**  
Vice Chair

The Board may go into Executive Session Pursuant to Tex. Gov't Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee;

Pursuant to Tex. Gov't Code §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a settlement offer;

Pursuant to Tex. Gov't Code §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules

of Professional Conduct of the State Bar of Texas clearly conflicts with Tex. Gov't Code Chapter 551; including seeking legal advice in connection with a posted agenda item;

Pursuant to Tex. Gov't Code §551.072 to deliberate the possible purchase, sale, exchange, or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person; and/or

Pursuant to Tex. Gov't Code §2306.039(c) the Department's internal auditor, fraud prevention coordinator or ethics advisor may meet in an executive session of the Board to discuss issues related to fraud, waste or abuse.

#### **OPEN SESSION**

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

#### **ADJOURN**

To access this agenda and details on each agenda item in the board book, please visit our website at [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us) or contact Michael Lyttle, 512-475-4542, TDHCA, 221 East 11<sup>th</sup> Street, Austin, Texas 78701, and request the information. If you would like to follow actions taken by the Governing Board during this meeting, please follow TDHCA account (@tdhca) on Twitter.

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact MeLissa Nemecek, ADA Responsible Employee, at 512-475-3959 or Relay Texas at 1-800-735-2989, at least five days before the meeting so that appropriate arrangements can be made. Non-English speaking individuals who require interpreters for this meeting should contact Elena Peinado, 512-475-3814, at least five days before the meeting so that appropriate arrangements can be made. Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado, al siguiente número 512-475-3814 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

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

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

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

**THIS RESTRICTION IS APPLICABLE TO THE IDENTIFIED MEETING ROOM ON THIS DATE AND DURING THE MEETING OF THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

1a

BOARD ACTION REQUEST

BOARD SECRETARY

JANUARY 16, 2020

Presentation, discussion, and possible action on Board meeting minutes summaries for October 10, 2019, and November 7, 2019

RECOMMENDED ACTION

Approve the Board meeting minutes summaries for October 10, 2019, and November 7, 2019

RESOLVED, that the Board meeting minutes summaries for October 10, 2019, and November 7, 2019, are hereby approved as presented.

Texas Department of Housing and Community Affairs Governing Board  
Board Meeting Minutes Summary  
October 10, 2019

On Thursday, the tenth day of October 2019, at 8:00 a.m., the regular meeting of the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or the Department) was held in Hearing Room E1.028 of the Texas Capitol Extension, 1100 Congress Avenue, Austin, Texas.

The following members, constituting a quorum, were present and voting:

- J.B. Goodwin
- Leslie Bingham-Escareño
- Paul A. Braden
- Asusena Reséndiz
- Sharon Thomason
- Leo Vasquez

J.B. Goodwin served as Chair, and James “Beau” Eccles, TDHCA General Counsel, served as secretary.

1) The Board unanimously approved the Consent Agenda as amended with the following items removed:

- Item 1(f) – Presentation, discussion, and possible action on an order proposing amendments to 10 TAC §8.7, Tenant Selection and Screening; an order proposing amendments to 10 TAC §23.61, Tenant-Based Rental Assistance (TBRA) General Requirements; and directing their publication in the Texas Register
- Item 7(b) – Presentation, discussion, and possible action on amendments to 10 TAC §10.602 Notice to Owners and Corrective Action Periods; §10.605 Elections under IRC §42(g); §10.607 Reporting Requirements; §10.609 Notices to the Department; §10.610 Written Policies and Procedures, §10.611 Determination, Documentation and Certification of Annual Income; §10.612 Tenant File Requirements; §10.613 Lease Requirements; §10.614 Utility Allowances; §10.615 Elections under IRC §42(g); Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments; §10.616 Household Unit Transfer Requirements for All Programs; §10.617 Affirmative Marketing Requirements, §10.618 Onsite Monitoring; §10.622 Special Rules Regarding Rents and Rent Limit Violations; §10.623 Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period; §10.624 Compliance Requirements for Developments with 811 PRA Units; and Figure §10.625; and directing that they be published for public comment in the Texas Register

- Item 7(d) – Presentation, discussion, and possible action on an order proposing new 10 TAC, Chapter 10, Subchapter G, Affirmative Marketing Requirements and Written Policies and Procedures, and directing its publication for public comment in the Texas Register
- Item 8(a) – Presentation, discussion and possible action on requests for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for 17736 Providence at Ted Trout Drive, Hudson

2) Action Item 3 – Presentation, discussion, and possible action on the election of Governing Board Officers for the upcoming biennium pursuant to Tex. Gov't Code §2306.030 – was presented by Chairman Goodwin. The Board unanimously selected Ms. Bingham-Escareño as vice chair; Mr. Eccles as Secretary; and David Cervantes, TDHCA Director of Administration, as Treasurer.

3) Action Item 4 – Presentation, discussion, and possible action on Dispute of the Compliance Division's assessment of the Applicant's compliance history to be reported to the Executive Award Review Advisory Committee for Estates at Shiloh (19439) – was presented by Patricia Murphy, TDHCA Director of Compliance, with additional information from Bobby Wilkinson, TDHCA Executive Director. Following public comment (listed below), the Board unanimously approved staff recommendation that the applicant's compliance history not preclude an award.

- John Shackelford, attorney representing the applicant, provided information on the item

4) Action Item 5(a) – Presentation, discussion, and possible action on 2020 Ending Homelessness Fund Awards – was presented by Abigail Versyp, TDHCA Director of Home and Homelessness Programs. The Board unanimously approved staff recommendation to make the awards.

5) Action Item 5(b) – Presentation, discussion, and possible action on an amendment to the 2018 Emergency Solutions Grants Program Contract for Youth and Family Alliance dba LifeWorks – was presented by Ms. Versyp. Following public comment (listed below), the Board unanimously approved staff recommendation to amend the contract.

- Susan McDowell, Lifeworks, thanked the board and staff as well as provided information on the item

6) Action Item 6 – Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application for 18235 Memorial Apartments, McAllen – was presented by Rosalio Banuelos, TDHCA Director of Asset Management, with additional information from Mr. Wilkinson, Mr. Eccles, and Marni Holloway, TDHCA Director of Multifamily Finance. Following public comment (listed below), the Board unanimously denied staff recommendation to deny the amendment request and, as a result, approved the material amendment request.

- Michael Lyttle, TDHCA Director of External Affairs, read letters into the record in opposition to staff recommendation from the Honorable Vicente Gonzales, U.S. Congressman, 15<sup>th</sup> District of Texas; and the Honorable Juan “Chuy” Hinojosa, Texas State Senator, District 20
- Bill Fisher, Sonoma Housing and the applicant, testified in opposition to staff recommendation
- Noe Reyes, citizen, testified in opposition to staff recommendation
- Juan Maldonado, Hidalgo County Housing Authority Board member, testified in opposition to staff recommendation
- Mike Lopez, Hidalgo County Housing Authority, testified in opposition to staff recommendation
- John Shackelford, attorney representing the applicant, testified in opposition to staff recommendation

7) Action Item 7(a) – Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 10 Subchapter E, Post Award and Asset Management Requirements, and an order proposing new 10 TAC Chapter 10 Subchapter E, Post Award and Asset Management Requirements, and directing their publication for public comment in the Texas Register – was presented by Mr. Banuelos. The Board unanimously approved staff recommendation on the proposed repeal of the existing rules and to publish the new, draft rules for public comment.

8) Action Item 7(c) – Presentation, discussion, and possible action on the proposed repeal of 10 TAC Chapter 13, the Multifamily Direct Loan Rule, and the proposed new 10 TAC Chapter 13, the Multifamily Direct Loan Rule, and directing the publication for public comment in the Texas Register – was presented by Andrew Sinnott, TDHCA Multifamily Loans Program Administrator. The Board unanimously approved staff recommendation on the proposed repeal of the existing rules and to publish the new, draft rules for public comment.

9) Action Item 7(e) – Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 20, Single Family Programs Umbrella Rule, and an order adopting new 10 TAC Chapter 20, Single Family Programs Umbrella Rule, and directing their publication in the Texas Register – was presented by Raul Gonzales, TDHCA Director of the Office of Colonia Initiatives, Housing Trust Fund, and Neighborhood Stabilization Program. Following public comment (listed below), the Board unanimously approved staff recommendation to repeal the existing rules and adopt the new rules.

- Lauren Loney, Texas Housers, provided comment on the rules
- Amy Ledbetter Parham, Texas Habitat for Humanity, testified in support of staff recommendation

10) Action Item 7(f) – Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 26, Texas Housing Trust Fund Rule, and an order adopting new 10 TAC Chapter 26, Texas Housing Trust Fund Rule, and directing their publication in the Texas Register – was presented by Mr. Gonzales. The Board unanimously approved staff recommendation to repeal the existing rules and adopt the new rules.

11) Action Item 7(g) – Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 90, Migrant Labor Housing Facilities; an order proposing new 10 TAC Chapter 90, Migrant Labor Housing Facilities; and directing its publication for public comment in the Texas Register – was presented by Tom Gouris, TDHCA Director of Special Initiatives, with additional information from Mr. Wilkinson. Following public comment (listed below), the Board unanimously approved staff recommendation on the proposed repeal of the existing rules and to publish the new, draft rules for public comment.

- Dave Mauch, Texas Rio Grande Legal Aid, provided comments on the draft rules

12) Action Item 8(a) – Presentation, discussion and possible action on requests for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for 17028 The Vineyard on Lancaster, Fort Worth; 17295 Legacy Trails of Decatur, Decatur; 17327 Legacy Trails of Lindale, Lindale; 17290 Golden Trails, West; and 17259 Mistletoe Station, Fort Worth – was presented by Ms. Holloway with additional information from Mr. Eccles. Following public comment (listed below), the Board unanimously approved staff recommendation to treat 17028 The Vineyard on Lancaster, 17327 Legacy Trails of Lindale, 17290 Golden Trails, and 17259 Mistletoe Station under the force majeure rule. The Board also approved denied staff recommendation on 17295 Legacy Trails of Decatur and, as a result, approved the request from 17295 to be treated under the force majeure rule.

- Lora Myrick, BETCO Consulting representing 17295 Legacy Trails of Decatur, testified in opposition to staff recommendation
- Bob Long, Hillside Development representing 17295 Legacy Trails of Decatur, testified in opposition to staff recommendation
- Hunter Botts, Affordable Housing Partners representing 17295 Legacy Trails of Decatur, provided information on the item
- Kelly Garrett, representing 17295 Legacy Trails of Decatur, provided information on the item

13) Action Item 8(b) – Presentation, discussion, and possible action on a timely filed appeal of the expiration of a Commitment of Housing Tax Credits for 19223 Bamboo Estates Apartments – was presented by Ms. Holloway with additional information from Mr. Eccles. Following public comment (listed below), the Board unanimously approved staff recommendation to deny the appeal.

- Sunny Philip, representing the applicant, testified in opposition to staff recommendation

- Chloe Dotson, Community Development Corporation of Brownsville, testified in support of staff recommendation

14) Action Item 8(c) – Presentation, discussion, and possible action regarding the issuance of a Determination Notice for 4% Housing Tax Credit Applications for 19407 Norwood Estates, Austin; 19436 Bridge at Granada, Austin; 19440 Ventura at Parmer, Austin ETJ; 19441 Decker Lofts, Austin ETJ; and 19437 Residences at Stillwater, Georgetown – was presented by Teresa Morales, TDHCA Director of Multifamily Bonds, with additional information from Mr. Wilkinson. The Board unanimously approved staff recommendation to issue determination notices for the transactions.

15) Action Item 8(d) – Presentation, discussion, and possible action regarding the issuance of a Determination Notice for 4% Housing Tax Credit Applications and a determination of eligibility under 10 TAC §11.101 of the Qualified Allocation Plan for 19429 Govalle Terrace, Austin; and 19433 Wayman Manor, Temple – was presented by Ms. Morales. The Board unanimously approved staff recommendation to find the applications eligible and to issue the determination notices.

16) Action Item 8(e) – Presentation, Discussion and Possible Action on a Determination regarding Eligibility under 10 TAC §11.101(a)(3) related to Neighborhood Risk Factors for Bridge at Canyon View (#19411) in Austin – was presented by Ms. Morales with additional information from Mr. Wilkinson. Following public comment (listed below), the Board voted 4-2 (nays: Goodwin and Bingham-Escareño) to deny staff recommendation which was to find the site ineligible. As a result, the Board’s action found the site to be eligible.

- Jake Brown, LBG Development and the applicant, testified in opposition to staff recommendation
- David Simmons, Texas STEM Coalition, provided information on the item
- Joanna Rowley, Texas STEM Coalition director at Mendez Middle School, provided information on the item
- Barry Palmer, Coats Rose attorney representing the applicant, testified in opposition to staff recommendation

17) Action Item 8(f) – Presentation, discussion, and possible action on a Determination Notice for Housing Tax Credits and an Award of Direct Loan Funds (#19418, Bridge at Loyola Lofts, Austin) – was presented by Ms. Morales. The Board voted unanimously to approve staff recommendation for issuing the credits and making the Direct Loan award.

18) Action Item 8(g) – Presentation, discussion, and possible action regarding a determination of eligibility under 10 TAC §13.5(d)(2) of the 2018 Multifamily Direct Loan Rule for 18509 El Sereno Apartments, Cibolo – was presented by Ms. Holloway with additional information from Megan Sylvester, TDHCA Federal Compliance Counsel. Following public comment (listed below), the Board voted unanimously to deny staff recommendation finding the application ineligible. As a result, the application was determined to be eligible.

- Cynthia Bast, Locke Lord attorney representing the applicant, testified in opposition to staff recommendation
- Moe Mohanna, the applicant, testified in opposition to staff recommendation

19) Action Item 8(h) – Presentation, discussion and possible action regarding an Award of Direct Loan funds from the 2019-1 Multifamily Direct Loan Notice of Funding Availability for 19503 Sierra Royale, Robstown – was presented by Mr. Sinnott. The Board voted unanimously to approve staff recommendation and make the award.

20) Action Item 8(i) – Presentation, discussion, and possible action on the Fifth Amendment to the 2019-1 Multifamily Direct Loan Annual Notice of Funding Availability and approving its publication in the Texas Register – was presented by Mr. Sinnott. The Board voted unanimously to approve staff recommendation approving and publishing the fifth amendment to the Direct Loan NOFA.

21) During the Public Comment portion of the meeting the follow persons provided comment:

- Mr. Lyttle read a letter into the record from The Honorable Kel Seliger, Texas State Senator, District 31, containing comments on the 2020 Qualified Allocation Plan
- Mr. Lyttle read a letter into the record from The Honorable Four Price, Texas State Representative, District 87, containing comments on the 2020 Qualified Allocation Plan

Except as noted otherwise, all materials presented to and reports made to the Board were approved, adopted, and accepted. These minutes constitute a summary of actions taken. The full transcript of the meeting, reflecting who made motions, offered seconds, etc., questions and responses, and details of comments, is retained by TDHCA as an official record of the meeting.

There being no further business to come before the Board, the meeting adjourned at 12:15 p.m. The next meeting is set for Thursday, November 7, 2019.

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Secretary

Approved:

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Chair

Texas Department of Housing and Community Affairs Governing Board  
Board Meeting Minutes Summary  
November 7, 2019

On Thursday, the seventh day of November 2019, at 8:00 a.m., the regular meeting of the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or the Department) was held in Hearing Room E2.028 of the Texas Capitol Extension, 1100 Congress Avenue, Austin, Texas.

The following members, constituting a quorum, were present and voting:

- J.B. Goodwin
- Leslie Bingham-Escareño
- Paul A. Braden
- Asusena Reséndiz
- Leo Vasquez

J.B. Goodwin served as Chair, and James “Beau” Eccles, TDHCA General Counsel, served as secretary.

1) The Board unanimously approved the Consent Agenda as presented.

2) Action Item 3 – Presentation, discussion, and possible action on Colonia Self-Help Center Program Awards to Maverick County and Starr County in accordance with Tex. Gov’t Code §2306.582 through Community Development Block Grant Funding – was presented by Raul Gonzalez, TDHCA Director of the Office of Colonia Initiatives, Housing Trust Fund, and the Neighborhood Stabilization Program, with additional information from Bobby Wilkinson, TDHCA Executive Director; and Brooke Boston, TDHCA Director of Programs. The Board unanimously approved staff recommendation to make the awards as conditioned.

3) Action Item 4(a) – Presentation, discussion, and possible action regarding Resolution No. 20-006 authorizing the form and substance of warehousing agreement, retained mortgage loan agreement and master trade confirmation; authorizing the execution of documents and instruments related to the foregoing; making certain finds and determinations in connection therewith; and containing other provisions relating to the subject – was presented by Monica Galuski, TDHCA Director of Bond Finance. The Board unanimously approved staff recommendation to approve the resolution.

4) Action Item 4(b) – Presentation, discussion, and possible action regarding the Issuance of a Multifamily Note (Ventura at Hickory Tree) Resolution No. 20-007 and a Determination Notice of Housing Tax Credits – was presented by Teresa Morales, TDHCA Director of Multifamily Bonds. The Board unanimously approved staff recommendation to issue the credits and approve the resolution.

5) Action Item 5(a) – Presentation, discussion, and possible action regarding the issuance of Determination Notices for 4% Housing Tax Credit Applications for 19406 Primrose Village Apartments, Weslaco; 19411 Bridge at Canyon View, Austin; 19428 Riverstone Apartments, San Marcos; 19438 Legacy Senior Residences, Round Rock; 19439 Estates of Shiloh, Dallas; and 19444 Oaks on North Plaza, Austin – was presented by Ms. Morales. The Board unanimously approved staff recommendation to issue the credits on all six proposed transactions.

6) Chairman Goodwin announced that consideration of Action Item 5(b) would be moved to the end of the agenda.

7) Action Item 5(c) – Presentation, discussion, and possible action on an award of a Predevelopment Grant from the Multifamily 2019-2 Special Purpose Notice of Funding Availability: Predevelopment – was presented by Andrew Sinnott, TDHCA Multifamily Loans Program Administrator. The Board unanimously approved staff recommendation to award the grant.

8) Action Item 5(d) – Presentation, discussion, and possible action regarding the approval for publication in the Texas Register of the 2020-2 Multifamily Direct Loan Special Purpose Notice of Funding Availability – was presented by Mr. Sinnott, with additional information from Mr. Eccles and Marni Holloway, TDHCA Director of Multifamily Finance. Following public comment (listed below), the Board voted 4-1 (Mr. Braden voting nay) to approve staff recommendation to publish the NOFA.

- Ryan Combs, Gardner Capital, provided comments on the item
- Barry Palmer, Coats Rose attorney, provided comments on the item

9) Action Item 6(a) – Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC §1.10, Public Comment Procedures; and an order adopting new 10 TAC §1.10, Public Comment Procedures; and directing their publication in the Texas Register – was presented by Ms. Boston. The Board unanimously approved staff recommendation for final adoption of the rules.

10) Action Item 6(b) – Presentation, discussion, and possible action on an order proposing new 10 TAC, Chapter 10, Subchapter G, Affirmative Marketing Requirements and Written Policies and Procedures, and directing its publication for public comment in the Texas Register – was presented by Cate Tracz, TDHCA Manager of Fair Housing. Additional information was provided by Mr. Wilkinson; Mr. Eccles; Megan Sylvester, TDHCA Federal Compliance Counsel; and Patricia Murphy, TDHCA Director of Compliance. Following public comment (listed below), the Board unanimously approved a motion to table this item until the December 2019 meeting.

- Walter Moreau, Foundation Communities, testified in opposition to staff recommendation

11) As part of tabling Action Item 6(b), the Board also tabled Action Item 6(c) – Presentation, discussion, and possible action on amendments to Title 10, Part 1, Chapter 10, Subchapter F of the Texas Administrative Code, in particular 10 TAC §10.602 Notice to Owners and Corrective Action Periods; §10.605 Elections under IRC §42(g); §10.607 Reporting Requirements; §10.609 Notices to the Department; §10.610 Written Policies and Procedures, §10.611 Determination, Documentation and Certification of Annual Income; §10.612 Tenant File Requirements; §10.613 Lease Requirements; §10.614 Utility Allowances; §10.615 Elections under IRC §42(g); Additional Income and Rent Restrictions for HTC, Exchange, and TCAP Developments; §10.616 Household Unit Transfer Requirements for All Programs; §10.617 Affirmative Marketing Requirements, §10.618 Onsite Monitoring; §10.622 Special Rules Regarding Rents and Rent Limit Violations; §10.623 Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period; §10.624 Compliance Requirements for Developments with 811 PRA Units; and Figure §10.625; and directing that they be published for public comment in the Texas Register – until the December 2019 meeting.

12) The Board unanimously approved a motion to re-open consideration of the Consent Agenda, to approve it as presented except for Item 1(h) – Presentation, discussion, and possible action on an order proposing amendments to 10 TAC §8.7, Tenant Selection and Screening; an order proposing amendments to 10 TAC §23.61, Tenant-Based Rental Assistance (TBRA) General Requirements; and directing their publication for adoption in the Texas Register – which will be tabled until the December 2019 meeting, and then to close any further consideration of the Consent Agenda.

13) Action Item 6(d) – Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 12, concerning the Multifamily Housing Revenue Bond Rules, and an order adopting new 10 TAC Chapter 12 concerning the Multifamily Housing Revenue Bond Rules, and directing its publication in the Texas Register – was presented by Ms. Morales. The Board unanimously approved staff recommendation for final adoption of the rules.

14) Action Item 6(e) – Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 25, Colonia Self-Help Center Program Rule, an order adopting new 10 TAC Chapter 25, Colonia Self-Help Center Program Rule, and directing their publication in the Texas Register – was presented by Mr. Gonzalez. The Board unanimously approved staff recommendation for final adoption of the rules.

15) Action Item 6(f) – Presentation, discussion, and possible action on the proposed repeal of 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule; proposed new 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule; and directing their publication for public comment in the Texas Register – was presented by Ms. Galuski. The Board approved staff recommendation to publish the draft rules for public comment.

16) Action Item 6(g) – Presentation, discussion, and possible action on the proposed repeal of 10 TAC Chapter 28, Taxable Mortgage Program; proposed new 10 TAC Chapter 28, Taxable Mortgage Program; and directing their publication for public comment in the Texas Register –

was presented by Ms. Galuski. The Board approved staff recommendation to publish the draft rules for public comment.

17) Action Item 5(b) – Presentation, discussion, and possible action on an order approving and recommending to the Governor the repeal of 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and an order approving and recommending to the Governor in accordance with Tex. Gov't Code §2306.6724(b) the new 10 TAC Chapter 11 concerning the Housing Tax Credit Program Qualified Allocation Plan, and, upon action by the Governor, directing its publication in the Texas Register – was presented by Ms. Holloway with additional information from Mr. Wilkinson; Mr. Eccles; and Brent Stewart, TDHCA Director of Real Estate Analysis. Following public comment (listed below), the Board unanimously approved staff recommendation as amended for final adoption of the rules.

- Jennifer Hicks, True Casa Consulting, testified in opposition to staff recommendation
- Toni Jackson, Banks Law Firm attorney on behalf of Harris County Housing Authority, testified in opposition to staff recommendation
- Gerry Cichon, Housing Authority of the City of El Paso, testified in opposition to staff recommendation
- Tracey Fine, National Church Residences, testified in opposition to staff recommendation
- Lisa Stephens, Texas Coalition of Affordable Housing Developers, testified in opposition to staff recommendation
- Water Moreau, Foundation Communities, testified in support of staff recommendation
- Lauren Loney, Texas Housers, testified in support of staff recommendation
- Jean Latsha, Pedcor Investments, testified in opposition to staff recommendation
- Barry Palmer, Coats Rose attorney on behalf of Houston Housing Authority, testified in opposition to staff recommendation
- Debra Guerrero, NRP Group, testified in opposition to staff recommendation
- Cyrus Reed, Lone Star Chapter of the Sierra Club, provided comments on the rules

18) During the Public Comment portion of the meeting the follow persons provided comment:

- Tamea Dula, Coats Rose attorney, provided suggestions on the presentation of the subsequent QAP (2021) during the rule-making phase

Except as noted otherwise, all materials presented to and reports made to the Board were approved, adopted, and accepted. These minutes constitute a summary of actions taken. The full transcript of the meeting, reflecting who made motions, offered seconds, etc., questions and responses, and details of comments, is retained by TDHCA as an official record of the meeting.

There being no further business to come before the Board, the meeting adjourned at 11:17 a.m. The next meeting is set for Thursday, December 12, 2019.

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Secretary

Approved:

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Chair

1b

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**JANUARY 16, 2020**

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement for Beckley Townhomes (HTC #01057)

**RECOMMENDED ACTION**

**WHEREAS**, Beckley Townhomes formerly known as Rosemont at Timbercreek (the Development) received a 9% Housing Tax Credit (HTC) award in 2001 to construct 100 multifamily units in Dallas, Dallas County;

**WHEREAS**, the HTC application for the Development received points and/or other preferences for agreeing to provide a Right of First Refusal (ROFR) to purchase the Development over a two-year ROFR period;

**WHEREAS**, in 2015, the 84th Texas Legislature, Regular Session, amended Tex. Gov't Code §2306.6725 and §2306.6726 to allow, among other things, for a 180-day ROFR period and to permit a Qualified Entity to purchase a property under ROFR, and defined a Qualified Entity to mean an entity described by, or as amended, an entity controlled by an entity described by, 26 U.S.C. §42(i)(7)(A), Internal Revenue Code of 1986;

**WHEREAS**, TX Timbercreek Housing, L.P. (the Development Owner or Owner) requests to amend the Land Use Restriction Agreement (LURA) for the Development to incorporate changes made to Tex. Gov't Code §2306.6725 and §2306.6726 in 2015; and

**WHEREAS**, amendment to the ROFR period in the LURA is a material change requiring Board approval under 10 TAC §10.405(b)(2)(E), and the Development Owner has complied with the procedural amendment requirements in 10 TAC §10.405(b) to place this request before the Board, including holding a public hearing;

**NOW, therefore, it is hereby**

**RESOLVED**, that the material LURA amendment for Beckley Townhomes is approved as presented to this meeting, and the Executive Director and his designees are hereby authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

## **BACKGROUND**

Beckley Townhomes f/k/a Rosemont at Timbercreek received a 9% HTC award in 2001 to construct 100 multifamily units in Dallas, Dallas County. In a letter dated November 6, 2019, Paul R. Sween, President of Polaris Holdings I, LLC, the owner of Timbercreek Acquisition, LLC, the General Partner of the Development Owner, requested approval to amend the HTC LURA related to the ROFR provision.

In 2001, the Housing Tax Credit application allotted five points to the Development Owner in exchange for a two-year ROFR period. Upon completion of the Development, the Owner entered into a Declaration of Land Use Restrictive Covenants/Land Use Restriction Agreement for Low-Income Housing Tax Credits recorded in Dallas County on December 29, 2003.

As approved in 2001, the additional use restrictions in the current HTC LURA would require, among other things, a two-year ROFR to sell the Development based on a set order of priority to a community housing development organization (as defined for purposes of the federal HOME Investment Partnership Program at 24 CFR Part 92), to a qualified nonprofit organization (as defined in Internal Revenue Code §42(h)(5)(C)), a tenant organization or to the Department, if at any time after the 15<sup>th</sup> year of the Compliance Period the Owner decides to sell the property. The property is currently in the 17<sup>th</sup> year of the 25-year the Compliance Period and the 40-year Extended Use Period specified in the LURA. However, the Owner desires to exercise its rights under Tex. Gov't Code §2306.6726 to amend the LURA to allow for a 180-day ROFR period.

In 2015, the 84th Texas Legislature, Regular Session, passed HB 3576, which amended Tex. Gov't Code §2306.6725 to allow for a 180-day ROFR period and Tex. Gov't Code §2306.6726 to allow for a Qualified Entity to purchase a development under a ROFR provision of the LURA and satisfy the ROFR requirement. Additionally, Tex. Gov't Code §2306.6726, as amended by HB 3576, defines Qualified Entity to mean an entity described by, or an entity controlled by an entity described by, §42(i)(7)(A) of the Internal Revenue Code of 1986. The Department's 2019 Uniform Multifamily Rules, Subchapter E, include administrative procedures to allow a Development Owner to conform to the new ROFR provisions described in the amended statute.

The Development Owner has complied with the amendment and notification requirements under 10 TAC §10.405(b). The Development Owner held a public hearing on the matter on December 5, 2019, at the Development's onsite clubhouse. There were no other attendees at the public hearing, and the Owner received no written comment regarding the requested amendment.

Staff recommends approval of the material LURA amendment as presented herein.

**TX TIMBERCREEK HOUSING, L.P.**

801 Beckleymeade Avenue  
Dallas, Texas 75232

November 6, 2019

**VIA HAND DELIVERY**

Ms. Lee Ann Chance  
Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78701-2410

Re: TDHCA File No. 01057; Beckley Townhomes (f/k/a Rosemont at Timbercreek)  
(the "**Property**")

Dear Ms. Chance:

The undersigned, being the General Partner (herein so called) of TX Timbercreek Housing, L.P., a Texas limited partnership and the current owner of the Property (the "**Partnership**"), is submitting this letter to request a material LURA amendment in order to modify the two-year Right of First Refusal ("**ROFR**") period.

**Request to Amend ROFR Period**

In 2015, Texas Government Code Section 2306.6726 was amended to allow for a 180-day ROFR period. Currently, the LURA for this Property requires a two-year ROFR period. Section 10.405(b)(2)(E) of the Rules allows for a LURA amendment in order to conform a ROFR to the provisions in Section 2306.6726. Therefore the General Partner, acting on behalf of the Partnership, requests a LURA amendment to eliminate the two-year ROFR period and replace it with the 180-day ROFR period.

**LURA Amendment**

In accordance with Section 10.405(b) of the Rules, the Partnership, is delivering a fee in the amount of \$2,500.00. In addition, the Partnership commits to hold a public hearing, as required by the Rules, and to notify all residents, investors, and lenders. The Partnership will proceed to set a date and time for the public hearing and will provide TDHCA with evidence that the notice has been delivered and the hearing has been conducted. With that, the Partnership requests staff recommendation in support of this request to be considered at the next available TDHCA Board meeting.

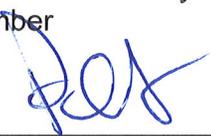
Thank you very much for your assistance. Please do not hesitate to contact us if you require any additional information.

Sincerely,

**TX TIMBERCREEK HOUSING, L.P.**,  
a Texas limited partnership

By: Timbercreek Acquisition, LLC,  
a Minnesota limited liability company,  
its general partner

By: Polaris Holdings I, LLC,  
a Minnesota limited liability company,  
its sole member

By:   
Name: Paul R. Sween  
Title: President

**TX TIMBERCREEK HOUSING, L.P.**  
801 Beckleymeade Avenue  
Dallas, Texas 75232

November 25, 2019

Dear Resident:

Beckley Townhomes (f/k/a Rosemont at Timbercreek) (the “**Community**”) is owned by TX Timbercreek Housing, L.P. (the “**Owner**”). In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the “**Department**”) (Phone: 512-475-3800; Website: [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)).

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, the Owner will offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years and permitting the Owner to transfer the Community to certain kinds of entities in the right of first refusal process. To be consistent with a change in Texas law, the Owner is requesting Department approval to change the two-year period to a 180-day period. TDHCA Uniform Multifamily Rules require that notice of this request be provided to all residents of the Property.

In making its decision whether to approve Owner’s request, the Department considers the opinions and views of the members of the Community. Accordingly, there will be a public meeting to discuss this matter and we invite you to attend. The public hearing is your opportunity to discuss the amendment request and voice your concerns. The public hearing will take place at the Community’s management office/clubhouse on **December 5, 2019, at 4:00 p.m.** Information from this meeting will be submitted for consideration by the Department’s governing board at its next available meeting.

Please note that this proposal will **not** affect your current lease agreement, your rent payment, or your security deposit. You will **not** be required to move out of your home or take any other action because of this change. If the Department approves the Owner’s request, the Community will not change at all from its current form.

If you are unable to attend the public hearing and would like to submit your concerns in writing to the Department, please send your comments via email to [asset.management@tdhca.state.tx.us](mailto:asset.management@tdhca.state.tx.us) or you may mail them to:

Texas Department of Housing and Community Affairs  
Asset Management Division  
221 East 11th Street  
Austin, Texas 78701

We appreciate that Beckley Townhomes (f/k/a Rosemont at Timbercreek) is your home and we invite you to attend and give your input on this proposal.

Thank you for choosing Beckley Townhomes (f/k/a Rosemont at Timbercreek) as your home.

Sincerely,

**TX TIMBERCREEK HOUSING, L.P.**,  
a Texas limited partnership

By: Timbercreek Acquisition, LLC,  
a Minnesota limited liability company,  
its general partner

By: Polaris Holdings I, LLC,  
a Minnesota limited liability company,  
its sole member

By:   
Name: Paul R. Sween  
Title: President

**TX TIMBERCREEK HOUSING, L.P.**  
801 Beckleymeade Avenue  
Dallas, Texas 75232

November 25, 2019

**Lender – Via Fed-Ex**  
Dougherty Funding LLC  
90 South Seventh Street, Suite 4300  
Minneapolis, Minnesota 55402

To whom it may concern:

TX Timbercreek Housing, L.P. (the "**Owner**") is the owner of Beckley Townhomes (f/k/a Rosemont at Timbercreek) (the "**Community**") which is located at 801 Beckleymeade Avenue, Dallas, Texas 75232. In order to help finance the construction and development of the Community, the Owner received federal funding through the Texas Department of Housing and Community Affairs (the "**Department**").

A contractual restriction imposed by the Department mandates that if the Owner decides to sell the Community at a certain time, a right of first refusal requires the Owner to offer the Community for sale to a non-profit organization or a tenant organization for a period of up to two years. Recent changes in Texas law allow for changes to the right of first refusal requirement, including reducing the two-year period to a 180-day period and permitting the Owner to transfer the Community to certain kinds of entities in the right of first refusal process. The Owner is asking TDHCA to modify its contract so that these changes permitted by Texas law will apply.

In making its decision whether to approve Owner's request, the Department considers the opinions and views of the members of the Community and its elected representatives. Accordingly, there will be a public meeting to discuss this matter. This meeting will take place at the Community's management office/clubhouse on **December 5, 2019, at 4:00 p.m.** Information from this meeting will be submitted for consideration by the Texas Department of Housing and Community Affairs Governing Board at their next available meeting.

We invite you or one of your staff to attend and give your input on this proposal.

Sincerely,

**TX TIMBERCREEK HOUSING, L.P.,**  
a Texas limited partnership

By: Timbercreek Acquisition, LLC,  
a Minnesota limited liability company,  
its general partner

By: Polaris Holdings I, LLC,  
a Minnesota limited liability company,  
its sole member

By:   
\_\_\_\_\_  
Name: Paul R. Sween  
Title: President

**AGENDA FOR PUBLIC HEARING**

- I. Welcome and Call to Order
- II. Introduction of Representatives of Property Owner and Property Manager (*and other representatives as appropriate*)
- III. Reason for Tenant Notice and Public Hearing (*ROFR requirement in LURA*)
- IV. Questions from Tenants
- V. Adjournment



*FORM FOR*  
**MINUTES**

Date: December 5th, 2019, 4:00 pm.

Public Hearing regarding Shady Creek Apartments' LURA Amendment / ROFR Requirement

The public hearing related to the request to amend the LURA Amendment - Right of First Refusal ("ROFR") period was held in the Onsite Community Club House. Nia Keeton was in attendance representing the owner and property manager. There were 0 residents in attendance. A summary of the discussion is as follows:

No comments received. Meeting adjourned at 5:30pm

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**JANUARY 16, 2020**

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement for Mill Stone Apartments (HTC #09007)

**RECOMMENDED ACTION**

**WHEREAS**, Mill Stone Apartments (the Development) received a 9% Housing Tax Credit (HTC) award in 2009 to construct 144 multifamily units in Fort Worth, Tarrant County;

**WHEREAS**, the HTC application for the Development received points and/or other preferences for agreeing to provide a Right of First Refusal (ROFR) to purchase the Development over a two-year ROFR period;

**WHEREAS**, in 2015, the 84th Texas Legislature, Regular Session, amended Tex. Gov't Code §2306.6725 and §2306.6726 to allow, among other things, for a 180-day ROFR period and to permit a Qualified Entity to purchase a property under ROFR, and defined a Qualified Entity to mean an entity described by, or as amended, an entity controlled by an entity described by, 26 U.S.C. §42(i)(7)(A), Internal Revenue Code of 1986;

**WHEREAS**, F.W. Mill Stone Partners, L.P. (the Development Owner or Owner) requests to amend the Land Use Restriction Agreement (LURA) for the Development to incorporate changes made to Tex. Gov't Code §2306.6725 and §2306.6726 in 2015; and

**WHEREAS**, amendment to the ROFR period in the LURA is a material change requiring Board approval under 10 TAC §10.405(b)(2)(E), and the Development Owner has complied with the procedural amendment requirements in 10 TAC §10.405(b) to place this request before the Board, including holding a public hearing;

**NOW, therefore, it is hereby**

**RESOLVED**, that the material LURA amendment for Mill Stone Apartments is approved as presented to this meeting, and the Executive Director and his designees are hereby authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

## **BACKGROUND**

Mill Stone Apartments received a 9% Housing Tax Credit award in 2009 to construct 144 multifamily units in Fort Worth, Tarrant County. In a letter dated November 13, 2019, Albert E. Magill, III, representative of the Development Owner, requested approval to amend the HTC LURA related to the ROFR provision.

In 2009, the Housing Tax Credit application allotted one point to the Development Owner in exchange for a two-year ROFR period. Upon completion of the Development, the Owner entered into a LURA recorded in Tarrant County on December 28, 2010, which was later amended and recorded on July 15, 2011.

As approved in 2009, the additional use restrictions in the current HTC LURA would require, among other things, a two-year ROFR to sell the Development based on a set order of priority to a community housing development organization (as defined for purposes of the federal HOME Investment Partnership Program at 24 CFR Part 92), to a qualified nonprofit organization (as defined in Internal Revenue Code §42(h)(5)(C)), to a tenant organization or to the Department, if at any time after the 15<sup>th</sup> year of the Compliance Period the Owner decides to sell the property. The Development is currently in the 9<sup>th</sup> year of the Compliance Period specified in the LURA. However, the Owner desires to exercise its rights under Tex. Gov't Code §2306.6726 to amend the LURA to allow for a 180-day ROFR period.

In 2015, the 84th Texas Legislature, Regular Session, passed HB 3576, which amended Tex. Gov't Code §2306.6725 to allow for a 180-day ROFR period and Tex. Gov't Code §2306.6726 to allow for a Qualified Entity to purchase a development under a ROFR provision of the LURA and satisfy the ROFR requirement. Additionally, Tex. Gov't Code §2306.6726, as amended by HB 3576, defines Qualified Entity to mean an entity described by, or an entity controlled by an entity described by, §42(i)(7)(A) of the Internal Revenue Code of 1986. The Department's 2019 Uniform Multifamily Rules, Subchapter E, include administrative procedures to allow a Development Owner to conform to the new ROFR provisions described in the amended statute.

The Development Owner has complied with the amendment and notification requirements under 10 TAC §10.405(b). The Development Owner held a public hearing on the matter on November 25, 2019, at the Development's onsite office/community clubhouse. The provided meeting minutes report no negative comments received regarding the requested amendment.

Staff recommends approval of the material LURA amendment as presented herein.

F. W. Mill Stone, LP  
2603 Augusta Dr. Suite 1400  
Houston, Texas 77057

November 13, 2019

Ms. Lee Ann Chance  
Asset Resolution Manager – Region 3  
Texas Dept. of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78711-3941

Re: F. W. Mill Stone Partners, LP TDHCA 090027  
CMTS 4588

Dear Ms. Chance:

Magill Development Company, LLC the Managing Partner of FW Mill Stone Development, LLC and the General Partner of FW Mill Stone Partners, LP is requesting approval to Amend the subject LURA Appendix D – Additional Use Restriction – Right of First Refusal from its current reading reflecting a two year Notice period prior to the expiration of the Compliance as well as other guidelines to a revised Right of First Refusal period as described in amended Section 2306.6725 of the Texas Governmental Code.

We have sent Notices to all Residents of Mill Stone Apartments as well as Lenders and Investors as required by the Post Award Activities Manual as attached in Exhibit A. Additionally, we have had a Public Hearing at the subject property.

Exhibit B is a copy of the minutes taken during the Public Hearing. Also, a copy of the Check and Payment Voucher is attached and was sent under separate cover to the Department for processing.

Thank you for your cooperation and support in Amending the ROFR to comply with Section 2306.6725 of the Texas Government Code.

Sincerely,



Albert E. Magill, III  
F.W. Mill Stone Partners, LP  
General Partner

NOTICE TO RESIDENTS  
Mill Stone Apartments  
8472 Randol Mill Rd.  
Fort Worth, Texas 76120  
817-238-7244

November 18, 2019

***TO ALL RESIDENTS OF ENCALVE APARTMENTS***

RE: LURA Amendment Request to TDHCA for  
Mill Stone Apartments

Dear Resident(s):

**F.W. Mill Stone Partners, LP** is asking the Texas Department of Housing and Community Affairs Governing Board (the TDHCA Board) to approve an amendment to its Land Use Restrictive Agreement (LURA) that will **reduce the Notice Period for the Right of First Refusal to Qualified Entities**. TDHCA Rules require that notice of this request be provided to all residents of the property. This letter is to inform you that there will be a public hearing to discuss the request and we invite you to attend.

The public hearing is your opportunity to discuss the amendment request and voice your concern regarding **Right of First Refusal to Qualified Entities**. Information obtained from this meeting will be submitted for consideration by the TDHCA Board at their January 16, 2020 meeting.

If you are unable to attend the public hearing and would like to submit your concerns in writing to the Department, please send your comments via email to [asset.management@tdhca.state.tx.us](mailto:asset.management@tdhca.state.tx.us) or you may mail them to:

Texas Department of Housing & Community Affairs  
Asset Management Division  
221 East 11th Street  
Austin, Texas 78701

A public hearing on this issue is scheduled at 8472 Randol Mill Rd.:

***Location: Mill Stone Apartments Community and Leasing Center***  
***Address: 8472 Randol Mill Rd.***  
***Date: November 25, 2019***  
***Time: 4:30 pm***

Sincerely,

April Lopez  
Regional Vice President  
Alpha Barnes Real Estate Services

FW Mill Stone Partners, LP  
2603 Augusta Dr. Suite 1400  
Houston, Texas 77057

December 17, 2019

Mr. Andrew D. Clauer  
Vice President  
Hudson Housing Capital  
630 Fifth Avenue - Rockefeller Center 28<sup>th</sup> Floor  
New York, NY 10111

Re: F. W. Mill Stone Partners, LP TDHCA 090027  
CMTS 4588

Dear Mr. Clauer:

Magill Development Company, LLC the Managing Partner of Enclave at Parkview Development, LLC and the General Partner of Enclave at Parkview, LP is requesting approval to Amend the subject LURA Appendix D – Additional Use Restriction – Right of First Refusal from its current reading reflecting a two year Notice period prior to the expiration of the Compliance as well as other guidelines to a revised Right of First Refusal period as described in amended Section 2306.6725 of the Texas Governmental Code.

In accordance with 10 TAC §10.405 (b)(3) of the Asset Management Rules, a public hearing was scheduled and held at the subject property on November 25th, 2019, at 4:30 p.m. No objections or negative comments regarding the requested amendment were received.

Please accept this as Notice of the request to Amend the LURA for the subject property associated with the ROFR section. This Amendment is scheduled to be presented to the Texas Department of Housing and Community Affairs on January 16, 2019. If you have any objections to this Amendment request you may contact me or the TDHCA prior to January 7, 2019 at the following address.

Lee Ann Chance  
Asset Resolution Manager – Region 3  
Texas Dept. of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78711-3941

Thank you for your cooperation and support to Amending the ROFR.

Sincerely,



Albert E. Magill, III  
FW MillStone Partners, LP  
General Partner

FW Mill Stone Partners, LP  
2603 Augusta Dr. Suite 1400  
Houston, Texas 77057

December 17, 2019

Mr. Robert D. LaRue  
Senior Vice President  
Grandbridge Real Estate Group  
2200 West Loop South, Suite 600  
Houston, Texas 77027

Re: Loan 357838 - F. W. Mill Stone Partners, LP TDHCA 090027  
CMTS 4588

Dear Rob:

Magill Development Company, LLC the Managing Partner of Enclave at Parkview Development, LLC and the General Partner of Enclave at Parkview, LP is requesting approval to Amend the subject LURA Appendix D – Additional Use Restriction – Right of First Refusal from its current reading reflecting a two year Notice period prior to the expiration of the Compliance as well as other guidelines to a revised Right of First Refusal period as described in amended Section 2306.6725 of the Texas Governmental Code.

In accordance with 10 TAC §10.405 (b)(3) of the Asset Management Rules, a public hearing was scheduled and held at the subject property on November 25th, 2019, at 4:30 p.m. No objections or negative comments regarding the requested amendment were received.

Please accept this as Notice of the request to Amend the LURA for the subject property associated with the ROFR section. This Amendment is scheduled to be presented to the Texas Department of Housing and Community Affairs on January 16, 2020. If you have any objections to this Amendment request you may contact me or the TDHCA prior to January 7, 2020 at the following address.

Lee Ann Chance  
Asset Resolution Manager – Region 3  
Texas Dept. of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78711-3941

Thank you for your cooperation and support to Amending the ROFR.

Sincerely,



Albert E. Magill, III  
FW Mill Stone Partners, LP  
General Partner

Draft  
Amendment

**EXHIBIT "C"**

**APPENDIX A - ADDITIONAL USE RESTRICTIONS - RIGHT OF FIRST REFUSAL**

**Right of First Refusal to Qualified Entities**

The Project Owner has entered into an Agreement for the Provision of the Right of First Refusal with the Department. If at any time after the fifteenth year of the Compliance Period, the Project Owner determines to sell the Project, a notice of intent to sell the Project ("Notice of Intent") shall be given to the Department and the tenants of the Project, and this Right of First Refusal Agreement shall serve as evidence that the Project Owner agrees to provide to a "Qualified Entity" (as defined in Section 2306.6726(d)(2) of the Texas Government Code), a Right of First Refusal to purchase the Project in accordance with the "Minimum Purchase Price" (as defined in Section 42(i)(7)(B) of the Code).

Project Owner agrees to the following terms:

1. The Project Owner must complete any right of first refusal process upon the earlier of:
  - a. the Project Owner's determination to sell the Project upon or following the end of the Compliance Period, or
  - b. the Project Owner's request to the Department, pursuant to Section 42(h)(6)(E)(i)(II) of the Code, to find a buyer who will purchase the Project pursuant to a "Qualified Contract" (as defined in Section 42(h)(6)(F) of the Code).

Upon the occurrence of either 1a or 1b, the Project Owner shall provide a Notice of Intent to the Department and to such other parties as the Department may direct at that time.

2. During the 180 days following the giving of Notice of Intent, the Project Owner may enter into an agreement to sell the Project only in accordance with a Right of First Refusal for sale at the Minimum Purchase Price with parties in the following order of priority:
  - a. during the first 60-day period following the giving of Notice of Intent, only with a Qualified Entity that is also a community housing development organization, as defined for purposes of the federal HOME Investment Partnerships Program at 24 C.F.R. §92.2 (a "CHDO") approved by the Department as a CHDO or controlled (wholly owned) by a CHDO approved by the Department;
  - b. during the second 60-day period after the Notice of Intent, only with a Qualified Entity that:
    - (i) is described in Section 2306.6706 of the Texas Government Code;
    - (ii) is controlled (wholly owned) by an entity described in Section 2306.6706 of the Texas Government Code; or
    - (iii) is a tenant organization; and
  - c. during the last 60-day period after the Notice of Intent, with any other Qualified Entity and approved by the Department.

3. After the later to occur of (i) the end of the Compliance Period or (ii) 180 days from delivery of a Notice of Intent, the Project Owner may sell the Project without regard to any Right of First Refusal established by Declaration if:
  - a. no offer to purchase the Project at or above the Minimum Purchase Price has been made by a Qualified Entity, or
  - b. a period of 120 days has expired from the date of acceptance of such offer without the sale having occurred, provided that the failure to close within such 120-day period shall not have been caused by the Project Owner or matters related to the title for the Project.
4. At any time prior to the giving of the Notice of Intent, the Project Owner may enter into an agreement with one or more specific Qualified Entities to provide a Right of First Refusal to purchase the Project for the Minimum Purchase Price, but any such agreement shall only permit purchase of the Project by such entity in accordance with and subject to the priorities set forth in paragraph 2.
5. The Department shall, at the request of the Project Owner, identify in the Declaration a Qualified Entity which shall hold a limited priority in exercising a Right of First Refusal to purchase the Project at the Minimum Purchase Price, in accordance with and subject to the priorities set forth in paragraph 2.

**Public Hearing Minutes  
November 25, 2019 (4:30 PM)  
Mill Stone Apartments  
Fort Worth, Texas**

**Introduction of Guest:** Please see Attendance Sign in Sheet for attendees.

**Background by Bert Magill:**

As part of the requirements in all affordable housing communities the state agency Texas Department of Housing and Community Affairs (TDHCA) require each property to file of record in its Home County a Land Use Restrictive Agreement (LURA) to stipulate that the property must maintain its affordable housing through the compliance and extended compliance period. This requirement confirms that the 144 restricted units in the Mill Stone Apartments must maintain its Rent and Income restrictions throughout the full term as stipulated in the LURA.

One of the many other requirements that are included in the LURA is the Right of First Refusal of a non-profit organization to obtain first rights the purchase the property after the initial compliance period after the property is in service for 15 years. The current LURA stipulates that the TDHCA has up to two years to find a Non-profit to purchase the property. This Meeting is being held to give notice that the Owner his making the request to TDHCA to Amend the LURA to have this two year offering period changed to a shorter period of 180 days.

**Proposed LURA Amendment by Bert Magill:**

This Meeting is being held to give notice that the Owner is making the request to TDHCA to Amend the LURA to have this two year offering period changed to a shorter period of 180 days. Owner has no current offer the purchase the property.

**Questions from Attendees:**

Ms. Jenkins of Unit 417 asked if this amendment would have any change to her living in her unit. She also expressed that she has been a resident of Mill Stone since December 2010.

Mr. Eltacshh living in unit 516 also commented that he has lived at Mill Stone since 2011  
No additional questions were submitted.

**Adjournment:** 4:50PM

**Minutes Prepared by:** Bert Magill

**RESIDENT SUPPORTIVE SERVICES SIGN-IN SHEET**

Date: **November 25, 2019**

Time: 4pm

LURA  
 supportive  
 service  
 Topic:

Millstone Resident Meeting

Speaker/Host: Bert (Albert) Magill

Topic: Resident Meeting with Owner, Bert

Printed Name	Signature	Apartment	Email/ Phone #
SHEILA JENKINS	<i>Sheila Jenkins</i>	Millstone 417	
April Lopez	<i>April Lopez</i>	Millstone	
Diana Calderon	<i>Diana Calderon</i>	Millstone	
ERIC HEDDIN	<i>Eric Heddin</i>	Millstone	
Rabiah- ECTABCH	<i>Rabiah Ectabch</i>	Millstone 516	
Bert Magill	<i>Bert Magill</i>		

Speaker Signature: Bert Magill Management member: April Lopez

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**JANUARY 16, 2020**

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement for Enclave at Parkview Apartments (HTC #060062)

**RECOMMENDED ACTION**

**WHEREAS**, Enclave at Parkview Apartments (the Development) received a 9% Housing Tax Credit (HTC) award in 2006 to construct 144 multifamily units in Fort Worth, Tarrant County;

**WHEREAS**, the HTC application for the Development received points and/or other preferences for agreeing to provide a Right of First Refusal (ROFR) to purchase the Development over a two-year ROFR period;

**WHEREAS**, in 2015, the 84th Texas Legislature, Regular Session, amended Tex. Gov't Code §2306.6725 and §2306.6726 to allow, among other things, for a 180-day ROFR period and to permit a Qualified Entity to purchase a property under ROFR, and defined a Qualified Entity to mean an entity described by, or as amended, an entity controlled by an entity described by, 26 U.S.C. §42(i)(7)(A), Internal Revenue Code of 1986;

**WHEREAS**, Enclave at Parkview, L.P. (the Development Owner or Owner) requests to amend the Land Use Restriction Agreement (LURA) for the Development to incorporate changes made to Tex. Gov't Code §2306.6725 and §2306.6726 in 2015; and

**WHEREAS**, amendment to the ROFR period in the LURA is a material change requiring Board approval under 10 TAC §10.405(b)(2)(E), and the Development Owner has complied with the procedural amendment requirements in 10 TAC §10.405(b) to place this request before the Board, including holding a public hearing;

**NOW, therefore, it is hereby**

**RESOLVED**, that the material LURA amendment for Enclave at Parkview Apartments is approved as presented to this meeting, and the Executive Director and his designees are hereby authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

## **BACKGROUND**

Enclave at Parkview Apartments received a 9% Housing Tax Credit award in 2006 to construct 144 multifamily units in Fort Worth, Tarrant County. In a letter dated November 13, 2019, Albert E. Magill, III, representative of the Development Owner, requested approval to amend the HTC LURA related to the ROFR provision.

In 2006, the Housing Tax Credit application allotted one point to the Development Owner in exchange for a two-year ROFR period. Upon completion of the Development, the Owner entered into a LURA recorded in Tarrant County on December 30, 2008, which was later amended and recorded on May 13, 2009.

As approved in 2006, the additional use restrictions in the current HTC LURA would require, among other things, a two-year ROFR to sell the Development based on a set order of priority to a community housing development organization (as defined for purposes of the federal HOME Investment Partnership Program at 24 CFR Part 92), to a qualified nonprofit organization (as defined in Internal Revenue Code §42(h)(5)(C)), to a tenant organization or to the Department, if at any time after the 15<sup>th</sup> year of the Compliance Period the Owner decides to sell the property. The Development is currently in the 12<sup>th</sup> year of the Compliance Period specified in the LURA. However, the Owner desires to exercise its rights under Tex. Gov't Code §2306.6726 to amend the LURA to allow for a 180-day ROFR period.

In 2015, the 84th Texas Legislature, Regular Session, passed HB 3576, which amended Tex. Gov't Code §2306.6725 to allow for a 180-day ROFR period and Tex. Gov't Code §2306.6726 to allow for a Qualified Entity to purchase a development under a ROFR provision of the LURA and satisfy the ROFR requirement. Additionally, Tex. Gov't Code §2306.6726, as amended by HB 3576, defines Qualified Entity to mean an entity described by, or an entity controlled by an entity described by, §42(i)(7)(A) of the Internal Revenue Code of 1986. The Department's 2019 Uniform Multifamily Rules, Subchapter E, include administrative procedures to allow a Development Owner to conform to the new ROFR provisions described in the amended statute.

The Development Owner has complied with the amendment and notification requirements under 10 TAC §10.405(b). The Development Owner held a public hearing on the matter on November 25, 2019, at the Development's onsite office/community clubhouse. The provided meeting minutes report no negative comments received regarding the requested amendment.

Staff recommends approval of the material LURA amendment as presented herein.

Enclave at Parkview, LP  
2603 Augusta Dr. Suite 1400  
Houston, Texas 77057

November 13, 2019

Ms. Lee Ann Chance  
Asset Resolution Manager – Region 3  
Texas Dept. of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78711-3941

Re: Enclave at Parkview, L.P. TDHCA 060062  
CMTS 4372

Dear Ms. Chance:

Magill Development Company, LLC the Managing Partner of Enclave at Parkview Development, LLC and the General Partner of Enclave at Parkview, LP is requesting approval to Amend the subject LURA Appendix D – Additional Use Restriction – Right of First Refusal from its current reading reflecting a two year Notice period prior to the expiration of the Compliance as well as other guidelines to a revised Right of First Refusal period as described in amended Section 2306.6725 of the Texas Governmental Code.

We have sent Notices to all Residents of Enclave at Parkview Apartments as well as Lenders and Investors as required by the Post Award Activities Manual as attached in Exhibit A. Additionally, we have had a Public Hearing at the subject property.

Exhibit B is a copy of the minutes taken during the Public Hearing. Also, a copy of the Check and Payment Voucher is attached and was sent under separate cover to the Department for processing.

Thank you for your cooperation and support in Amending the ROFR to comply with Section 2306.6725 of the Texas Government Code.

Sincerely,



Albert E. Magill, III  
Enclave at Parkview, LP  
General Partner

NOTICE TO RESIDENTS  
Enclave at Parkview Apartments  
7201 Old Decatur Rd.  
Fort Worth, Texas 76179  
817-238-7244

November 18, 2019

***TO ALL RESIDENTS OF ENCALVE APARTMENTS***

RE: LURA Amendment Request to TDHCA for  
Enclave Apartments

Dear Resident(s):

**Enclave at Parkview, LP** is asking the Texas Department of Housing and Community Affairs Governing Board (the TDHCA Board) to approve an amendment to its Land Use Restrictive Agreement (LURA) that will **reduce the Notice Period for the Right of First Refusal to Qualified Entities**. TDHCA Rules require that notice of this request be provided to all residents of the property. This letter is to inform you that there will be a public hearing to discuss the request and we invite you to attend.

The public hearing is your opportunity to discuss the amendment request and voice your concern regarding **Right of First Refusal to Qualified Entities**. Information obtained from this meeting will be submitted for consideration by the TDHCA Board at their January 16, 2020 meeting.

If you are unable to attend the public hearing and would like to submit your concerns in writing to the Department, please send your comments via email to [asset.management@tdhca.state.tx.us](mailto:asset.management@tdhca.state.tx.us) or you may mail them to:

Texas Department of Housing & Community Affairs  
Asset Management Division  
221 East 11th Street  
Austin, Texas 78701

A public hearing on this issue is scheduled at 7201 Old Decatur Rd.:

***Location: Enclave Apartments Community and Leasing Center***

***Address: 7201 Old Decatur Rd.***

***Date: November 25, 2019***

***Time: 3:00 pm***

Sincerely,

April Lopez  
Regional Vice President  
Alpha Barnes Real Estate Services

Enclave at Parkview, LP  
2603 Augusta Dr. Suite 1400  
Houston, Texas 77057

December 17, 2019

Mr. Chuck Helms  
Vice President  
Veritex Bank  
777 Post Oak Boulevard, Suite 700  
Houston, Texas 77057

Re: Enclave at Parkview, L.P. TDHCA 060062  
CMTS 4372

Dear Mr. Helms:

Magill Development Company, LLC the Managing Partner of Enclave at Parkview Development, LLC and the General Partner of Enclave at Parkview, LP is requesting approval to Amend the subject LURA Appendix D – Additional Use Restriction – Right of First Refusal from its current reading reflecting a two year Notice period prior to the expiration of the Compliance as well as other guidelines to a revised Right of First Refusal period as described in amended Section 2306.6725 of the Texas Governmental Code. (Attached)

In accordance with 10 TAC §10.405 (b)(3) of the Asset Management Rules, a public hearing was scheduled and held at the subject property on November 25th, 2019, at 3:00 p.m. No objections or negative comments regarding the requested amendment were received.

Please accept this as Notice of the request to Amend the LURA for the subject property associated with the ROFR section. This Amendment is scheduled to be presented to the Texas Department of Housing and Community Affairs on January 16, 2019. If you have any objections to this Amendment request you may contact me or the TDHCA prior to January 7, 2020 at the following address.

Lee Ann Chance  
Asset Resolution Manager – Region 3  
Texas Dept. of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78711-3941

Thank you for your cooperation and support of Amending the ROFR.

Sincerely,

  
Albert E. Magill, III  
Enclave at Parkview, LP  
General Partner

Enclave at Parkview, LP  
2603 Augusta Dr. Suite 1400  
Houston, Texas 77057

December 17, 2019

Mr. Albert E. Magill  
San Jacinto Realty Services, LLC  
2603 Augusta Dr. Suite 1400  
Houston, Texas 77057

Re: Enclave at Parkview, L.P. TDHCA 060062  
CMTS 4372

Dear Mr. Magill:

Magill Development Company, LLC the Managing Partner of Enclave at Parkview Development, LLC and the General Partner of Enclave at Parkview, LP is requesting approval to Amend the subject LURA Appendix D – Additional Use Restriction – Right of First Refusal from its current reading reflecting a two year Notice period prior to the expiration of the Compliance as well as other guidelines to a revised Right of First Refusal period as described in amended Section 2306.6725 of the Texas Governmental Code. (Attached)

In accordance with 10 TAC §10.405 (b)(3) of the Asset Management Rules, a public hearing was scheduled and held at the subject property on November 25th, 2019, at 3:00 p.m. No objections or negative comments regarding the requested amendment were received.

Please accept this as Notice of the request to Amend the LURA for the subject property associated with the ROFR section. This Amendment is scheduled to be presented to the Texas Department of Housing and Community Affairs on January 16, 2020. If you have any objections to this Amendment request you may contact me or the TDHCA prior to January 7, 2020 at the following address.

Lee Ann Chance  
Asset Resolution Manager – Region 3  
Texas Dept. of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78711-3941

Thank you for your cooperation and support to Amend the ROFR.

Sincerely,



Albert E. Magill, III  
Enclave at Parkview, LP

## APPENDIX D - ADDITIONAL USE RESTRICTIONS - RIGHT OF FIRST REFUSAL

(Only Developments which made a Right of First Refusal election after 2001 should include this page as part of the LURA.)

### Right of First Refusal to a Tenant or Qualified Nonprofit Organizations for 2001 and later allocations

The Development Owner agrees to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period for the minimum purchase price provided in, and in accordance with the requirements of, §42(i)(7) of the Code (the "Minimum Purchase Price"), to a Qualified Nonprofit Organization (as defined in §42 (h) (5) (C) of the Code), the Department, or either an individual tenant with respect to a single family building, or a tenant cooperative, a resident management corporation in the Development or other association of tenants in the Development with respect to multifamily developments (together, in all such cases, including the tenants of a single family building, a "Tenant Organization").

The following terms are hereby incorporated into this Declaration:

(i) Upon the earlier to occur of:

(I) the Development Owner's determination to sell the Development, or (II) the Development Owner's request to the Department, pursuant to §42 (h)(6)(E)(i)(II) of the Code, to find a buyer who will purchase the Development pursuant to a "qualified contract" within the meaning of §42 (h)(6)(F) of the Code, the Development Owner shall provide a notice of intent to sell the Development ("Notice of Intent") to the Department and to such other parties as the Department may direct at that time. If the Development Owner determines that it will sell the Development at the end of the Compliance Period, the Notice of Intent shall be given no later than two years prior to expiration of the Compliance Period. If the Development Owner determines that it will sell the Development at some point later than the end of the Compliance Period, the Notice of Intent shall be given no later than two years prior to the date upon which the Development Owner intends to sell the Development.

(ii) During the two years following the giving of Notice of Intent, the Development Owner may enter into an agreement to sell the Development only in accordance with a right of first refusal for sale at the Minimum Purchase Price with parties in the following order of priority:

(I) during the first six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization that is also a community housing development organization, as defined for purposes of the federal HOME Investment Partnerships Program at 24 C.F.R. § 92.1 (a "CHDO") and is approved by the Department;

(II) during the second six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization or a Tenant Organization; and

(III) during the second year after the Notice of Intent, only with the Department or with a Qualified Nonprofit Organization approved by the Department or a Tenant Organization approved by the Department.

(IV) If, during such two year period, the Development Owner shall receive an offer to purchase the Development at the Minimum Purchase Price from one of the organizations designated in subparagraphs (I) – (III) of this paragraph (within the period(s) appropriate to such organization), the Development Owner shall sell the Development at the Minimum Purchase Price to such organization. If, during such period, the Development Owner shall receive more than one offer to purchase the Development at the Minimum Purchase Price from one or more of the organizations designated in subparagraphs (I) – (III) of this paragraph (within the period(s) appropriate to such organization), the Development Owner shall sell the Development at the Minimum Purchase Price to whichever of such organization it shall choose.

(iii) At any time after the fifteenth year of the Compliance Period, but no earlier than two years after delivery of a Notice of Intent, the Development Owner may sell the Development without regard to any right of first refusal established by this Declaration if: (x) no offer to purchase the Development at or above the Minimum Purchase Price has been made by a Qualified Nonprofit Organization, a Tenant Organization or the Department, or (y) a period of 120 days has expired from the date of acceptance of such offer without the sale having occurred, provided that the failure to close within such 120-day period shall not have been caused by the Development Owner or matters related to the title for the Development.

(iv) At any time prior to the giving of the Notice of Intent, the Development Owner may enter into an agreement with one or more specific Qualified Nonprofit Organizations and/or Tenant Organizations to provide a right of first refusal to purchase the Development for the Minimum Purchase Price, but any such agreement shall only permit purchase of the Development by such organization in accordance with and subject to the priorities set forth in paragraph (ii) of this section.



DRAFT  
AMENDMENT

**EXHIBIT "C"**

**APPENDIX A - ADDITIONAL USE RESTRICTIONS - RIGHT OF FIRST REFUSAL**

**Right of First Refusal to Qualified Entities**

The Project Owner has entered into an Agreement for the Provision of the Right of First Refusal with the Department. If at any time after the fifteenth year of the Compliance Period, the Project Owner determines to sell the Project, a notice of intent to sell the Project ("Notice of Intent") shall be given to the Department and the tenants of the Project, and this Right of First Refusal Agreement shall serve as evidence that the Project Owner agrees to provide to a "Qualified Entity" (as defined in Section 2306.6726(d)(2) of the Texas Government Code), a Right of First Refusal to purchase the Project in accordance with the "Minimum Purchase Price" (as defined in Section 42(i)(7)(B) of the Code).

Project Owner agrees to the following terms:

1. The Project Owner must complete any right of first refusal process upon the earlier of:
  - a. the Project Owner's determination to sell the Project upon or following the end of the Compliance Period, or
  - b. the Project Owner's request to the Department, pursuant to Section 42(h)(6)(E)(ii) of the Code, to find a buyer who will purchase the Project pursuant to a "Qualified Contract" (as defined in Section 42(h)(6)(F) of the Code).

Upon the occurrence of either 1a or 1b, the Project Owner shall provide a Notice of Intent to the Department and to such other parties as the Department may direct at that time.

2. During the 180 days following the giving of Notice of Intent, the Project Owner may enter into an agreement to sell the Project only in accordance with a Right of First Refusal for sale at the Minimum Purchase Price with parties in the following order of priority:
  - a. during the first 60-day period following the giving of Notice of Intent, only with a Qualified Entity that is also a community housing development organization, as defined for purposes of the federal HOME Investment Partnerships Program at 24 C.F.R. §92.2 (a "CHDO") approved by the Department as a CHDO or controlled (wholly owned) by a CHDO approved by the Department;
  - b. during the second 60-day period after the Notice of Intent, only with a Qualified Entity that:
    - (i) is described in Section 2306.6706 of the Texas Government Code;
    - (ii) is controlled (wholly owned) by an entity described in Section 2306.6706 of the Texas Government Code; or
    - (iii) is a tenant organization; and
  - c. during the last 60-day period after the Notice of Intent, with any other Qualified Entity and approved by the Department.

*Draft  
Amendment*

3. After the later to occur of (i) the end of the Compliance Period or (ii) 180 days from delivery of a Notice of Intent, the Project Owner may sell the Project without regard to any Right of First Refusal established by Declaration if:
  - a. no offer to purchase the Project at or above the Minimum Purchase Price has been made by a Qualified Entity, or
  - b. a period of 120 days has expired from the date of acceptance of such offer without the sale having occurred, provided that the failure to close within such 120-day period shall not have been caused by the Project Owner or matters related to the title for the Project.
4. At any time prior to the giving of the Notice of Intent, the Project Owner may enter into an agreement with one or more specific Qualified Entities to provide a Right of First Refusal to purchase the Project for the Minimum Purchase Price, but any such agreement shall only permit purchase of the Project by such entity in accordance with and subject to the priorities set forth in paragraph 2.
5. The Department shall, at the request of the Project Owner, identify in the Declaration a Qualified Entity which shall hold a limited priority in exercising a Right of First Refusal to purchase the Project at the Minimum Purchase Price, in accordance with and subject to the priorities set forth in paragraph 2.

**Public Hearing Minutes  
November 25, 2019 (3:00 PM)  
Enclave at Parkview Apartments  
Fort Worth, Texas**

**Introduction of Guest:** Please see Attendance Sign in Sheet for attendees.

**Background by Bert Magill:**

As part of the requirements in all affordable housing communities the state agency Texas Department of Housing and Community Affairs (TDHCA) require each property to file of record in its Home County a Land Use Restrictive Agreement (LURA) to stipulates that the property must maintain its affordable housing through the compliance and extended compliance period. This requirement confirms that the 144 restricted units in the Enclave at Parkview Apartments must maintain its Rent and Income restrictions throughout the full term as stipulated in the LURA.

One of the many other requirements that are included in the LURA is the Right of First Refusal of a non-profit organization to obtain first rights the purchase the property after the initial compliance period after the property is in service for 15 years. The current LURA stipulates that the TDHCA has up to two years to find a Non-profit to purchase the property. This Meeting is being held to give notice that the Owner his making the request to TDHCA to Amend the LURA to have this two year offering period changed to a shorter period of 180 days.

**Proposed LURA Amendment by Bert Magill:**

This Meeting is being held to give notice that the Owner is making the request to TDHCA to Amend the LURA to have this two year offering period changed to a shorter period of 180 days. Owner has no current offer the purchase the property.

**Questions from Attendees:**

Ms. Synthia Morris of Unit 406 asked a question of clarification to make sure she knew that it would have no effect on her lease agreement. She also expressed that she has been a resident of Enclave since March of 2015.

Mr. Jess Diaz living in unit 1013 also commented that he has lived at Enclave December 2015

Mr. Robert Gonzalez in unit 315 indicated that he has lived at Enclave since December 2016

No additional questions were submitted.

**Adjournment:** 3:35PM

**Minutes Prepared by:** Bert Magill

## RESIDENT SUPPORTIVE SERVICES SIGN-IN SHEET

Date: **November 25, 2019**

Time: 3pm

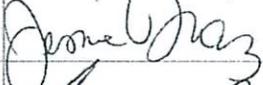
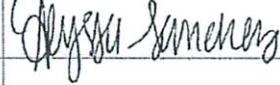
LURA  
supportive  
service  
Topic:

Resident Meeting

/enclave at Parkview

Speaker/Host: Bert (Albert) Magill

Topic: Resident Meeting with Owner, Bert

Printed Name	Signature	Apartment	Email/ Phone #
SYNTHIA MORRIS		406	
Jessie Diaz		1013	
Robert Gonzalez		B15	
April Lopez			
Samantha Elliott			
Alyssa Sanchez			
LORENZO TORRES			
Jon Carballo			
Bert Magill			

Speaker Signature: Bert Magill Management member: April Lopez

1c

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**JANUARY 16, 2020**

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Exchange Land Use Restriction Agreement for StoneLeaf at Dalhart (HTC #07131, HTC Exchange #15090009914)

**RECOMMENDED ACTION**

**WHEREAS**, StoneLeaf at Dalhart (the Development) received a 9% Housing Tax Credit (HTC) award in 2007 to construct 76 multifamily units in Dalhart, Dallam County, and subsequently exchanged its HTC award under the Tax Credit Exchange Program in 2009;

**WHEREAS**, J. Michael Sugrue, representative of the general partner of StoneLeaf at Dalhart, LP (the Development Owner or Owner), requests approval for a change in the Owner's set aside election to the Average Income Set Aside and modification in the income and rent restrictions to allow for tenants earning up to 80% Area Median Income (AMI), while maintaining an overall average unit designation that does not exceed 60% AMI and keeping the number of 30% AMI units at 16 as previously approved;

**WHEREAS**, the Owner has agreed to have a waitlist preference for the 60 non-30% AMI units for applicants at 60% AMI or below, and to not charge such households more than the 60% rent;

**WHEREAS**, Board approval is required for changes to the income or rent restrictions (including a request to implement a revised election under §42(g) of the Code) as directed in 10 TAC §10.405(b)(2)(B), and the Development Owner has complied with the procedural amendment requirements in 10 TAC §10.405(b) to place this request before the Board, including holding a public hearing; and

**WHEREAS**, the requested changes do not negatively affect the Development, impact the viability of the transaction, or impact the selection of the application for an award;

**NOW, therefore, it is hereby**

**RESOLVED**, that the material LURA amendment for StoneLeaf at Dalhart is approved as presented to this meeting, and the Executive Director and his designees are hereby, authorized, empowered, and directed to take all necessary action to effectuate the foregoing.

## **BACKGROUND**

StoneLeaf at Dalhart was originally approved for a 9% HTC award in 2007 for the new construction of 76 multifamily units (16 units at 30% AMI and 60 units at 60% AMI), electing the 40% at 60% income set aside. In 2009 the Development was approved to exchange its HTC award for Tax Exchange Program Funds and continues to lease 100% of the units to tenants whose income is 60% or less of the Area Median Income.

In a letter dated November 18, 2019, a representative of the general partner of the Owner (J. Michael Sugrue), requested a material amendment to the LURA to amend the Qualified Low Income Housing Development Election in the Application from maintaining at least 40% or more of the residential units as both rent restricted and occupied by individuals whose income is 60% or less of the area median income (40% at 60% minimum set aside election) to the new election of Average Income allowed under IRC §42(g)(1)(C) as adopted by the Federal Consolidated Appropriations Act of 2018. Mr. Sugrue indicated that the property has suffered from an average occupancy in the low 70% range for more than a year and is operating at a deficit due to a market change where major employers are paying higher wages than originally anticipated. This market shift was not predictable, and the increased income set aside to up to 80% AMI would increase the potential to reach the higher income tenants and improve the occupancy and financial feasibility of the Development, while maintaining an overall average unit designation that does not exceed 60% AMI.

Due to the fact that StoneLeaf at Dalhart was approved for an award in 2007, the Average Income Election was not an option at the time of original Application or at the time of the Exchange award in 2009, and therefore, the proposed amendment was not reasonably foreseeable or preventable by the Applicant at the time of Application.

According to the request, the existing unit mix could change from 16 at 30% and 60 at 60% AMI Units to 16 at 30%, 47 at 60%, 10 at 70%, and 3 at 80% AMI Units. The new overall average unit designation percentage of 55.79% would not exceed the 60% AMI Average Income Election requirement. The Owner indicated that this change would help the market and the Development by allowing higher income tenants. Rents will not be increased for current tenants.

Based on the Underwriter's demographic data, the proposed unit mix would income qualify 320 more households in the 2,973 square mile Primary Market Area. The Owner's goal is to increase occupancy 5% every quarter to achieve 95% occupancy by October 31, 2020.

An operating pro forma analysis completed by the Department's Real Estate Analysis Division reflected current rents annualized at 71% occupancy would provide an estimated 0.49 DCR. Rents underwritten at optimistic achievable rents, not full program rents and assuming 92.5% occupancy would produce a 2.19 DCR.

Staff reached out to the Treasury Department regarding this proposed change. Per discussion with the Treasury related to amending a property's Extended Use Agreement to allow some households at 70% and 80% AMI, Section 1602 properties (Exchange Program properties) without tax credits are subject to the allocating agency making the determination on whether or not to allow the new average income minimum set aside. The Treasury Department also indicated that this was not an option for any Development that received tax credits.

Given the current and historical difficulties of this Development in finding qualified households, staff is recommending this change, as long as the owner continues to have a waitlist preference for the 60 units for households at or below 60% AMI. If an otherwise qualified household at 60% AMI or below is on the waitlist for these 60 units, they will not be charged greater than 60% AMI rent upon occupancy. The Owner has agreed with this condition.

The lender for the Development, Davis-Penn Mortgage Co., provided a letter dated November 19, 2019, indicating support for the proposed amendment and confirming that the property has had difficulty finding tenants at the 60% AMI level and has been operating at a loss. The lender indicated that the change in income limits will not impact their loan terms.

The Development Owner has complied with the amendment and notification requirements under 10 TAC §10.405(b). The Development Owner held a public hearing on the matter on November 19, 2019, at the Development's onsite community clubhouse. No negative public comment was received regarding the requested amendment.

Staff recommends approval of the material LURA amendment as presented herein.



Addendum to Underwriting Report

TDHCA Application #:  Program(s):

Address/Location: 1719 East 1st Street

City: Dalhart County: Dallam Zip: 79022

APPLICATION HISTORY	
Report Date	PURPOSE
12/17/19	LURA Amendment (Income Averaging)
10/06/11	Amendment
12/04/09	Tax Credit Exchange
12/28/07	Addendum
10/04/07	Original Underwriting

ANALYSIS

The General Partner (GP) is requesting an amendment to the LURA to include income averaging as a way to increase occupancy and income at the property. The current unit mix includes 16 30% AMI units and 60 60% AMI units. 42 of the total 76 units are 60% AMI two bedroom units. The December 2019 rent roll shows an overall occupancy of 71%, with 22 vacant units. 18 of the 22 vacant units are two bedroom 60% AMI units.

At original underwriting, there were no capture rate thresholds in the REA rules. The original underwriting report states, " There does not appear to be very much demand for the 2 bedroom 60% units of which the development has a large percentage (56%) of their units." The 60% two bedroom unit capture rate was 215%; the three bedroom 60% AMI unit capture rate was 79%. 2019 REA rules only allow for unit capture rates up to 65% to indicate there is enough income and household size qualified households to absorb the unit mix. At original underwriting, the Gross Capture Rate was 38.91%. 2019 REA rules allow up to a 30% Gross Capture Rate for rural properties. The PMA used to generate the qualified households is 2,973 square miles.

Per GP, the market has changed and the major employers in Dalhart are paying higher wages as a way to draw employees from other rural towns. The average wages are now over the 60% AMI and the property has had to turn away potential residents because they are slightly to grossly over income. The several market rate properties in town offer rents at the 60%-70% AMI levels, but do not have to income qualify tenants, thereby leaving the Subject at a great disadvantage. Subject is equal to superior in design, amenities, finishes, and location to the other properties in town, but has been operating at a loss for over a year due to low occupancy.

Per GP, the Hilmar Cheese Factory, prison, and pig farms are the largest employers in the area. They have starting pay rates from \$25,920 to \$42,000/year without overtime. The maximum eligible income for a one person 60% income household is \$25,440. The maximum allowable 70% income limit is \$29,680 and 80% is \$33,920.

Per the property's traffic log, from July 1 to November 30, 2019, 23 households were turned away because they were over income; of these 23 households, 7 would qualify with the proposed 70% and 80% AMI units.

Based on Underwriter's demographic data, the proposed unit mix would income qualify 320 more households in the 2,973 square mile PMA.

The proposed unit mix decreases the number of 60% units from 60 to 47, replacing them with ten 70% AMI units and three 80% AMI units.

#### Operating Pro Forma

Per the December 2019 rent roll, Subject is not achieving full 60% rents at the property; the units rented in 2019 are leased approximately \$30-\$70 less than max net 60% rents. Market projects in Dalhart are achieving 60%-70% AMI rents without having to income qualify tenants.

If we annualize the current monthly rent from the December 2019 rent roll (71% occupied), it would total \$385,620 annual income. With assumed expenses at amendment, the DCR would be 0.49.

Underwriter's pro forma is used for analysis.

Rents are underwritten at optimistic achievable rents, not full program rents. Assuming 92.5% occupancy, this generates \$554k potential income and produces a 2.19 DCR. The GP's goal is to increase occupancy 5% every quarter to achieve 95% occupancy by 10/31/2020. Rents will not be increased for current tenants.

Per GP, expenses included in the amendment application are generally higher than current expenses as they are currently operating the property very lean due to the low occupancy.

Payroll has decreased due to change in the management company in July 2019. Underwriter assumed the current property tax amount paid because income will likely not increase greatly over the next few years as concessions are offered to increase occupancy. Gas and water/sewer/trash expense is expected to increase as occupancy increases as these are the utilities the landlord pays. G&A will likely decrease due to decreased legal and marketing as the property increases occupancy.

Underwriter's expense ratio is 63%; GP's is 70%; this is due to GP assuming higher expenses and lower income than Underwriter.

This underwriting assumes optimistic achievable rents and expenses. It is likely it will take a few years for the income and expenses to even out as the property increases occupancy and then retention of residents.

Market Analysis

Primary Market Area (PMA): 2,973 sq. miles 31 mile equivalent radius

The PMA consists of three census tracts covering all of Dallam and Hartley counties, totaling 2,973 square miles. Subject is located just east of the center of the PMA.

ELIGIBLE HOUSEHOLDS BY INCOME								
Dallam County Income Limits								
HH Size		1	2	3	4	5	6	7+
30% AMGI	Min	\$10,200	\$10,200	\$12,240	\$12,240	\$14,160	\$14,160	---
	Max	\$12,720	\$14,550	\$16,350	\$18,180	\$19,620	\$21,090	---
60% AMGI	Min	\$20,430	\$20,430	\$24,510	\$24,510	\$28,350	\$28,350	---
	Max	\$25,440	\$29,100	\$32,700	\$36,360	\$39,240	\$42,180	---
70% AMGI	Min	\$23,850	\$23,850	\$28,590	\$28,590	\$33,060	\$33,060	---
	Max	\$29,680	\$33,950	\$38,150	\$42,420	\$45,780	\$49,210	---
80% AMGI	Min	\$32,700	\$32,700	\$32,700	\$32,700	\$37,800	\$37,800	---
	Max	\$33,920	\$38,800	\$43,600	\$48,480	\$52,320	\$56,240	---

AFFORDABLE HOUSING INVENTORY		
Stabilized Affordable Developments in PMA ( pre-2015 )	Total Units	24
	Total Developments	1

OVERALL DEMAND ANALYSIS				
	Market Analyst		Underwriter	
	HTC	Assisted	HTC	Assisted
Total Households in the Primary Market Area			4,475	
Potential Demand from the Primary Market Area			946	
10% External Demand			95	
Potential Demand from Other Sources				
GROSS DEMAND			1,041	
Subject Affordable Units			76	
Unstabilized Competitive Units			0	
RELEVANT SUPPLY			76	
Relevant Supply ÷ Gross Demand = GROSS CAPTURE RATE			7.3%	

Population:	General	Market Area:	Rural	Maximum Gross Capture Rate:	30%
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UNDERWRITING ANALYSIS of PMA DEMAND by AMGI BAND										
AMGI Band	Market Analyst					Underwriter				
	Demand	10% Ext	Subject Units	Comp Units	AMGI Band Capture	Demand	10% Ext	Subject Units	Comp Units	AMGI Band Capture
30% AMGI						214	21	16	0	7%
60% AMGI						505	50	47	0	8%
70% AMGI						151	15	10	0	6%
80% AMGI						56	6	3	0	5%

UNDERWRITING ANALYSIS of PMA DEMAND by UNIT TYPE										
Unit Type	Market Analyst					Underwriter				
	Demand	10% Ext	Subject Units	Comp Units	Unit Capture Rate	Demand	10% Ext	Subject Units	Comp Units	Unit Capture Rate
1 BR/30%						35	4	6	0	16%
1 BR/60%						51	5	9	0	16%
1 BR/70%						64	6	1	0	1%
2 BR/30%						28	3	7	0	23%
2 BR/60%						42	4	28	0	61%
2 BR/70%						84	8	7	0	8%
2 BR/80%						89	9	2	0	2%
3 BR/30%						15	1	3	0	19%
3 BR/60%						21	2	10	0	43%
3 BR/70%						16	2	2	0	11%
3 BR/80%						45	4	1	0	2%

The Gross Capture Rate of 7.3% is well below the maximum 30% limit for rural properties, however the 2 bedroom 60% unit capture rate of 61% is approaching the 65% maximum limit.

As stated above, the proposed unit mix including the 70% and 80% units would income qualify 320 more households in the 2,973 square mile PMA. The current unit mix would produce a 11% GCR and infeasible unit capture rates.

These capture rates are understated as the market properties in the area are charging similar rents to Subject and are therefore pulling from the same demand pool, although the market properties are also able to capture tenants with higher income as well.

**Conclusion**

This underwriting is not to determine if the property meets financial and operating feasibility thresholds, but to determine if the requested changes to AMI unit designations will allow for a greater possibility of financing feasibility and project viability.

The requested LURA Amendment to include 70% and 80% units will not necessarily make this property profitable, but it does allow for a larger qualified income pool. The overall average income restriction at the property increases from 53.68% to 55.79%. The property is currently 71% occupied; increasing occupancy will increase the actual income of the property.

The Exchange Award provided in 2009 did not have the Average Income Election Set Aside nor were IRS 8609's issued as an Exchange Program Participant. Per discussion with the Treasury related to amending a property's Extended Use Agreement to allow some households at 70% and 80% incomes, Section 1602 properties without tax credits (properties that did not file a form 8609 with the IRS) are subject to the allocating agency making the determination on whether or not the new average income minimum set aside could apply.

Underwriter:	<u>Jeanna Rolsing</u>
Manager of Real Estate Analysis:	<u>Thomas Cavanagh</u>
Director of Real Estate Analysis:	<u>Brent Stewart</u>

**UNIT MIX/RENT SCHEDULE**  
**StoneLeaf at Dalhart, Dalhart, 9% HTC #07131**

LOCATION DATA	
CITY:	Dalhart
COUNTY:	Dallam
Area Median Income	\$54,400
PROGRAM REGION:	1

UNIT DISTRIBUTION							
# Beds	# Units	% Total	Assisted	MDL	Income	# Units	% Total
Eff	-	0.0%	0	0	20%	-	0.0%
1	16	21.1%	0	0	30%	16	21.1%
2	44	57.9%	0	0	40%	-	0.0%
3	16	21.1%	0	0	50%	-	0.0%
4	-	0.0%	0	0	60%	47	61.8%
5	-	0.0%	0	0	70%	10	13.2%
					80%	3	3.9%
					MR	-	0.0%
<b>TOTAL</b>	<b>76</b>	<b>100.0%</b>	<b>-</b>	<b>-</b>	<b>TOTAL</b>	<b>76</b>	<b>100.0%</b>

Pro Forma ASSUMPTIONS	
Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjust	130%
Applicable Fraction	100.00%
APP % Acquisition	3.42%
APP % Construction	9.00%
Average Unit Size	895 sf

UNIT MIX / MONTHLY RENT SCHEDULE																			
HTC		UNIT MIX				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				Average Rents Per 12/4/19 Rent Roll		
Type	Gross Rent	# Units	# Beds	# Baths	NRA	Gross Rent	Utility Allow	Max Net Program Rent	Delta to Max	Rent psf	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent psf	Delta to Max	Underwritten		
TC 30%	\$340	6	1	1	709	\$340	\$45	\$295	\$0	\$0.42	\$295	\$1,770	\$1,768	\$295	\$0.42	\$0	\$295	\$267	
TC 60%	\$681	9	1	1	709	\$681	\$45	\$636	(\$20)	\$0.87	\$616	\$5,544	\$5,544	\$616	\$0.87	(\$20)	\$616	\$605	
TC 70%	\$795	1	1	1	709	\$795	\$45	\$750	(\$75)	\$0.95	\$675	\$675	\$675	\$675	\$0.95	(\$75)	\$675		
TC 30%	\$408	7	2	2	900	\$408	\$51	\$357	(\$39)	\$0.35	\$318	\$2,226	\$2,226	\$318	\$0.35	(\$39)	\$318	\$318	
TC 60%	\$817	28	2	2	900	\$817	\$51	\$766	(\$81)	\$0.76	\$685	\$19,180	\$20,160	\$720	\$0.80	(\$46)	\$720	\$720	
TC 70%	\$953	7	2	2	900	\$953	\$51	\$902	(\$137)	\$0.85	\$765	\$5,355	\$5,355	\$765	\$0.85	(\$137)	\$765		
TC 80%	\$1,090	2	2	2	900	\$1,090	\$51	\$1,039	(\$224)	\$0.91	\$815	\$1,630	\$1,630	\$815	\$0.91	(\$224)	\$815		
TC 30%	\$472	3	3	2	1,065	\$472	\$57	\$415	(\$55)	\$0.34	\$360	\$1,080	\$1,080	\$360	\$0.34	(\$55)	\$360	\$358	
TC 60%	\$945	10	3	2	1,065	\$945	\$57	\$888	(\$73)	\$0.77	\$815	\$8,150	\$8,150	\$815	\$0.77	(\$73)	\$815	\$812	
TC 70%	\$1,102	2	3	2	1,065	\$1,102	\$57	\$1,045	(\$180)	\$0.81	\$865	\$1,730	\$1,730	\$865	\$0.81	(\$180)	\$865		
TC 80%	\$1,260	1	3	2	1,065	\$1,260	\$57	\$1,203	(\$278)	\$0.87	\$925	\$925	\$900	\$900	\$0.85	(\$303)	\$900		
<b>TOTALS/AVERAGES:</b>		<b>76</b>			<b>67,984</b>				<b>(\$76)</b>	<b>\$0.71</b>	<b>\$635</b>	<b>\$48,265</b>	<b>\$49,218</b>	<b>\$648</b>	<b>\$0.72</b>	<b>(\$63)</b>	<b>\$648</b>		<b>\$596</b>

<b>ANNUAL POTENTIAL GROSS RENT:</b>		<b>\$579,180</b>	<b>\$590,619</b>
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## STABILIZED PRO FORMA

**StoneLeaf at Dalhart, Dalhart, 9% HTC #07131**

### STABILIZED FIRST YEAR PRO FORMA

	COMPARABLES		APPLICANT				TDHCA				VARIANCE	
	Database	Current Expenses	% EGI	Per SF	Per Unit	Amount	Amount	Per Unit	Per SF	% EGI	%	\$
<b>POTENTIAL GROSS RENT</b>				\$0.71	\$635	\$579,180	\$590,619	\$648	\$0.72		-1.9%	(\$11,439)
pet, lat, key misc fees					\$6.32	\$5,760						
Misc					\$2.58	\$2,352						
Total Secondary Income					\$8.89		\$8,112	\$8.89			0.0%	\$0
<b>POTENTIAL GROSS INCOME</b>						\$587,292	\$598,731				-1.9%	(\$11,439)
Vacancy & Collection Loss				7.5% PGI		(44,047)	(44,905)	7.5% PGI			-1.9%	858
Rental Concessions						-	-				0.0%	-
<b>EFFECTIVE GROSS INCOME</b>						\$543,245	\$553,826				-1.9%	(\$10,581)

General & Administrative	\$27,177	\$358/Unit	52,236	\$687	5.85%	\$0.47	\$418	\$31,800	\$27,177	\$358	\$0.40	4.91%	17.0%	4,623
Management	\$25,166	4.3% EGI	17,755	\$234	4.96%	\$0.40	\$355	\$26,950	\$27,691	\$364	\$0.41	5.00%	-2.7%	(741)
Payroll & Payroll Tax	\$95,680	\$1,259/Unit	113,841	\$1,498	16.01%	\$1.28	\$1,145	\$87,000	\$87,000	\$1,145	\$1.28	15.71%	0.0%	-
Repairs & Maintenance	\$54,223	\$713/Unit	46,968	\$618	11.78%	\$0.94	\$842	\$64,000	\$49,400	\$650	\$0.73	8.92%	29.6%	14,600
Electric/Gas	\$17,417	\$229/Unit	18,733	\$246	5.06%	\$0.40	\$362	\$27,500	\$27,500	\$362	\$0.40	4.97%	0.0%	-
Water, Sewer, & Trash	\$46,120	\$607/Unit	44,024	\$579	9.00%	\$0.72	\$644	\$48,908	\$48,908	\$644	\$0.72	8.83%	0.0%	-
Property Insurance	\$25,488	\$0.37 /sf	28,705	\$378	5.52%	\$0.44	\$395	\$30,000	\$30,000	\$395	\$0.44	5.42%	0.0%	-
Property Tax (@ 100%) 1.7457	\$39,555	\$520/Unit	17,716	\$233	4.97%	\$0.40	\$355	\$27,000	\$17,716	\$233	\$0.26	3.20%	52.4%	9,284
Reserve for Replacements	\$20,229	\$266/Unit	24,700	\$325	4.69%	\$0.37	\$335	\$25,460	\$25,460	\$335	\$0.37	4.60%	0.0%	-
Cable TV			363	\$5	0.44%	\$0.04	\$32	\$2,400	\$2,400	\$32	\$0.04	0.43%	0.0%	-
Supportive Services			-	\$0	0.66%	\$0.05	\$47	\$3,600	\$3,600	\$47	\$0.05	0.65%	0.0%	-
TDHCA Compliance fees (\$40/HTC unit)			6,840	\$90	0.56%	\$0.04	\$40	\$3,040	\$3,040	\$40	\$0.04	0.55%	0.0%	-
Asset Mgmt Fee			-	\$0	0.00%	\$0.00	\$0	\$0	\$0	\$0	\$0.00	0.00%	0.0%	-
<b>TOTAL EXPENSES</b>					<b>69.52%</b>	<b>\$5.56</b>	<b>\$4,969</b>	<b>\$ 377,658</b>	<b>\$349,892</b>	<b>\$4,604</b>	<b>\$5.15</b>	<b>63.18%</b>	<b>7.9%</b>	<b>\$ 27,766</b>
<b>NET OPERATING INCOME ("NOI")</b>					<b>30.48%</b>	<b>\$2.44</b>	<b>\$2,179</b>	<b>\$165,587</b>	<b>\$203,934</b>	<b>\$2,683</b>	<b>\$3.00</b>	<b>36.82%</b>	<b>-18.8%</b>	<b>\$ (38,347)</b>

CONTROLLABLE EXPENSES		\$3,411/Unit		\$3,158/Unit
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## Asset Management Division

### Amendment Request Form

Completed forms and supporting materials can be emailed to [asset.management@tdhca.state.tx.us](mailto:asset.management@tdhca.state.tx.us)

#### TYPE OF AMENDMENT REQUESTED

Date Submitted: Amendment Requested: *Material LURA Amendment,*

Has the change been implemented? *No* Award Stage: *Compliance Period (After 8609s)*

**NOTE: Material Application or LURA Amendment requests must be received 45 days before the Board Meeting.**

Contact your Asset Manager if you are unsure what type of Amendment to request. Amendment submission requirements and Board dates pertaining to Material Amendments are located on the [Post Award Activities Manual page](#).

#### DEVELOPMENT INFORMATION

Dev. Name: StoneLeaf at Dalhart

File No. / CMTS No.: 07131 /4457

#### CONTACT INFORMATION

Request Submitted By: Mike Sugrue

Phone #/Email: (903) 887-4344 /

#### SECTION 1: COVER LETTER

A cover letter **MUST** be submitted with your request. Review your cover letter to ensure it includes:

- The change(s) requested
- The reason the change is necessary
- The good cause for the change
- An explanation of whether the change was reasonably foreseeable or preventable at the time of Application

#### SECTION 2: REQUIRED DOCUMENTATION

Entering an Amendment conveys to the Department that representations in the Application have changed. You **MUST** provide information about any changes made from the time of Application (or as last approved by the Department) in your request, including items that will be impacted by the requested change. Failure to represent or properly document all changes may result in delays, denials, or a request for re-submission. The following is attached:

- Revised Application Exhibits/Documents Reflecting and Verifying All Requested Changes – revised site plans, surveys, Building and Unit Configuration exhibit, agreements and org charts reflecting changes in Developers or Guarantors, etc.
- Revised Development Financing Exhibits or a Signed Statement of No Financial Impact – if sources, terms, conditions, or amounts of financing will be impacted or changed by your amendment request, revised Application exhibits and term sheets may be necessary (generally Material Amendments only)
- Amendment fee of \$2,500 for first amendments, \$3,000 for second amendments, increase of \$500 for each successive amendment (Applicable only to Material Amendments and Non-Material Amendments if changes have already been implemented) – *N/A for Developments only funded by a Direct Loan program (HOME, NSP, HTF)*

### SECTION 3A: MATERIAL APPLICATION AMENDMENT ITEMS

Check all items that have been modified from the original application (see *Post Award Rules, §10.405(a)(3)*):

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> Site plan            | <input type="checkbox"/> Scope of tenant services         | <input type="checkbox"/> Exclusion of reqs in §11.101 or §11.201.       |
| <input type="checkbox"/> Number of units*     | <input type="checkbox"/> Reduction of 3%+ in unit sq ft   | <input type="checkbox"/> Req. to implement a revised set aside election |
| <input type="checkbox"/> Bedroom mix          | <input type="checkbox"/> Reduction of 3%+ common area     | <input checked="" type="checkbox"/> Other                               |
| <input type="checkbox"/> Architectural design | <input type="checkbox"/> Residential density (5%+ change) |   |

If “Number of units” is selected above and the total LI units or LI units at any rent or income level will be reduced, also:

- Written confirmation from the lender *and* syndicator that the development is infeasible without the adjustment in units
- Evidence supporting the need for the adjustment in units

If “Request to implement a revised set aside” is selected above, also:

- Revised financial exhibits to the Application
- Written acknowledgement from all lenders and the syndicator that they are aware of the changes being requested and confirm any changes in terms as a result of the new election

*NOTE: \*The approved amendment may carry a penalty in accordance with §10.405(a)(6)(b).*

### SECTION 3B: MATERIAL LURA AMENDMENT ITEMS

Check all items that require a material LURA amendment (see Subchapter E, *§10.405(b)(2)*):

- |  |  |   |
|--|--|---|
| <input type="checkbox"/> Reductions to the number of LI units              | <input type="checkbox"/> Changes to Target Population                      | <input type="checkbox"/> Affecting Rights of Tenant/3 <sup>rd</sup> Parties |
| <input checked="" type="checkbox"/> Changes to income or rent restrictions | <input type="checkbox"/> Removal of Non-profit                             | <input type="checkbox"/> Other  |
| <input type="checkbox"/> Change in ROFR period/provisions                  | <input type="checkbox"/> Request to implement a revised set aside election |   |

The following additional items are attached for consideration or will be forthcoming:

- Draft Notice of Public Hearing\*
- Evidence of public hearing\*

*NOTE: \*Draft Notices of Public Hearing must be provided with the Amendment materials 45 days prior to the Board meeting. \*The Public Hearing must be held at least 15 business days prior to the Board meeting and evidence in the form of attendance sheets and a summary of comments made must be submitted to TDHCA within 3 days of the hearing.*

### SECTION 4A: NON-MATERIAL APPLICATION AMENDMENT SUMMARY

Check or explain items that require a non-material Application amendment (Contact your Asset Manager if you are unsure of whether your request is non-material):

- Amendment is requesting a change in Developer(s) or Guarantor(s) and pre and post change org charts, agreements to the change, and Previous Participation forms are attached.
- Changes in natural person(s) used to meet the experience requirement.
- Representations made in the Application that exceed the scope of a notification item: Describe items needed

### SECTION 4B: NON-MATERIAL LURA AMENDMENT SUMMARY

Check or explain items that require a non-material LURA amendment (Contact your Asset Manager if you are unsure of whether your request is non-material):

- HUB participation removal (request must also include documentation showing that a) the HUB is requesting removal of its own volition or is being removed as a result of default, b) the participation has been substantive or meaningful, and c) where the HUB will be replaced as a GP or SLP that is not a HUB and will sell its ownership interest, an ownership transfer request has also been submitted). HUB removal requests will only be considered after the issuance of 8609s.
- A change resulting from a Department work out arrangement as recommended by TDHCA.
- A correction of error (Amendments to Applicable Fractions, BIN lists, Accessible Units, etc.)
- Changes in amenities or supportive services that are referenced in the LURA (Requests to change amenities should address whether an amenity will be replaced by an item of equal benefit or point value).
- Other Representations made in the LURA not identified above: Describe items needed

#### SECTION 4C: NOTIFICATION ITEM SUMMARY

Check or explain items that require a notification to the Department:

- Change to the Development Site acreage required by the City or other local governmental authority, or changes resulting from survey discrepancies (less than 5% change in density)
- Minor modifications to the site plan that will not significantly impact costs (relocation or rearrangement of buildings, changes in ingress/egress, etc.)
- Increases or decreases in net rentable square footage or common areas (less than 3% change)
- Changes in amenities not requiring a change to the LURA or negatively impacting scoring
- Changes in Developers or Guarantors with no new Principals
- Other: Describe items needed



**StoneLeaf At Dalhart**

November 18, 2019

Rene Ruiz  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, TX 78701

Rene,

We are requesting a Land Use Restriction Agreement (LURA) Amendment to allow for Income Averaging. We realize that this will allow potential tenants earning up to 80% AMI to reside at StoneLeaf at Dalhart as long as the average unit designation does not exceed 60% AMI.

The property has suffered from an average occupancy in the low 70% range for more than a year and is operating at a deficit.

The market has changed and the major employers are paying wages higher than 60% AMI. We are seeing many potential tenants who are slightly to grossly over income. Our request will help with satisfying some of this market by allowing them the opportunity to reside at StoneLeaf at Dalhart.

This change in the market was not predictable. As the available workforce was shrinking the employers were forced to raise wages to be able to hire employees with the skills necessary to operate their business.

Thank you for your consideration.

Sincerely,

J. Michael Sugrue  
General Partner

cc: Rosalio Banelos

# DAVIS-PENN MORTGAGE CO.

November 19, 2019

Mr. Rosalio Banuelos  
Mr. Rene Ruiz  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Austin, Texas 78701-2410

Mr. Mike Sugrue  
Stoneleaf Companies  
1302 South 3<sup>rd</sup> Street, Suite 103  
Mabank, Texas 75156

**RE: Stoneleaf @ Dalhart  
2321 East 1<sup>st</sup> Street  
Dalhart, Texas 79022**

Gentlemen,

It has been brought to our attention by Mr. Sugrue that the Agency is considering the subject property for Income Averaging. That is great news, as the property has had difficulty finding tenants at the 60% of Median Income level, and has been operating at a loss as a result. The change in income limits will not impact our loan terms, and HUD staff has recently inquired if there was anything the Agency could do to possibly help the economics of the property.

We fully support your decision, and appreciate your efforts in helping to restore the property to an economic success.

Sincerely,



Ray Landry  
Senior Vice President



A FULL-SERVICE MORTGAGE COMPANY



## StoneLeaf At Dalhart

November 11, 2019

The Honorable Senator Kel Seliger  
Texas State Senator  
P.O. Box 12068, Capitol Station  
Austin, TX 78711

Re: StoneLeaf at Dalhart Apartments  
2321 East 1<sup>st</sup> Street Dalhart, TX 79022  
LURA Amendment Request to TDHCA

Dear Senator Seliger:

StoneLeaf at Dalhart, LP is asking the Texas Department of Housing and Community Affairs Governing Board (the TDHCA Board) to approve an amendment to its Land Use Restrictive Agreement (LURA) that will allow the property to use Income Averaging, which allows tenants earning up to 80% of Area Median Income (AMI) to occupy the premises, while the overall average income designation of the apartment homes does not exceed 60% of Area Median Income (AMI).

TDHCA Board rules require that notice of this request be given to the Senator for the district in which StoneLeaf at Dalhart Apartments is located.

A public hearing on this issue is scheduled at StoneLeaf at Dalhart Apartments:

Location: StoneLeaf at Dalhart Apartments  
2321 East 1<sup>st</sup> Street Dalhart, TX 79022  
Date: 11/19/2019  
Time: 12:00 Noon

You are invited to attend and offer your comments.

If you have any questions, please feel free to contact us.

Yours truly,

J. Michael Sugrue  
General Partner



## StoneLeaf At Dalhart

November 11, 2019

Representative John T. Smithee  
Texas House District 86  
P.O. Box 2910  
Austin, TX 78768

Re: StoneLeaf at Dalhart Apartments  
2321 East 1<sup>st</sup> Street Dalhart, TX 79022  
LURA Amendment Request to TDHCA

Dear Representative Smithee:

StoneLeaf at Dalhart, LP is asking the Texas Department of Housing and Community Affairs Governing Board (the TDHCA Board) to approve an amendment to its Land Use Restrictive Agreement (LURA) that will allow the property to use Income Averaging, which allows tenants earning up to 80% of Area Median Income (AMI) to occupy the premises, while the overall average income designation of the apartment homes does not exceed 60% of Area Median Income (AMI).

TDHCA Board rules require that notice of this request be given to the State Representative for the district in which StoneLeaf at Dalhart Apartments is located.

A public hearing on this issue is scheduled at StoneLeaf at Dalhart Apartments:

Location: StoneLeaf at Dalhart Apartments  
2321 East 1<sup>st</sup> Street Dalhart, TX 79022  
Date: 11/19/2019  
Time: 12:00 Noon

You are invited to attend and offer your comments.

If you have any questions, please feel free to contact us.

Yours truly,

J. Michael Sugrue  
General Partner



## StoneLeaf At Dalhart

November 11, 2019

Mayor Phillip Hass  
City of Dalhart  
205 Rock Island Ave.  
Dalhart, TX 79022

Re: StoneLeaf at Dalhart Apartments  
2321 East 1<sup>st</sup> Street Dalhart, TX 79022  
LURA Amendment Request to TDHCA

Dear Mayor Hass:

StoneLeaf at Dalhart, LP is asking the Texas Department of Housing and Community Affairs Governing Board (the TDHCA Board) to approve an amendment to its Land Use Restrictive Agreement (LURA) that will allow the property to use Income Averaging, which allows tenants earning up to 80% of Area Median Income (AMI) to occupy the premises, while the overall average income designation of the apartment homes does not exceed 60% of Area Median Income (AMI).

TDHCA Board rules require that notice of this request be given to the Mayor for the town in which StoneLeaf at Dalhart Apartments is located.

A public hearing on this issue is scheduled at StoneLeaf at Dalhart Apartments:

Location: StoneLeaf at Dalhart Apartments  
2321 East 1<sup>st</sup> Street Dalhart, TX 79022  
Date: 11/19/2019  
Time: 12:00 Noon

You are invited to attend and offer your comments.

If you have any questions, please feel free to contact us.

Yours truly,

J. Michael Sugrue  
General Partner



## StoneLeaf At Dalhart

November 11, 2019

TO ALL RESIDENTS OF STONELEAF AT DALHART

Re: LURA Amendment Request to TDHCA for StoneLeaf at Dalhart

Dear Resident(s):

**Stoneleaf Companies** is asking the Texas Department of Housing and Community Affairs Governing Board (the TDHCA Board) to approve an amendment to its Land Use Restrictive Agreement (LURA) that will allow the property to use Income Averaging, which allows tenants earning up to 80% of Area Median Income (AMI) to occupy the premises, while the overall average income designation of the apartment homes does not exceed 60% of Area Median Income (AMI). TDHCA Board rules require that notice of this request be given to all residents of the property. This letter is to inform you that there will be a public hearing to discuss the request and we invite you to attend.

The public hearing is your opportunity to discuss the amendment request and voice your concern regarding Income Averaging. Information obtained from this meeting will be submitted for consideration by the TDHCA Board at their anticipated January 16, 2020 meeting.

If you are unable to attend the public hearing and would like to submit your concerns in writing to the Department, please send your comments via email to [asset.management@tdhca.state.tx.us](mailto:asset.management@tdhca.state.tx.us) or you may mail them to:

Texas Department of Housing & Community Affairs  
Asset Management Division  
221 East 11<sup>th</sup> Street  
Austin, TX 78701

A public hearing on this issue is scheduled at **StoneLeaf at Dalhart**:

**Location:** StoneLeaf at Dalhart  
2321 East 1<sup>st</sup> Street  
Dalhart, TX 79022  
**Date:** November 19, 2019  
**Time:** 12:00pm

Sincerely,

Pat Schroeder  
Director Of Compliance  
FDI Management Group

# MINUTES OF RESIDENT MEETING REGARDING LURA AMENDMENT REQUEST

## StoneLeaf at Dalhart

### 1. Call to order

Pat Schroeder called to order meeting regarding LURA Amendment Request at 12:00pm on November 19, 2019 at StoneLeaf at Dalhart.

### 2. Roll Call

The following were present:

Victoria E. Sugrue, Owner of StoneLeaf at Dalhart  
Pat Schroeder, Director of Compliance for FDI Management  
Lori Quiroz, Property Manager at StoneLeaf at Dalhart  
William, Onsite Maintenance for StoneLeaf at Dalhart  
Robert Yeager, Resident  
Edith Yeager, Resident  
Bryan Larsen, Resident  
Rhonda Lucas, Resident  
Juan Moreno, Resident

### 3. Pat Schroeder explained the letter that was passed out.

Resident Yeager stated he liked the idea and was only worried about rent increases. Pat assured Yeager if this was passed rents would not be increased.

### 4. Pat explained that the amendment would be presented at the January or February 2020 TDHCA Board meeting.

### 5. Questions or Comments

Resident Lucas asked if a friend making \$80,000 a year would qualify? Response to her question was that \$80,000 would probably be too high.

Resident Yeager stated he knew of friends and family that make higher income that could qualify. Yeager also stated that Manager Lori was WONDERFUL! Yeager was well pleased and thinks it is good for the community and for marketing.

### 6. Adjournment

Pat explained any further questions or concerns could be submitted after meeting by following the directions on the Notice. Pat Schroeder adjourned the meeting at 12:11pm.

Resident Juan Moreno arrived at 12:13pm. Pat explained the Notice and Juan did not have any questions or concerns.

Minutes Submitted by: Lori Quiroz  
Minutes Approved by: Victoria Sugrue  
Date: November 19, 2019



Stoneleaf at Dalhart  
Traffic Log 7/1/19-10/2/19

Prospects (Didn't qualify due to income)	Household Size	Gross Income
	2	\$88,000.00
	2	\$80,000.00
	1	\$34,000.00
	1	\$36,000.00
	1	\$29,120.00
	1	\$35,200.00
	1	She stated she was OI for HH of 1
	1	\$50,000.00
	1	\$50,000.00
	2	\$54,000.00
	4	\$41,000.00
	2	\$39,000.00
	3	\$34,000.00
	1	\$42,000.00

Applicants (Denied due to Income)

	1	\$29,000.00
	2	31583

Applicants (Denied due to Credit/  
Criminal) 3 Applicants Denied for reason  
above

Approved Move Ins

	4	\$35,643.00
	4	\$25,474.00
	3	\$27,040.00
	3	\$29,197.00
	1	\$23,680.00
	4	\$18,720.00
	1	\$9,816.00
	1	\$8,484.00

Pending Move Ins

	1	\$10,316.00
	4	\$34,330.00
	3	\$17,954.00
Applicants-changed mind/no response	4	\$23,520.00

5 applicants

**Fw: StoneLeaf at Dalhart**

Kirt Shell [kirt02@hotmail.com]

Sent: 11/7/2019 4:43 PM

To: "Mike Sugrue" &lt;mike@stoneleafcompanies.com&gt;

Cc: "robbye arxadvantage.net" &lt;robbye@arxadvantage.net&gt;

**From:** Kirt Shell**Sent:** Thursday, September 5, 2019 4:04 PM**To:** darrell jack <djack@stic.net>; Mike Sugrue <mike@stoneleafcompanies.com>**Subject:** StoneLeaf at Dalhart

Mike,

I called to survey the project today and confirmed 72% occupancy. Also, I was informed that it's the 2BR at 60% that is the problem. This is consistent with the demographics of the PMA.

The demographics showed there is more demand in the 70% income band and 70% 2BR unit type. I even maxed out the 60% income bands by unit type and demand by band, so the 70% band and 70% by unit type only includes renters overqualified for 60% units - to prevent overlapping.

I think the demographic evidence clearly supports the notion that opening up the project to 70% renters would help the project - consistent with your discussions with Darrell and my conversation with on-site management.

Let me know if I can do anything else.

FAMILY										
Unit Size	Demand	2020 & 2021 Growth Demand	10% External Demand	Total Demand	Subject Units	Comparable Units	Inclusive Capture Rate	Additional Units Allowed	Subject Units Occupied	Subject Units Leased
Overall	828	2	83	913	76	0	8.3%	198	72%	74%
30% Band	216	-1	21	236	15	0	6.4%	56	93%	100%
60% Band	508	0	51	558	61	0	10.9%	107	67%	67%
70% Band	104	3	11	119	0	0	0.0%	36	N/A	N/A
1 BR/30%	35	0	4	39	6	0	15.6%	19	100%	100%
1 BR/60%	64	-3	6	68	10	0	14.7%	34	100%	100%
1 BR/70%	57	-2	5	60	0	0	0.0%	39	N/A	N/A
2 BR/30%	32	-1	3	34	6	0	17.6%	16	83%	100%
2 BR/60%	76	1	8	84	36	0	42.8%	19	47%	47%
2 BR/70%	88	1	9	98	0	0	0.0%	64	N/A	N/A
3 BR/30%	12	0	1	13	3	0	22.8%	6	100%	100%
3 BR/60%	26	0	3	28	15	0	53.1%	3	93%	93%
3 BR/70%	29	1	3	33	0	0	0.0%	22	N/A	N/A

Here are the Adjusted bands used to get Demand by Income Band and prevent double counting:

	Min	Max	Adj Min	Adj Max
<b>30% AMGI Band</b>	\$10,200	\$21,090	\$10,200	\$20,430
<b>60% AMGI Band</b>	\$20,430	\$42,180	\$20,430	\$42,180
<b>70% AMGI Band</b>	\$23,850	\$49,210	\$42,180	\$49,210

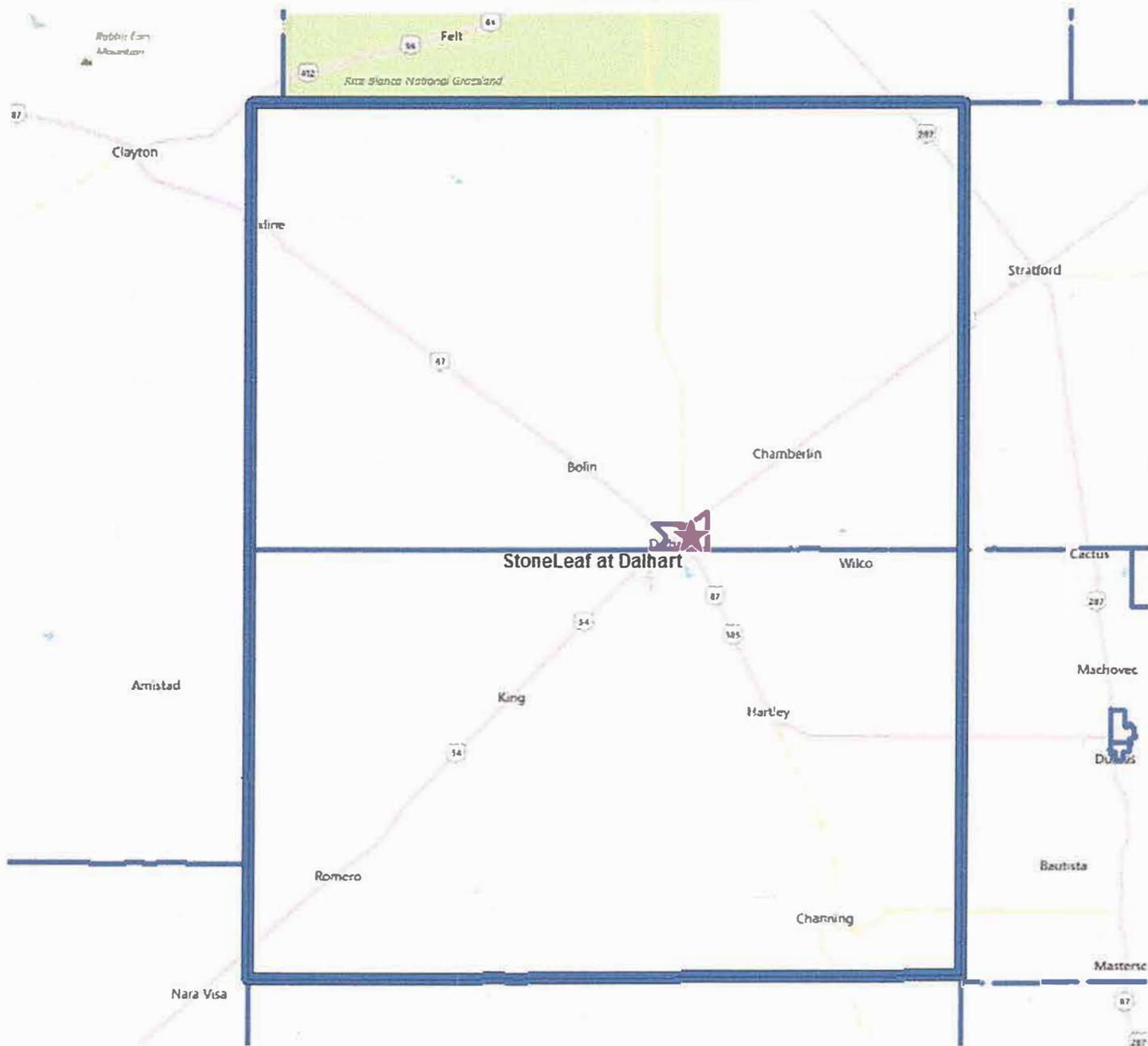
Here are the bands by unit type used to prevent double counting:

Household Size	30% of AMI		60% of AMI		70% of AMI	
1	\$10,200	\$12,720	\$20,430	\$25,440	\$25,440	\$29,680
2	\$10,200	\$14,550	\$20,430	\$29,100	\$29,100	\$33,950
3	\$12,240	\$16,350	\$24,510	\$32,700	\$32,700	\$38,150
4	\$12,240	\$18,180	\$24,510	\$36,360	\$36,360	\$42,420
5	\$14,160	\$19,620	\$28,350	\$39,240	\$39,240	\$45,780
6	\$14,160	\$21,090	\$28,350	\$42,180	\$42,180	\$49,210

After getting total income qualified renter HH size, I use the following to distribute the demand by unit type - again to prevent double counting:

Household Distribution								
Unit Size	HH Size	1	2	3	4	5	6	7÷
1 BR		85%	40%	0%	0%	0%	0%	0%
2 BR		15%	55%	90%	50%	0%	0%	0%
3 BR		0%	5%	10%	50%	100%	100%	0%
4 BR		0%	0%	0%	0%	0%	0%	100%
		100%	100%	100%	100%	100%	100%	

PMA used:



### Kirt Shell

Office Phone: (512) 312-4238

Cell Phone: (512) 635-7199

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# Apartment Market Survey

Tuesday, November 12, 2019

Sagebrush Apts      1207 Tennessee      Dalhart      Texas      79022-      (806) 244-7281

**Year Built:** 1978      **Lease Terms:**  
**Utilities Paid By:** Resident      **Pets Allowed:** No  
**Water Paid By:** Resident      **Pet Deposit:**  
**Cable Paid By:** Resident      **Management Company:** Private O&O  
**Heater System:**      **Map Code:**  
**Comments:**      **Water Heater System:**

Dalhart- 8/15: no spec- no vac

Unit Type Bed/Bath	Number of Units	Number Occupied	Square Feet Per Unit	Deposit Amount	Rent			Market Totals			Percent Occupied
					Low Rent	High Rent	Average Rent	Income	Square Feet	PPSF	
1-1	4	4	600	\$250.00	\$405.00	\$405.00	\$405.00	\$1,620.00	2,400	\$0.675	100%
2-1	16	16	700	\$250.00	\$455.00	\$455.00	\$455.00	\$7,280.00	11,200	\$0.650	100%
<b>Totals:</b>	20	20						\$8,900.00	13,600	\$0.654	100%

## Interior

- |   |  |
|---|--|
| <input type="checkbox"/> Alarm System           | <input type="checkbox"/> Linen Closet                    |
| <input type="checkbox"/> Bookshelves            | <input type="checkbox"/> Microwave                       |
| <input checked="" type="checkbox"/> Ceiling Fan | <input checked="" type="checkbox"/> Mini-Blinds          |
| <input type="checkbox"/> Computer Desk          | <input type="checkbox"/> Pantry                          |
| <input type="checkbox"/> Crown Molding          | <input type="checkbox"/> Self-Cleaning Oven              |
| <input type="checkbox"/> Dishwasher             | <input checked="" type="checkbox"/> Separate Dining Area |
| <input type="checkbox"/> Dry Bar                | <input type="checkbox"/> 9' Ceilings                     |
| <input type="checkbox"/> Fireplace              | <input type="checkbox"/> Vaulted Ceilings                |
| <input type="checkbox"/> Garden Tub             | <input type="checkbox"/> Washer/Dryer Connections        |
| <input type="checkbox"/> Hi-Speed Internet      | <input type="checkbox"/> Washer/Dryer Units              |
| <input type="checkbox"/> Ice Maker              | <input type="checkbox"/> Wet Bar                         |
| <input type="checkbox"/> Individual Storage     |  |

## Exterior

- |   |  |
|---|--|
| <input type="checkbox"/> Aerobic Room       | <input type="checkbox"/> Jogging Trail       |
| <input type="checkbox"/> Attached Garages   | <input type="checkbox"/> Laundry Facilities  |
| <input type="checkbox"/> Barbecue Grills    | <input type="checkbox"/> Limited Access Gate |
| <input type="checkbox"/> Billiards Room     | <input type="checkbox"/> Movie Theater       |
| <input type="checkbox"/> Business Center    | <input type="checkbox"/> Pool (Outdoor)      |
| <input type="checkbox"/> Clubhouse          | <input type="checkbox"/> Pool (Indoor)       |
| <input type="checkbox"/> Concierge Services | <input type="checkbox"/> Playground          |
| <input type="checkbox"/> Covered Parking    | <input type="checkbox"/> Sports Court        |
| <input type="checkbox"/> Detached Garages   | <input type="checkbox"/> Tennis Court        |
| <input type="checkbox"/> Door Trash Pickup  | <input type="checkbox"/> Volleyball Court    |
| <input type="checkbox"/> Fitness Center     |  |
| <input type="checkbox"/> Hot Tub/Spa        |  |

# Apartment Market Survey

Monday, November 18, 2019

**Sandy Ridge Ranch      2411 FM 281      Dalhart      Texas      79022-      (806) 249-0059**

<b>Year Built:</b>	2012	<b>Lease Terms:</b>	6 & 12
<b>Utilities Paid By:</b>	Owner/Resident	<b>Pets Allowed:</b>	Yes
<b>Water Paid By:</b>	Owner/Resident	<b>Pet Deposit:</b>	\$400.00
<b>Cable Paid By:</b>	Resident	<b>Management Company:</b>	PO & O
<b>Heater System:</b>	Electric	<b>Map Code:</b>	
<b>Comments:</b>	<b>Water Heater System:</b>		Electric

11/18/2019 - Adrianna no specials

Unit Type Bed/Bath	Number of Units	Number Occupied	Square Feet Per Unit	Deposit Amount	Rent			Market Totals			Percent Occupied
					Low Rent	High Rent	Average Rent	Income	Square Feet	PPSF	
1-1	16	16	715	\$500.00	\$635.00	\$695.00	\$665.00	\$10,640.00	11,440	\$0.930	100%
2-2	32	30	961	\$500.00	\$740.00	\$800.00	\$770.00	\$24,640.00	30,752	\$0.801	94%
3-2	16	15	1151	\$500.00	\$845.00	\$905.00	\$875.00	\$14,000.00	18,416	\$0.760	94%
<b>Totals:</b>	<b>64</b>	<b>61</b>						<b>\$49,280.00</b>	<b>60,608</b>	<b>\$0.813</b>	<b>95%</b>

### Interior

- |   |  |
|---|--|
| <input type="checkbox"/> Alarm System           | <input type="checkbox"/> Linen Closet                        |
| <input type="checkbox"/> Bookshelves            | <input checked="" type="checkbox"/> Microwave                |
| <input checked="" type="checkbox"/> Ceiling Fan | <input type="checkbox"/> Mini-Blinds                         |
| <input type="checkbox"/> Computer Desk          | <input type="checkbox"/> Pantry                              |
| <input type="checkbox"/> Crown Molding          | <input checked="" type="checkbox"/> Self-Cleaning Oven       |
| <input checked="" type="checkbox"/> Dishwasher  | <input type="checkbox"/> Separate Dining Area                |
| <input type="checkbox"/> Dry Bar                | <input type="checkbox"/> 9' Ceilings                         |
| <input type="checkbox"/> Fireplace              | <input type="checkbox"/> Vaulted Ceilings                    |
| <input type="checkbox"/> Garden Tub             | <input checked="" type="checkbox"/> Washer/Dryer Connections |
| <input type="checkbox"/> Hi-Speed Internet      | <input type="checkbox"/> Washer/Dryer Units                  |
| <input type="checkbox"/> Ice Maker              | <input type="checkbox"/> Wet Bar                             |
| <input type="checkbox"/> Individual Storage     |  |

### Exterior

- |  |  |
|--|--|
| <input type="checkbox"/> Aerobic Room              | <input type="checkbox"/> Jogging Trail         |
| <input type="checkbox"/> Attached Garages          | <input type="checkbox"/> Laundry Facilities    |
| <input type="checkbox"/> Barbecue Grills           | <input type="checkbox"/> Limited Access Gate   |
| <input type="checkbox"/> Billiards Room            | <input type="checkbox"/> Movie Theater         |
| <input type="checkbox"/> Business Center           | <input type="checkbox"/> Pool (Outdoor)        |
| <input checked="" type="checkbox"/> Clubhouse      | <input type="checkbox"/> Pool (Indoor)         |
| <input type="checkbox"/> Concierge Services        | <input checked="" type="checkbox"/> Playground |
| <input type="checkbox"/> Covered Parking           | <input type="checkbox"/> Sports Court          |
| <input type="checkbox"/> Detached Garages          | <input type="checkbox"/> Tennis Court          |
| <input type="checkbox"/> Door Trash Pickup         | <input type="checkbox"/> Volleyball Court      |
| <input checked="" type="checkbox"/> Fitness Center |  |
| <input type="checkbox"/> Hot Tub/Spa               |  |

# Apartment Market Survey

Tuesday, November 12, 2019

**Tascosa Apts**      **809 W 7th**      **Dalhart**      **Texas**      **79022-**      **(806) 244-3418**

**Year Built:** 1960      **Lease Terms:** 6-12  
**Utilities Paid By:** Owner      **Pets Allowed:** No  
**Water Paid By:** Owner      **Pet Deposit:**  
**Cable Paid By:** Owner      **Management Company:** West Texas Rentals  
**Heater System:** Electric      **Map Code:**  
**Comments:**      **Water Heater System:** Electric

May- 8/15: fully furn.- all bills pd: no spec-no vaca

Unit Type Bed/Bath	Number of Units	Number Occupied	Square Feet Per Unit	Deposit Amount	Rent			Market Totals			Percent Occupied
					Low Rent	High Rent	Average Rent	Income	Square Feet	PPSF	
1-1	16	16	500	\$750.00	\$750.00	\$750.00	\$750.00	\$12,000.00	8,000	\$1.500	100%
2-1	4	4	600	\$850.00	\$850.00	\$850.00	\$850.00	\$3,400.00	2,400	\$1.417	100%
Eff	8	8	350	\$650.00	\$650.00	\$650.00	\$650.00	\$5,200.00	2,800	\$1.857	100%
<b>Totals:</b>	<b>28</b>	<b>28</b>						<b>\$20,600.00</b>	<b>13,200</b>	<b>\$1.561</b>	<b>100%</b>

## Interior

- |   |  |
|---|--|
| <input type="checkbox"/> Alarm System           | <input type="checkbox"/> Linen Closet                    |
| <input type="checkbox"/> Bookshelves            | <input checked="" type="checkbox"/> Microwave            |
| <input checked="" type="checkbox"/> Ceiling Fan | <input checked="" type="checkbox"/> Mini-Blinds          |
| <input type="checkbox"/> Computer Desk          | <input type="checkbox"/> Pantry                          |
| <input type="checkbox"/> Crown Molding          | <input type="checkbox"/> Self-Cleaning Oven              |
| <input type="checkbox"/> Dishwasher             | <input checked="" type="checkbox"/> Separate Dining Area |
| <input type="checkbox"/> Dry Bar                | <input type="checkbox"/> 9' Ceilings                     |
| <input type="checkbox"/> Fireplace              | <input type="checkbox"/> Vaulted Ceilings                |
| <input type="checkbox"/> Garden Tub             | <input type="checkbox"/> Washer/Dryer Connections        |
| <input type="checkbox"/> Hi-Speed Internet      | <input type="checkbox"/> Washer/Dryer Units              |
| <input type="checkbox"/> Ice Maker              | <input type="checkbox"/> Wet Bar                         |
| <input type="checkbox"/> Individual Storage     |  |

## Exterior

- |   |  |
|---|--|
| <input type="checkbox"/> Aerobic Room       | <input type="checkbox"/> Jogging Trail                 |
| <input type="checkbox"/> Attached Garages   | <input checked="" type="checkbox"/> Laundry Facilities |
| <input type="checkbox"/> Barbecue Grills    | <input type="checkbox"/> Limited Access Gate           |
| <input type="checkbox"/> Billiards Room     | <input type="checkbox"/> Movie Theater                 |
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| <input type="checkbox"/> Clubhouse          | <input type="checkbox"/> Pool (Indoor)                 |
| <input type="checkbox"/> Concierge Services | <input type="checkbox"/> Playground                    |
| <input type="checkbox"/> Covered Parking    | <input type="checkbox"/> Sports Court                  |
| <input type="checkbox"/> Detached Garages   | <input type="checkbox"/> Tennis Court                  |
| <input type="checkbox"/> Door Trash Pickup  | <input type="checkbox"/> Volleyball Court              |
| <input type="checkbox"/> Fitness Center     |  |
| <input type="checkbox"/> Hot Tub/Spa        |  |

1d

**BOARD ACTION REQUEST**  
**COMMUNITY AFFAIRS DIVISION**  
**JANUARY 16, 2020**

Presentation, discussion, and possible action regarding authorization to release a Notice of Funding Availability for Program Year 2020 Community Services Block Grant Discretionary funds for education and employment initiatives for Native American and migrant seasonal farm worker populations

**RECOMMENDED ACTION**

**WHEREAS**, Community Services Block Grant (CSBG) funds are awarded annually to the Texas Department of Housing and Community Affairs (the Department) by the U.S. Department of Health and Human Services (USHHS);

**WHEREAS**, the Department reserves 90% of the allotment for CSBG-eligible entities to provide services/assistance to the low-income population in all 254 counties; up to 5% for state administration expenses; and the remaining amount for state discretionary use;

**WHEREAS**, at the Board meeting of July 25, 2019, the Department established a set aside of \$1,700,000 for 2020 CSBG Discretionary (CSBG-D) activities in the 2020 CSBG State Plan, including \$300,000 for Native American and migrant seasonal farm worker population education and employment initiatives; and

**WHEREAS**, CSBG-D funds for Native American and migrant seasonal farm worker population education and employment initiatives will be made available to eligible applicants to carry out the purpose of the CSBG pursuant to 42 U.S. Code Chapter 106;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Executive Director be granted the authority to release a Notice of Funding Availability (NOFA) for 2019 CSBG-D funds for Native American and migrant seasonal farm worker population education and employment initiatives;

**FURTHER RESOLVED**, that to the extent that subsequent revisions to the NOFA are required in order to facilitate the use of the funds by the applicants, the Board also authorizes staff to make such revisions in accordance with, and to the extent limited by the CSBG federal and state regulations; and

**FURTHER RESOLVED**, that staff is authorized, empowered, and directed, for and on behalf of the Department to execute such documents, instruments and

writings and perform such other acts as may be necessary to effectuate the foregoing.

### **BACKGROUND**

Each year the Department sets aside 5% (approximately \$1,700,000) of its annual CSBG allocation for state discretionary use. Each year funds from CSBG-D are used for specific identified activities that the Department supports and other ongoing initiatives such as employment and education programs for Native American and migrant seasonal farm workers. This year, \$300,000 has been targeted for Native American and migrant seasonal farm worker populations for employment and education programs for which the Department is issuing this NOFA. This amount is substantively unchanged from the amounts programmed for this activity last year. The Department will release funds competitively.

In the event that the Department does not have sufficient eligible applications to fund in this activity, the Department may, at the discretion of the Executive Director, reprogram the funds from this activity into another eligible discretionary activity specified in the 2020 CSBG State Plan.

The Department's anticipated contract period for Program Year 2020 CSBG-D Native American and migrant seasonal farm worker education and employment initiatives is April 1, 2020, through March 31, 2021.

The NOFA and Scoring Attachment B are attached for review and approval as part of this item. The other attachments referenced in the NOFA, Attachments A and Attachments C through H, are submission forms of required information or certifications, and are not included within this Board Action Item.



**Notice of Funding Availability (NOFA) for Federal Fiscal Year (FFY) 2020 Community Services Block Grant (CSBG) Discretionary Funds for Education and Employment Services to Native American and Migrant Seasonal Farm Worker Populations**

The Texas Department of Housing and Community Affairs (the Department) is pleased to announce a NOFA for FFY 2020 CSBG Discretionary Funds for education and employment services to Native American and migrant seasonal farm worker populations. The Department is seeking organizations interested in administering projects focused on employment and education in Native American and migrant seasonal farm worker populations.

Interested applicants must meet the requirements set forth in the application and must submit a complete application through the established system described in the NOFA by **Monday, February 10, 2020, 5:00 p.m. Austin local time.**

The application forms contained in this packet and submission instructions are available on the Department's web site at <http://www.tdhca.state.tx.us/nofa.htm>. The Department looks forward to receiving your completed application. Should you have any related questions, please contact Rita Gonzales-Garza at (512) 475-3905 or [rita.garza@tdhca.state.tx.us](mailto:rita.garza@tdhca.state.tx.us).

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## I. Application Instructions

### A. Application Deadline:

All applications must be submitted before **Monday, February 10, 2020, 5:00 p.m. Austin local time.**

### B. Electronic Submission:

All applications must be submitted electronically to be considered eligible applications. Applications are to be submitted through the Wufoo system using the following link:

<https://tdhca.wufoo.com/forms/native-americansmigrant-seasonal-farm-worker-nofa/>

### C. Application Questions

Application questions may be submitted via electronic mail to [rita.garza@tdhca.state.tx.us](mailto:rita.garza@tdhca.state.tx.us). Answers will be provided in the order in which they are received. Please do not submit the same question twice as you await a response.

**The deadline to submit questions related to the content of the NOFA and Application is Friday February 7, 2020, by 11:00 a.m. CST (Austin local time).** Questions related to the content of the NOFA submitted after this deadline may not be answered.

## II. Proposed Timeline for NOFA and Application

Date	Action
January 16, 2020	The application will be available through the TDHCA Website: <a href="http://www.tdhca.state.tx.us/nofa.htm">http://www.tdhca.state.tx.us/nofa.htm</a>
February 7, 2020 11:00 a.m. (Austin local)	Deadline to submit questions regarding the NOFA and application prior to application submission
February 10, 2020 5:00 p.m. (Austin local)	Deadline for Applicants to submit applications in response to this NOFA
March 19, 2020	Anticipated date for the Department to present funding recommendations to Board of Directors
April 1, 2020	Anticipated Contract Start Date*
March 31, 2021	Anticipated Contract End Date*

\*An applicant decision to appeal may delay the Contract Start and End Date

## III. General Information

### A. Background

The Department has been designated as the state agency to administer the CSBG Program. On an annual basis, the Department receives CSBG funds from the U.S. Department of Health and Human Services (HHS) to ameliorate the causes of poverty within communities.

The Department is permitted to reserve up to 5% of CSBG funds for state discretionary use for which the Department's Board has determined specific uses. This NOFA releases the portion of these FFY 2020 CSBG State Discretionary (CSBG-D) funds aimed at education and employment services for Native Americans and migrant seasonal farm workers (MSFW).

Capitalized words in this NOFA, unless otherwise defined herein, have the meaning outlined in Chapter 2306 of the Texas Government Code or in Title 10 Texas Administrative Code (TAC), Chapter 1 or Chapter 6.

**B. CSBG-D Subrecipient Performance Requirements:**

This NOFA is for services to Native American and MSFW populations. The NOFA will provide funding to organizations to provide new or existing projects that provide education and/or employment assistance and services focusing on the direct needs of individuals and families within the MSFW population or the Native American population. The successful applicant must ensure that participants receive case management along with employment and/or education assistance and services.

This activity must be completed throughout the 12-month contract period. The contract period is anticipated to be April 1, 2020, through March 31, 2021.

Subrecipient must complete activities that have the following results:

- For employment projects, an increase in employment skills or increase in persons assisted in obtaining jobs; and/or
- For education projects, an increase in education and or skills that are expected to lead to an increase in income.

Persons eligible for direct assistance must have an annual income at or below 125% of the Federal Poverty Income Guidelines issued annually by HHS.

**C. Funds Available and Award Amounts**

In this NOFA, the Department makes available \$300,000 of FFY 2020 non-formula CSBG funds to be utilized for the following discretionary projects:

Category 1: Migrant Seasonal Farm Worker Employment Assistance and Services Projects (Two projects at \$100,000 each)	\$200,000
Category 2: Native American Education Employment Assistance and Services Projects	\$100,000

An applicant must apply for \$100,000 per application and an applicant (or affiliate as defined in 10 TAC §6.2(b)(1)) is limited to receiving an award in only one category (unless no other eligible applications under either Category are recommended). If applying in both categories the applicant must indicate in the application on Attachment A which award it will accept if the score results in a recommendation for both.

If sufficient eligible applications are received that meet threshold criteria it is anticipated that three awards of \$100,000 each will be made by the Department’s Board of Directors (Board). The Department intends to fund the two highest scoring applications for assistance to the MSFW population, and the one highest scoring application for assistance to the Native American population. However, if sufficient eligible applications are not received to accomplish that, then the next highest scoring application meeting threshold and scoring criteria in either category will be recommended. If no other applications in either category remain except from an applicant (or affiliate) that has already been recommended for an award, the Department may recommend a second award to the next highest scoring application. In the event that the Department does not receive sufficient eligible applications in response to this NOFA to exhaust available funding, the Department reserves the right to reprogram the funds.

The availability of FFY 2020 CSBG discretionary funds to Subrecipient organizations is dependent on the Department's receipt and availability of funds from HHS. Access to funds may be limited to the amount of 2020 CSBG discretionary funds available to the Department from HHS, and is subject to Board decisions regarding its use.

#### **D. Eligible Applicant Organizations**

Organizations eligible to apply for CSBG-D NOFA funds are: Private Nonprofit Organizations with 501(c) status, Public Housing Authorities, Local Mental Health Authorities, Units of General Local Government, and Regional Councils of Governments who are proposing an educational and/or employment project targeted to either MSFW populations or Native Americans.

#### **E. Ineligible Applicant Organizations**

Organizations ineligible to apply for the competitive FFY 2020 CSBG State Discretionary Funds are:

- Private Nonprofit Organizations that do not have a Certificate of Formation (or Articles of Incorporation);
- Private Nonprofit Organizations that the Texas Secretary of State's Office website states are not authorized to do business in Texas; and
- Organizations for which persons on the organization's governing body or employees are debarred or suspended by the Department or another governmental agency;
- Organizations for which persons on the organization's governing body or employees are on the suspended or debarred listed for the System for Award Management in accordance with 2 CFR Part 180.

#### **F. Private Nonprofit Organizations.**

The Department is not requiring that an organization submit a Certificate of Formation or proof of eligible status. However, it is the applicant's responsibility to ensure that its information including its Certificate of Formation (formally known as Articles of Incorporation) with the Texas Secretary of State's Office is correct and complete at the time of application. The Department will confirm proof of active status directly with the Texas Secretary of State. No administrative deficiencies will be issued for failure to have the appropriate status and governing documents reflected on the Secretary of State's Office when confirmed by the Department. Failure to have this information will cause the application to be terminated without further review as further described in Section VI, A of the NOFA.

#### **G. Registration Requirements**

Prior to contract execution, the successful applicant must provide the Department with the organization's Data Universal Numbering System (DUNS) and proof of registration with the Central Contractor Registration (CCR). If the organization is not registered, go to <https://www.sam.gov> to renew, update, or create a new registration.

### **IV. State and Federal Requirements**

Subrecipient shall comply with all provisions of the Federal and State laws and regulations including but not limited to:

Public Law 105-285, Title II - Community Services Block Grant Program, Subtitle B Community Services Block Grant Program of the Community Services Block Grant Act, Chapter 106 of the Community Services Block Grant Act (42 U.S.C. §9901 *et seq.*), as amended by the "Community Services Block Grant

Amendments of 1994" (P.L. 103-252) and the Coats Human Services Reauthorization Act of 1998 (P.L. 105-285);

Chapter 2306 of the Texas Government Code:

- A. Title 10 Texas Administrative Code, Part 1, Chapters 1 and 2;
- B. Title 10 Texas Administrative Code, Part 1, Chapter 6, Subchapters A and B;
- C. 2 CFR Part 200, as applicable; and
- D. Texas Uniform Grant Management Standards.

Subrecipient shall also comply with the Drug-Free Workplace Act of 1988, the Pro-Children Act of 1994, Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794), the Americans with Disabilities Act of 1990 (ADA), as amended (42 U.S.C. 12101 et seq.) and Executive Order 13166 of August 11, 2000 related to Limited English Proficiency.

Subrecipient shall practice non-discrimination and provide equal opportunity in compliance with federal law in keeping with the President's Executive Order 11246 of September 24, 1965, and ensure that a person shall not be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in the administration of or in connection with any program or activity funded in whole or in part with funds made available under this contract, on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief.

Subrecipient shall comply with political activity prohibitions and shall not utilize CSBG funds to influence the outcome of any election, or the passage or defeat of any legislative measure or to directly or indirectly hire employees or in any other way fund or support candidates for the legislative, executive, or judicial branches of government of subrecipients, the State of Texas, or the government of the United States. Subrecipient shall comply with 45 CFR. §87.2 and ensure that CSBG funds are not to be used for sectarian or inherently religious activities such as worship, religious instruction or proselytization, and must be for the benefit of persons regardless of religious affiliation.

Subrecipient shall comply with Chapter 2264 of the Texas Government Code and will not knowingly employ an undocumented worker, where "undocumented worker" means an individual who, at the time of employment, is not lawfully admitted for permanent residence to the United States or authorized under law to be employed in that manner in the United States.

Subrecipient is not permitted to award any funds provided by this contract to any party that is debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549. The Subrecipient will be required to agree that prior to entering into any agreement with a potential subcontractor that the verification process to comply with this requirement will be accomplished by checking <https://www.sam.gov/SAM/pages/public/searchRecords/search.jsf>

## V. Application Content

Attachments A-H are Threshold Documents. Each page of the application, excluding the Single Audit, must be numbered. Each Application must contain the items listed below in the following order:

- Table of Contents – must include page numbers.
- Attachment A – Applicant Information Form – Form must be placed on the top of the application.
- Attachment B – Application Questions Parts 1-4 – Complete the NOFA Application Questions document. Applications that do not include a completed document with responses to NOFA

questions will be deemed ineligible. Please use the following format to provide any information which is requested in response to questions:

- ✓ 11 font
- ✓ Standard 8½ " x 11" paper with 1" margins
- ✓ Provide brief descriptions of requested information.
- Attachment C – Audit Information – All applications must include the following documents relating to fiscal accountability, even if this information has been previously submitted to the Department.
  - A. An application must include a completed Audit Certification Form, found on the Department's website at <http://www.tdhca.state.tx.us/pmcomp/forms.htm>.
  - B. An organization that is subject to the Federal Single Audit Act requirements must certify that the Single Audit for the latest fiscal year is available at the Federal Audit Clearinghouse. An Organization that is subject only to the State Single Audit Act must submit one copy of the organization's most recent Single Audit report.
  - C. An organization not subject to either the Federal or the State Single Audit requirements must submit one copy of a third-party audit of financial statements prepared by a Certified Public Accountant, including any notes to the audit.
- Attachment D – Uniform Previous Participation Form for Single Family and Community Affairs.
- Attachment E – Certifications Regarding Legal Actions, Debarment & Compliance with Laws.
- Attachment F – Private Nonprofit Organization's Tax-Exempt Status Documentation. Existing Internal Revenue Service (IRS) ruling – All private nonprofit organizations must provide documentation of their status as a tax-exempt entity under Section 501(c) of the Internal Revenue Code. The ruling should be on IRS letterhead which is legible and signed by the IRS District Director. Expired advanced rulings from the IRS are not acceptable. If an organization is a subsidiary of a parent organization, documentation of the parent organization's IRS ruling and a copy of the page listing the affiliate organization in the documents filed with the IRS by the parent organization.
- Attachment G – Applicant Certifications
  - The certification must be signed by the organization's Executive Director. If such cannot be attested, then attach a document explaining why.
- Attachment H – CSBG Budget Worksheets
  - A. The proposed budget for CSBG is to be submitted utilizing the Attachment H form. There are several tabs within the spreadsheet to complete. Complete the budget based on the estimated funds available noted in Section III. C (i.e., \$100,000).
  - B. This NOFA does not have limitations on the amount of funds utilized for the provision of direct services or for the costs of staff assigned to provide the direct services, as long as the costs meet federal and state requirements.

## VI. Application Review Process

### A. Eligibility Prescreening Review

The Department will review applications to determine if they meet the following eligibility prescreening criteria. If the Department determines that any of these criteria have not been satisfied, the application will not be reviewed and the applicant will be sent a notice of the elimination of their application from consideration, and notified of their opportunity to appeal. The prescreening criteria are:

- All application threshold documents A through H must be submitted by the application deadline.
- Application documents must be submitted electronically to be considered eligible applications. Applications are to be submitted through the Wufoo using the following link: <https://tdhca.wufoo.com/forms/native-americansmigrant-seasonal-farm-worker-nofa/>
- An Applicant must meet all requirements as set forth in III. General Information, D. Eligible Applicant Organizations; and
- An Applicant must not be an ineligible applicant organization as set forth in III. General Information, E. Ineligible Applicant Organizations.

Any applicant not meeting these threshold criteria will be terminated. A notice of termination will be sent, and an applicant will have an opportunity to appeal the decision in accordance with 10 TAC §1.7, Staff Appeals Process.

### B. Deficiency Notices

After the application receipt deadline, the Department will not consider any unsolicited information that an applicant may want to provide. If the Department identifies deficiencies within the Attachments it will issue a deficiency notice to request the deficiency be resolved. *Applicants will have three (3) days from the date of issuance of the deficiency notice to provide the requested information.* Deficiency notices will be e-mailed to the applicant's chief executive and the person specified as the "person to contact with application questions" in the applicant information form. If the applicant does not provide the requested information within the 3-day time period, the applicant will be sent a notice indicating termination of the application.

#### Scoring of Applications

Applications received from eligible organizations with no threshold deficiencies will be reviewed and scored by the Department. The Department will utilize a standard scoring instrument to evaluate, score, and rank each application. The scoring instrument will award points based on the applicant's response to the requested information in Attachment B. **Applications with a score below 50% of the maximum eligible points available will not be considered for funding except as described in the next paragraph.**

If all applicants score below the minimum point threshold, the Department reserves the right to review the top overall scoring entity and if, in the Department's judgment, they can appropriately administer the CSBG-D funds, may recommend an award to its Governing Board. Upon completion of scoring each application, applicants will be provided a scoring notice with an opportunity to appeal.

The Department will consider and evaluate prior monitoring and/or audit issues during its application scoring. Additionally, other factors to be considered in the scoring of each application will include, but not be limited to:

- Capacity to effectively administer federal funds and to ensure compliance with regulations;
- Ability to demonstrate staff and organizational capacity to deliver the proposed services; and,

- Ability to demonstrate positive past performance with Department or other federally funded programs, including the results of Department monitoring reviews, timeliness of submission of reports, and other information deemed relevant to performance.

### **C. Awards**

Applicants whose applications score competitively will be reviewed by the Department’s Executive Award Review Advisory Committee in accordance with 10 TAC Chapter 1, Subchapter C and subsequently brought to the Department’s Governing Board for consideration of an award.

### **D. Appeals Process**

An appeal of a staff determination must be submitted in writing and in accordance with the Texas Administrative Rule Title 10, Part 1, Chapter 1, Subchapter A, §1.7 which can be found at the Secretary of State’s website at:

[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=5&ti=10&pt=1&ch=1&sch=A&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=1&sch=A&rl=Y).

## **VII. Appendices**

### **Federal and State Resources:**

CSBG Act, COATES Human Services Reauthorization Act of 1998, available at <https://www.acf.hhs.gov/ocs/resource/community-services-block-grant-statute>

Texas Administrative Code - 10 TAC Chapter 1, Administration, available at [http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=4&ti=10&pt=1&ch=1](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=10&pt=1&ch=1)

Texas Administrative Code - 10 TAC Chapter 2, Enforcement, available at [http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=4&ti=10&pt=1&ch=2](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=10&pt=1&ch=2)

Texas Administrative Code - 10 TAC Chapter 6, Subchapter A, General Provisions, available at [http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=5&ti=10&pt=1&ch=6&sch=A&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=6&sch=A&rl=Y)

Texas Administrative Code - 10 TAC Chapter 6, Subchapter B, Community Services Block Grant, available at [http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=5&ti=10&pt=1&ch=6&sch=B&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=6&sch=B&rl=Y)

## **VIII. List of Attachments**

Attachments are posted separately on the TDHCA website as fillable MS Excel documents at <http://www.tdhca.state.tx.us/nofa.htm>

- Attachment A-G:
  - Attachment A: Applicant Information Form
  - Attachment B: Application Questions Parts 1-4
  - Attachment C: Audit Information
  - Attachment D: Uniform Previous Participation Information
  - Attachment E: Certifications Regarding Legal Actions, Debarment & Compliance with Laws
  - Attachment F: Private Nonprofit Organization’s Tax-Exempt Status Documentation
  - Attachment G: Applicant Certifications
- Attachment H: CSBG Budget Worksheets

**NOFA for FFY 2020 CSBG Discretionary Funds for Native American and MSFW Populations  
Attachment B: Part 1 - Experience**

**Applicant Name:**

0

**Instructions:**

When responding to the questions in Attachment B - Part 1 - 4:

- 1. Attachments:** Applicant must complete all areas highlighted in **yellow** and upload attachments according to the instructions found on the Wufoo submission page.
- 2. Responses:** If the response is provided in a separate document, please ensure that the response is uploaded as the appropriate entry in the Wufoo submission. If the Department is unable to clearly determine which question the response pertains to, the applicant may not receive points for their response.
- 3. Years of Experience:** When responding to years of experience, if the experience is 6 months or greater, round your response up to one year. If it is less than six months, do not. For example: 1 year 5 months would be 1 year and 1 year 6 months would be 2 years.
- 4.** All applicants must complete all parts of the application questions.

**Attachment B: Part 1 - Experience**

Section	Question	Scoring Mechanism	Maximum Points	Self-Score	Reviewer 1 (TDHCA use only)	Reviewer 2 (TDHCA use only)						
1.1	The applicant's experience administering other state or federally funded programs subject to 2 CFR Part 200 or UGMS (currently administered directly by applicant) during the past 10 years. Funds from the Texas Department of Housing and Community Affairs (TDHCA) must be included. If applicant received the grant for more than one fiscal year, list each year it was received.	State or federally funded grant programs administered:  Note: A maximum of 50 points will be awarded. • 5 points for each year award was received	50									
							<b>Table 1.1</b> In the table below, list all current state or federally funded grant programs administered directly by the applicant and the number of years administering the grant (indicate each grant source only once), including TDHCA funds. Add additional pages as necessary.					
							<b>Grant Name</b>	<b>Funding Entity Providing Award</b>	<b>Purpose of Award</b>	<b># Years of Award</b>	<b>Federal or State Funds (Y/N)</b>	
Section	Question	Scoring Mechanism	Maximum Points	Self-Score	Reviewer 1 (TDHCA use only)	Reviewer 2 (TDHCA use only)						

1.2	<p>Provide the following information on the experience in delivering <b>employment skills or employment related assistance</b> for the population for which applicant is applying (i.e., either Native American or migrant seasonal farm worker). For example, if the applicant indicated they are applying for funds to assist Native American populations, they will only receive points for this question only if the experience relates to assisting Native Americans.</p>	<p>In assigning points, reviewer will consider the depth to which the nature of the experience in delivering <b>employment skills or employment related assistance</b> is described:</p> <p>a. A maximum of 10 points will be awarded, based on the depth of relevant employment skills or employment related assistance experience with either Native Americans or migrant seasonal farm workers (as applicable). Number of points awarded will be dependent on the specificity of description and experience related to direct employment skills or employment related assistance with the targeted population.</p> <p>b. A maximum of 10 points may be awarded, with 4 points for 2 years of experience, 8 points for 3-4 years, 10 points for 5+ years of providing direct employment skills or employment related assistance to the targeted population..</p> <p>c. Population served includes the population for which the applicant is applying (i.e., either Native American or migrant seasonal farm worker):  Yes = 20 points.  No = 0 points.</p> <p>d. Provide points for the number of unduplicated persons served with employment skills or employment related assistance in the previous 12 months that were either Native American or migrant seasonal farm worker:  5-15 persons award 5 points;  16-29 persons award 10 points;  30-45 persons award 20 points  46-55 persons award 30 points  56+ persons award 40 points</p>	80			
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a. In the space below, provide a description of relevant experience (include particular years) providing direct assistance to assist the population for which the applicant is applying (i.e., either Native Americans or migrant seasonal farm workers) to gain employment skills or employment related assistance to improve their employability or increase wages (types of services, etc.). Make sure to indicate whether experience was aimed at providing services to either Native Americans or migrant seasonal farm workers.

b. In the space below, provide information on the number of years (and include particular years) of relevant experience providing direct employment skills or employment related assistance to the population for which the applicant is applying (i.e., either Native Americans or migrant seasonal farm workers).

c. During the **past 12 months**, did the applicant target their employment skills or employment related assistance to Native Americans or did the applicant target migrant seasonal farm workers? Explain which population was targeted. If neither population was targeted, what population was targeted?

d. In the space below, provide information on either the number of unduplicated Native Americans or the number of unduplicated migrant seasonal farm workers that were served by the applicant in the **past 12 months** with employment skills or employment related assistance. Specify the time period and the number of persons served by each targeted population.

Section	Question	Scoring Mechanism	Maximum Points	Self-Score	Reviewer 1 (TDHCA use only)	Reviewer 2 (TDHCA use only)
1.3	Provide the following information on the experience in delivering <b>education related assistance</b> for the population for which applicant is applying (i.e., either Native American or migrant seasonal farm worker). For example, if the applicant indicated they are applying for funds to assist Native American populations, they will only receive points for this question only if the experience relates to assisting Native Americans.	<p>In assigning points, reviewer will consider the depth to which the nature of the experience in delivering <b>education related assistance</b> is described:</p> <p>a. A maximum of 10 points will be awarded, based on the depth of relevant experience in providing direct education related assistance experience with either Native Americans or migrant seasonal farm workers (as applicable). Number of points awarded will be dependent on the specificity of description and experience related to direct education related assistance with the targeted population.</p> <p>b. A maximum of 10 points may be awarded, with 4</p>	80			

points for 2 years of experience, 8 points for 3-4 years, 10 points for 5+ years of providing direct education related assistance to the targeted population.

c. Population served includes the population for which the applicant is applying (i.e., either Native American or migrant seasonal farm worker):  
Yes = 20 points.  
No = 0 points.

d. Provide points for the number of unduplicated persons served with education related assistance in the previous 12 months that were either Native American or migrant seasonal farm workers:  
5-15 persons award 5 points;  
16-29 persons award 10 points;  
30-45 persons award 20 points  
46-55 persons award 30 points  
56+ persons award 40 points

a. In the space below, provide a description of relevant experience (include particular years) providing direct assistance to to assist the population for which the applicant is applying (i.e., either Native Americans or migrant seasonal farm workers) to increase their education aimed at improving their employability or increasing their wages (types of services, etc.). Make sure to indicate whether experience was aimed at providing services to either Native Americans or migrant seasonal farm workers.

b. In the space below, provide information on the number of years (and include particular years) of relevant experience providing direct education related assistance to the population for which the applicant is applying (i.e., either Native Americans or migrant seasonal farm workers).

c. During the past 12 months, did the applicant target their education assistance to Native Americans or did the applicant target migrant seasonal farm workers? Explain which population was targeted. If neither population was targeted, what population was targeted?

d. In the space below, provide information on either the number of unduplicated Native Americans or the number of unduplicated migrant seasonal farm workers that were served by the applicant in the **past 12 months** with education related assistance. Specify the time period and the number of persons served by each targeted population.

Empty response area for providing information on the number of unduplicated Native Americans or migrant seasonal farm workers served.

210	0	0	0
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**NOFA for FFY 2020 CSBG Discretionary Funds for Native American and MSFW Populations**

**Attachment B: Part 2 - Prior Performance**

**Applicant Name:**

0

**Attachment B: Part 2 - Prior Performance**

Section	Question	Scoring Mechanism	Maximum Points	Self-Score	Reviewer 1 (TDHCA use only)	Reviewer 2 (TDHCA use only)
2.1	<p>In the table below, list all TDHCA funded programs administered in the past 3 years.</p> <p>Only the most recent monitoring report will be considered for point deductions.</p> <p>Provide copies of the most recent monitoring reports for each of the TDHCA programs listed in response to question 1.1. If the grant has not been monitored, provide information explaining such. Only the most recent monitoring report will be considered for point deductions.</p> <p>Provide follow-up response from TDHCA of resolution of monitoring findings/deficiencies. Also explain if follow-up response from TDHCA of resolution of monitoring findings/deficiencies has not been released.</p> <p>For ease of review, please number the pages of the documents, even if the numbering is handwritten.</p> <p>Deficiencies are those which identify issues related to fraud, waste, abuse, or financial irregularity, or <u>significant</u> non-compliance with either federal rules, state regulations/rules including, but not limited to 2 CFR Part 200 or Uniform Grant Management Standards.</p>	<p>Number of monitoring findings/deficiencies and disallowed costs identified in monitoring reviews of state funded programs.</p> <p>For each of the most recent monitoring reports for each program, determine:</p> <p>(1) Monitoring report had findings/deficiencies: Deduct -10 points per finding/deficiency.</p> <p>(2) Applicant shows history of not cooperating with or not submitting documentation upon request with TDHCA: Deduct -20 points per fund source of non-cooperation.</p> <p>(3) Monitoring report had disallowed costs in excess of \$1,000 amount based on other than minor administrative errors): Deduct -10 points per grant program in addition to (1)-(3) point deductions above.</p> <p><b>Note:</b> If monitoring report is not attached and/or explanatory information is not provided: Deduct -10 points per grant.</p>	(points to be deducted based on review)			

**Table 2.1** (Instruction: Please provide copies of the most recent monitoring reports. If the grant has not been monitored in the past 36 months, provide a document from the funding source to that effect. Scan all monitoring reports into one document and include a cover page labeled as “Documents in response to Question #2.1” and number each page consecutively. The numbering can be hand written at the bottom of each page.)

Funding Source		Name of Most Recent Monitoring Report	Page #	# of Findings/Deficiencies	Copy of Report attached (Y/N) Date of Last Monitoring (MM/DD/YY)	Amount of Disallowed Costs
Section	Question and Response	Scoring Mechanism	Maximum Points	Self-Score	Reviewer 1 (TDHCA use only)	Reviewer 2 (TDHCA use only)
2.2	Does the applicant have a history in the preceding 12 months or in the last year of CSBG-D funding of not submitting their monthly performance or monthly expenditure reports or final performance or final expenditure reports to the Department by the due date?  <b>Response:</b> If Yes, list which documents/submissions below in highlighted area:	If Departmental records show late submissions of performance or expenditure reports in the preceding 12 months or the last year of CSBG-D funding: Deduct -5 points per late submission No late submissions = 0 points	(points to be deducted based on review)			

2.3	<p>Has the applicant been placed on a modified cost reimbursement basis of payment for TDHCA Community Affairs funded programs during the past 3 years (a contract sanction whereby reimbursement of costs incurred by a Subrecipient is made only after the Department has reviewed and approved backup documentation provided by the Subrecipient to support such costs)?</p> <p><b>Response:</b> Select Yes or No in the drop down menu of the cell below:</p> <hr/> <p>Is the applicant currently on a modified cost reimbursement method of payment for TDHCA funded programs?</p> <p><b>Response:</b> Select Yes or No in the drop down menu of the cell below:</p>	<p>Applicant's history of being on a modified cost reimbursement method of payment for TDHCA Community Affairs Division funded programs.</p> <ul style="list-style-type: none"> <li>• Yes, during the past 3 years: Deduct -50 points</li> <li>• Yes, currently on modified cost reimbursement: Deduct -50 points</li> <li>• No, not during the past 3 years: 0 point deduction</li> </ul>	(points to be deducted based on review)			
2.4	<p>Provide the following information related to your organization's expenditures of CSBG Discretionary funds for the most recently completed TDHCA CSBG Discretionary contract. If no funding was received, leave blank.</p>	<p>Prior Performance - Expenditures: For each percentage point not spent per year, one point will be deducted. (i.e., 81.4% = 19 points deducted, 81.5% = 18 points deducted)</p> <p>Note: The Department will verify expenditures from our records.</p>	(points to be deducted based on review)			
Year	Contract Period	CSBG Discretionary Award Amount	Final Expenditure Amount		% of Funds Expended	
Section	Question	Scoring Mechanism	Maximum Points	Self-Score	Reviewer 1 (TDHCA use only)	Reviewer 2 (TDHCA use only)
2.5	Complete the table below. Provide the	Prior Performance Persons Served	(points to be			



NOFA for FFY 2020 CSBG Discretionary Funds for Native American and MSFW Populations

Attachment B: Part 2 - Efficiency

Applicant Name:

0

Attachment B: Part 3 - Efficiency

Section	Question	Scoring Mechanism	Maximum Points	Self-Score	Reviewer 1 (TDHCA use only)	Reviewer 2 (TDHCA use only)
3.1	<p>In the table below, provide information on the costs that are proposed to be charged to the CSBG-D grant. Administrative costs include those expenses related to management staff such as the executive director, accounting staff, human resource staff, administrative personnel, and overhead costs related to same staff. The Department recommends limiting administrative costs (admin staff and their overhead costs) to no more than 20% of the funds requested. Programmatic costs relate to costs for staff who provide direct client services and carry out duties such as intake, client interview, casework, case management, referrals, and follow-up. It also includes the overhead costs related to these direct client program staff.</p> <p>Direct client assistance costs relate to costs for direct assistance to clients such as education or employment related assistance (tuition, uniforms, books, etc.).</p> <p>In the table below, break out the part of the Overhead Costs that are administrative and programmatic.</p>	<p>Percentage of CSBG costs budgeted for programmatic costs (staff, fringe, and overhead related to programmatic staff) excluding direct client assistance costs:</p> <p>80-100%: 100 points                      60-79%: 80 points                      40-59%: 60 points                      20-39%: 40 points                      Less than 20%: 0 points</p> <p><b>NOTE:</b> If calculation for Programmatic Costs is found to be incorrect, -10 points will be deducted.</p>	100			

**Section 3.1 – Table**

<b>Proposed CSBG Budget</b>		<b>Format</b>	<b>Answer</b>
a. Administrative salaries and fringe related to administrative staff (for example Ex Dir, CFO, admin staff)		Dollar figure	
b. Programmatic salaries and fringe of program staff (for example program directors, case workers, homeless service liaison)		Dollar figure	
c. Direct Client Assistance costs (e.g. rent, food, education assistance, tuition) NOTE: From Budget Support Sheet B6.		Dollar figure	
d. Costs that are budgeted related to Travel, Supplies, Equipment, Contractual, and Other categories excluding indirect costs in category e.		Dollar figure	
e. Indirect costs (for applicants with a federally approved Indirect Cost Rate Plan or for entities claiming the de minimus rate)		Dollar figure	
f. Total CSBG-D funds requested in budget		Dollar figure a+b+c+d+e	\$ -
g. Percentage of total CSBG funds budgeted for programmatic salaries and fringe		Percentage b/f	#DIV/0!

<b>Section</b>	<b>Question</b>	<b>Scoring Mechanism</b>	<b>Maximum Points</b>	<b>Self-Score</b>	<b>(TDHCA use only)</b>	<b>(TDHCA use only)</b>
<b>3.2</b>	Provide information on the amount and percentage of the CSBG-D grant request that will be utilized for Direct Client Assistance, <b>excluding</b> any funds that will be used for salaries and overhead costs of Programmatic staff.  Figures for Section 3.1c above will be utilized for this question and should match Budget Sheet B6. ☒	Percentage of CSBG costs budgeted for direct client assistance costs:  80-100%: 50 points 60-79%: 40 points 40-59%: 30 points 20-39%: 20 points 10-19% 10 points Less than 10%: 0 points  <b>NOTE:</b> If calculation is found to be incorrect, 10 points will be deducted.	<b>50</b>			

150	0	0	0
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NOFA for FFY 2020 CSBG Discretionary Funds for Native American and MSFW Populations  
Attachment B: Part 2 - Proposed Employment and Education Services/Activities

<b>Applicant Name:</b>	0
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**Attachment B: Part 4 - Proposed Employment and Education Services/Activities**

Section	Question	Scoring Mechanism	Maximum Points	Self-Score	Reviewer 1 (TDHCA use only)	Reviewer 2 (TDHCA use only)
4.1	In the table below, indicate how your organization will implement the initiative and evaluate progress on accomplishing what is proposed in the CSBG Discretionary NOFA Application by breaking down your administration of this grant into distinct tasks.	<p><b>Evaluation of Programs:</b> Review plan to evaluate project and award points as follows:</p> <p>Evaluation plan should include, but not be limited to, identification of the tasks, steps to accomplish tasks, evaluation, frequency of evaluation, and a completion time.</p> <ul style="list-style-type: none"> <li>• Award up to 30 points if the tasks clearly set forth activities that will lead to accomplish what is proposed in the application.</li> <li>• Award up to 20 points if the steps to be taken to achieve the tasks are clearly delineated.</li> <li>• Award up to 20 points if the process used to evaluate the initiative is comprehensive.</li> <li>• Award up to 5 points if frequency for when evaluation will occur is reasonable for the tasks.</li> <li>• Award up to 5 points for the completion time. If completion time allotted to achieve results is insufficient, award 0 points.</li> </ul>	80			



Section	Question	Scoring Mechanism	Maximum Points	Self-Score	Reviewer 1 (TDHCA use only)	Reviewer 2 (TDHCA use only)
4.2	<p><b>Employment Initiative:</b> Provide targets for the number of unduplicated persons that you anticipate will achieve the stated goal or receive the stated service as a result of assistance provided through the proposed initiative. An individual can be counted as an unduplicated person receiving a service only once in each activity during the contract term (ONLY COUNT THE PRIMARY RECIPIENT, SUCH AS THE HEAD OF HOUSEHOLD, DO NOT COUNT THE ENTIRE HOUSEHOLD).</p> <p>NOTE: The Department will utilize these proposed targets in the contract and applicant will be evaluated in a future application cycle on their performance (i.e., points deducted for not meeting proposed targets from prior application).</p>	<p><b>Award points as follows:</b></p> <p>3 point awarded for each person for a.-b. with a <b>MAXIMUM of 60 points for a. and 60 points for b.</b></p> <p>1 point for each person for c.-d. with a <b>MAXIMUM of 20 points for c. and 20 points for d.</b></p> <p>NOTE: <b>Do not overestimate</b> your target numbers because in the subsequent application for funds, you will be penalized for not meeting targets proposed in your application in Attachment B Part 2 Question 2.5.</p>	160			
<b>Table 4.2 - Employment Initiative</b>						<b>Target</b>
	a. Number of persons that will obtain employment.					
	b. Number of persons that will obtain an increase in income and or benefits or increased hours.					
	c. Number of persons that will obtain work skills or experience (not related to job search, but actual work skills) to obtain employment or to obtain an increase in employment (a better job, better wages, etc.) through job/vocational training and apprenticeships.					
	d. Number of persons to be provided job search and readiness assistance (such as coaching, resume writing, interview skills training, pre-employment physicals, background checks, career counseling & workshops, etc.).					
Section	Question	Scoring Mechanism	Maximum Points	Self-Score	Reviewer 1 (TDHCA use only)	Reviewer 2 (TDHCA use only)

4.3	<p><b>Education Initiative:</b> Provide targets for the number of unduplicated persons that you anticipate will achieve the stated goal or receive the stated service as a result of assistance provided through the proposed initiative. An individual can be counted as an unduplicated person receiving a service only once in each activity during the contract term (ONLY COUNT THE PRIMARY RECIPIENT, SUCH AS THE HEAD OF HOUSEHOLD, DO NOT COUNT THE ENTIRE HOUSEHOLD).</p> <p>NOTE: The Department will utilize these proposed targets in the contract and applicant will be evaluated in a future application cycle on their performance (i.e., points deducted for not meeting proposed targets).</p>	<p><b>Award points as follows:</b> 1 point awarded for each person to achieve stated goal or will receive stated service in a. through f., with a <b>MAXIMUM of 20 points per each initiative (a.-f.)</b></p> <p>NOTE: Do not overestimate your target numbers because in the subsequent application for funds, you will be penalized for not meeting targets proposed in your application in Attachment B Part 2 Question 2.5.</p>	120			
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**Table 4.3 - Education Initiative**

**Target**

Number of persons that will enroll and work towards obtaining a recognized credential, certificate, or degree related to the achievement of	
a. educational or vocational skills (a trade school or community college).	
Number of persons that will demonstrate improved basic education or receive adult literacy classes, ESL, basic education, or applied technology	
b. classes (excluding high school and GED).	
Number of persons that will enroll in programs to gain competencies required for employment by obtaining a high school diploma or GED.	
c.	
d. Number of persons that will enroll and work towards obtaining an Associate's degree.	
e. Number of persons that will enroll and work towards obtaining a Bachelor's degree.	
f. Number of persons that will obtain a degree (associate's or bachelor's degree) within contract year.	

Section	Question	Scoring Mechanism	Maximum Points	Self-Score	Reviewer 1 (TDHCA use only)	Reviewer 2 (TDHCA use only)
4.4	Unduplicated Persons:	Award points as follows:	120			

	<p>Provide targets for the number of unduplicated persons that you anticipate will receive the following types of assistance through the proposed <u>education and employment</u> initiative. An individual can be counted as an unduplicated person receiving a service only once in each activity during the contract term (ONLY COUNT THE PRIMARY RECIPIENT, SUCH AS THE HEAD OF HOUSEHOLD, DO NOT COUNT THE ENTIRE HOUSEHOLD).</p>	<p>1 point awarded for each person to achieve stated goal or will receive stated service in b. through d with a <b>MAXIMUM of 40 points per each initiative (b.-d.). No points for a.</b></p> <p>NOTE: Do not overestimate your target numbers because in the subsequent application for funds, you will be penalized for not meeting targets proposed in your application in Attachment B Part 2 Question 2.5.</p>				
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Table 4.4 - Unduplicated Persons						Target
	<p>Number of persons receiving case management (a process where a case worker meets with client on an on-going basis to identify, develop, and a. implement a plan to meet short and long-term goals). <b>No points awarded for a.</b></p>					
	<p>Number of persons receiving assistance, either funded with the grant or other funding source, for rent, food, utilities, child care, or b. transportation.</p>					
	<p>Number of persons receiving assistance with tools, uniforms, clothes, equipment, tuition aid, books, and supplies which enable them to obtain or c. retain a job or complete their education goals.</p>					
	<p>Number of persons that receive Financial Literacy Education or Counseling or who achieve or maintain capacity to meet basic needs or reported d. improved financial well being.</p>					

Section	Question	Scoring Mechanism	Maximum Points	Self-Score	Reviewer 1 (TDHCA use only)	Reviewer 2 (TDHCA use only)
4.5	<p>Provide the following information in the yellow-highlighted area below: Describe the current <b>coordination and outreach efforts</b> and describe how your organization will coordinate the proposed project with other service providers in the service area to meet the varied needs that will enable clients to further their education or obtain employment or increase wages.</p>	<p>In assigning points, reviewer will consider the depth to which items are described: Applicant provided information that demonstrates:</p> <p>a. Clear coordination and outreach efforts: 10 point maximum</p> <p>b. Variety of client needs addressed through coordination efforts: 10 point maximum</p> <p>c. Coordination efforts were not sufficiently demonstrated: 0 points</p>	20			

**4.5 Response**



500	0	0	0
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**NOFA for FFY 2020 CSBG Discretionary Funds for Native American and MSFW Populations  
Attachment B: Part 2 - Scoring Summary**

<b>Applicant Name:</b>		0		
<b>Checklist of Application Questions Requesting Attachments</b>				
<b>Question</b>		<b>Attachment Item Requested</b>		
	<b>2.1</b>	Most recent monitoring report for each TDHCA award made in the last 3 years		
<b>Application Question Sections</b>				
<b>Scoring Section</b>	<b>Maximum Points</b>	<b>Points Received</b>	<b>Reviewer 1</b>	<b>Reviewer 2</b>
Part 1: Experience	210	0	0	0
Part 2: Prior Performance	Deductions To Be Determined	0	0	0
Part 3: Efficiency	150	0	0	0
Part 4: Proposed Employment and Education Services/Activities	500	0	0	0
<b>Maximum Points=860</b>				
<b>Final Score (Minimum Score = 430**)</b>		0	0	0

*\* The Self-Score column on Attachment B Parts 1-4 are to be completed by the Applicant; however, the Department does not base its scoring of the application on the Applicant's self-score. \**

*\*\*TDHCA reserves the right to reject funding for applications that do not exceed 430 points. \*\**

*\*\*\*TDHCA reserves the right to request further information related to the application for clarification purposes during the scoring review period.\*\*\**

1e

**BOARD ACTION REQUEST**  
**ASSET MANAGEMENT DIVISION**  
**JANUARY 16, 2020**

Presentation, discussion, and possible action on an order adopting the repeal of 10 TAC Chapter 10 Subchapter E, Post Award and Asset Management Requirements, and an order adopting new 10 TAC Chapter 10 Subchapter E, Post Award and Asset Management Requirements, and directing their publication in the *Texas Register*

**RECOMMENDED ACTION**

**WHEREAS**, at its meeting of October 10, 2019, the Board approved for publication and public comment in the *Texas Register* the proposed repeal and replacement of 10 TAC Chapter 10 Subchapter E concerning the Post Award and Asset Management Requirements; and

**WHEREAS**, the proposed repeal and replacement were published in the October 25, 2019, issue of the *Texas Register* for public comment between October 25, 2019, and November 8, 2019, and staff has received comments from three commenters;

**NOW, therefore, it is hereby**

**RESOLVED**, that the final order adopting the repeal and replacement of 10 TAC Chapter 10 Subchapter E, together with the preambles presented to this meeting, is hereby adopted for publication in the *Texas Register*; and

**FURTHER RESOLVED**, that the Executive Director and his designees be and each of them are hereby authorized, empowered, and directed, for and on behalf of the Department, to cause the repeal of 10 TAC Chapter 10 Subchapter E, Post Award and Asset Management Requirements, and new 10 TAC Chapter 10 Subchapter E, Post Award and Asset Management Requirements, together with the preambles in the form presented to this meeting, to be published in the *Texas Register* for final adoption and, in connection therewith, make such non-substantive technical corrections, or preamble-related corrections, as they may deem necessary to effectuate the foregoing, including the preparation and requested revisions to the subchapter specific preambles.

**BACKGROUND**

Tex. Gov't Code §2306.053 provides for the Department to administer federal housing, community affairs, or community development programs, including the low income housing tax credit program. The Asset Management Division and its Rules, as a whole, are an integral part of administering the Department's federal housing programs, assisting in reviewing and ensuring the long-term affordability and safety of multifamily rental housing Developments in the Department's portfolio as required under Tex. Gov't Code §§2306.185 and 2306.186, performing the functions of processing amendments and ownership transfers as required under §§2306.6712 and 2306.6713, and performing essential functions required under various federal program (HOME, NSP, NHTF, Exchange, TCAP) rules and under Section 42 of the Internal Revenue Code.

Staff recommends that these rules be retained and that this be accomplished through repeal of the existing rules and adoption of new rules. The adoption of new rules will further clarify language and requirements on which questions are often received, correct references to processes, other rules and

forms that have been updated, reduce stakeholder reporting burdens of duplicative materials at 10% Test and cost certification submission, implement internal audit recommendations and federal requirements for the cost certification process, create more efficiency in the creation of Special Reserve Account Agreements and release of Special Reserve funds, and reduce the number of notification and non-material amendments related to changes in guarantors, revise requirements for annual rent reviews and Community Housing Development Organization (CHDO) certifications to clarify current Department practice and meet federal requirements, add additional notification requirements to Right of First Refusal documentation based on previous public comment, roundtable discussions, and stakeholder input, and remove requirements regulating broker fees and Department approvals of brokers under Qualified Contract requirements.

Behind the preamble for the new rule adoption, the rule is shown in its clean new form.

Upon Board approval, the new 2020 Asset Management Rules will be published in the *Texas Register* for adoption.

**Attachment 1: Preamble, including required analysis, for adopting the repeal of 10 TAC Chapter 10, Subchapter E, §§10.400-10.408, Post Award and Asset Management Requirements**

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 10, Subchapter E, §§10.400 – 10.408, Post Award and Asset Management Requirements. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

**a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.**

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous re-adoption making changes to an existing activity, concerning the post award activities of Low Income Housing Tax Credit (LIHTC) and other Department-funded multifamily Developments.

2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation but is associated with the simultaneous re-adoption making changes to an existing activity, Post Award and Asset Management Requirements.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect this state's economy.

**b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.**

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule relates to the procedures for the handling of post award and asset management activities of multifamily developments awarded funds through various Department programs. Other than in the case of a small or micro-business that is an owner or a party to one of the Department's properties, no small or micro-businesses are subject to the rule. If a small or micro-business is such an owner or participant, the new rule provides for a more clear, transparent process for doing so and do not result in a negative impact for those small or micro-businesses. There are not likely to be any rural communities subject to the new rule because this rule is applicable only to the owners or operators of properties in the Department's portfolio, not municipalities.

3. The Department has determined that because this rule relates only to the process in use for the post award and asset management activities of the Department's portfolio, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will be no economic effect on local employment, as the repealed rule will be replaced with a similar rule; therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that no impact is expected on a statewide basis, there are also no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal of this rule is in effect, the public benefit anticipated as a result of the repealed sections will be unaffected as the repealed rule will be replaced with a similar rule. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments, as the repealed rule will be replaced with a similar rule.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between October 25, 2019, and November 8, 2019. No comments were received regarding the proposed repeal.

The Board adopted the final order authorizing the repeal on January 16, 2020.

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the repealed sections affect no other code, article, or statute.

§10.400 Purpose

§10.401 General Commitment or Determination Notice Requirements and Documentation

§10.402 Housing Tax Credit and Tax Exempt Bond Developments

§10.403 Review of Annual HOME/NSP and National Housing Trust Fund Rents

§10.404 Reserve Accounts

§10.405 Amendments and Extensions

§10.406 Ownership Transfers (§2306.6713)

§10.407 Right of First Refusal

§10.408 Qualified Contract Requirements

**Attachment 2: Preamble, including required analysis, adopting new 10 TAC Chapter 10, Subchapter E, §§10.400-10.408, Post Award and Asset Management Requirements**

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 10, Subchapter E, §§10.400 – 10.408, Post Award and Asset Management Requirements with one technical citation update to the proposed text as published in the October 25, 2019, issue of the *Texas Register*. The purpose of the new section is to assist in reviewing and ensuring the long-term affordability and safety of multifamily rental housing Developments in the Department's portfolio as required under Tex. Gov't Code §§2306.185 and 2306.186, perform the functions of processing amendments and ownership transfers as required under §§2306.6712 and 2306.6713, and perform essential functions required under various federal program (HOME, NSP, NHTF, Exchange, TCAP) rules and under Section 42 of the Internal Revenue Code.

The updating of the rule through the new section will further clarify language and requirements on which questions are often received, correct references to processes, other rules, forms, or attachments that have been updated, reduce stakeholder reporting burdens of duplicative materials at 10% Test and cost certification submission, implement internal audit recommendations and federal requirements for the cost certification process, create more efficiency in the creation of Special Reserve Account Agreements and release of Special Reserve funds, reduce the number of notification and non-material amendments related to changes in guarantors, revise requirements for annual rent reviews and Community Housing Development Organization (CHDO) certifications to clarify current Department practice and meet federal requirements, add additional notification requirements to Right of First Refusal documentation based on previous public comment and stakeholder input at roundtables, and remove requirements regulating broker fees and Department approvals of brokers under Qualified Contract requirements.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule would be in effect, the new rule does not create or eliminate a government program, but relates to the re-adoption making changes to an existing activity, concerning the post award activities of Low Income Housing Tax Credit (LIHTC) and other Department-funded multifamily Developments.

2. The new rule does not require a change in work that would require the creation of new employee positions. While some additional work by the Department will be required associated with the additional annual rent reviews of TCAP-RF funded Developments, review of CHDO packages for any new CHDO or CHDO certified prior to 2016, review of NHTF cost certification forms, and review of additional documentation requested as part of ROFR notification requirements, the Department anticipates handling this additional work with existing staff resources. The rule changes do not reduce work load such that any existing employee positions could be eliminated.

3. The new rule changes do not require additional future legislative appropriations.

4. The new rule changes do not result in an increase in fees paid to the Department. However, the Department does anticipate a nominal decrease in fees paid to the Department through the reduction of requests for non-material amendments to add guarantors where guarantors are also the General Contractors or are only providing guaranties during the construction period.

5. The new rule is not creating a new regulation, but is replacing a rule being repealed simultaneously to provide for revisions. The new rule can be considered to "expand" certain existing regulations related to

Cost Certifications in §10.402(j)(3)(B), Review of Annual Rent Approvals in §10.403, Ownership Transfers in §10.406(f)(2), Right of First Refusal documentation in §10.407(c)(3), and Preliminary Qualified Contract Requests in §10.408(c)(2)(D). All of these additions, other than those made in the Right of First Refusal documentation, are necessary in order to observe and clarify requirements from the Department's Internal Auditor, certain federal programs, and Tex. Gov't Code. In the case of the additional items added to required documentation under Right of First Refusal, the Department is responding to external comment and input requesting that these items be added in order to further the Department's directive under Tex. Gov't Code §2306.256 of developing policies and implementing a program to preserve affordable housing in the state of Texas. Specifically, external comment was received during the 2019 rules cycle that communicated the concern that ROFR was not being successfully applied and that without robust notification and advertising, TDHCA's notifications of ROFR postings were not adequately reaching prospective, qualified buyers interested in preserving affordable housing that might otherwise terminate its affordability through the Qualified Contract process.

6. The new rule is not repealing an existing regulation but will limit notifications to the Department and the submission of non-amendments for guarantors where guarantors are not long-term parties to the transaction, will remove certain requirements related to broker approvals and fees under Qualified Contract rules, and will revise and update processes and required documentation to remove unnecessary redundancies and promote efficiency for stakeholders and internal staff related to Special Reserve, 10% Test, and Cost Certification requirements.

7. The new rule will not increase or decrease the number of individuals subject to the rule's applicability. Though the new rule in §10.403, Review of Annual HOME/NSP and National Housing Trust Fund Rents, has been revised to specifically include TCAP-RF recipients, TCAP recipients were already previously included in the rule's applicability through the reference to Multifamily Direct Loan funds used as HOME match.

8. The new rule will not negatively or positively affect this state's economy.

**b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.**

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule relates to the procedures for the handling of post award and asset management activities of multifamily Developments awarded funds through various Department programs. Other than in the case of a small or micro-business that is an owner or a party to one of the Department's properties, no small or micro-businesses are subject to the rule. If a small or micro-business is such an owner or participant, the new rule provides for a more clear, transparent process for doing so and do not result in a negative impact for those small or micro-businesses. There are not likely to be any rural communities subject to the new rule because this rule is applicable only to the owners or operators of properties in the Department's portfolio, not municipalities.

3. The Department has determined that because this rule relates only to the process in use for the post award and asset management activities of the Department's portfolio, there will be no economic effect on small or micro-businesses or rural communities.

**c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.** The new rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

**d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).**

The Department has evaluated the new rule as to its possible effects on local economies and has determined that for the first five years the new rule will be in effect there will be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule. Additionally, because this rule only provides for administrative processes required of properties in the Department's portfolio, no activities under this rule would support additional local employment opportunities. Alternatively, the rule would also not cause any negative impact on employment.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that no impact is expected on a statewide basis, there are also no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new rule sections will be increased efficiency and clarity in post award requirements as well as more robust notifications to local governments, housing authorities, and tenant associations when Owners of Developments with a LURA including a Right of First Refusal requirement submit a notice of intent to sell and post for ROFR. The possible economic cost to individuals required to comply with the new section will be the nominal difference in the cost of materials and/or staff time between providing a letter or emailed notice of intent to tenants at the Development and the Department (along with its list of qualified buyers) and providing additional letters or emailed notices of intent under the new rule to additional tenant organizations, mayors or elected members of the governing body of the municipalities in which the Development is located as applicable, the presiding officer of the governing body of the county in which the Development is located, and the local housing authority.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new rule does not have any foreseeable implications related to costs or revenues of the state or local government, as the costs to administer any additional requirements will potentially be offset by efficiency gains in other revised processes and will otherwise be absorbed by current Department resources.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between October 25, 2019, and November 8, 2019. Comments regarding the proposed new rule were accepted in writing and e-mail with comments received from: (1) Lauren Loney, Advocacy Co-Director for Texas Housers, (2) Sandy Hoy, General Counsel for the Texas Apartment Association (TAA), and (3) Tillie Croxdale, Real Estate Project Manager for Foundation Communities. Comments were only received on §10.402(b) – Housing Tax Credit and Tax Exempt Bond Developments, Determination Notices, §10.402(e)(1) – Post Bond Closing Documentation Requirements, §10.404(d)(4) – Special Reserve Accounts, §10.406(f)(2) – Ownership Transfers, Nonprofit Organizations, and §10.407(c) – Right of First Refusal, Required Documentation. One internal technical correction was made, which relates to the correction of a citation reference in §10.403 – Review of HOME, NSP, TCAP-RF, and National Housing Trust Fund Rents, Applicability.

#### **§10.402(b) – Housing Tax Credit and Tax Exempt Bond Developments, Determination Notices**

COMMENT SUMMARY: Commenter (2) stated that TAA had concerns about the Board's ability to extend the expiration date of the notice for good cause which could result in a Development Owner missing out on participation in the program through a delay that was no fault of their own. The Commenter proposed the following change to the language:

"The Determination Notice expiration date may not be extended unless the Board determines that any delay was due to circumstances beyond the control of the Development Owner. The Determination Notice will be rescinded if the Tax Exempt Bonds

are not closed within the timeframe provided for by the Board on its approval of the Determination Notice, by the expiration of the Certificate of Reservation associated with the Determination Notice, or if there are material changes to the financing or Development as determined by the Department pursuant to its rules and any conditions of approval included in the Board approval or underwriting report....”

STAFF RESPONSE: To provide an extension of the Determination Notice expiration date would be to extend the 30-day timeframe by which an Applicant has to return the required fees and documentation due with the Determination Notice. Staff removed the language regarding the ability for the Board to extend such date in part to be consistent with the treatment of Commitment Notices for Competitive HTC awards and because it would be difficult, if not impossible, to present such an item to the Board before the expiration date in the Determination Notice. Should an Applicant not meet the requirements of the Determination Notice within the 30-day timeframe, then it would likely result in the Applicant’s ability to appeal which would ultimately be brought before the Board. The change is considered a technical correction related to updating how the consideration of an extension would take place and therefore staff recommends no change to the rule section.

**§10.402(e)(1) – Post Bond Closing Documentation Requirements**

COMMENT SUMMARY: Commenter (3) asked whether Fair Housing Trainers will be able to update their training certificates to conform with TDHCA requirements and, if not, whether the change in language will present an issue during Asset Management review.

STAFF RESPONSE: Staff added the specific language “attended *and passed*” in response to questions received last year during the 10% test reviews, at which point staff was asked by an external party whether a statement or certification from the fair housing training provider would be accepted if the training had been taken but had not been passed. However, the RFQ for acceptable training providers requires that a certificate be provided only in the event that a class is passed by a training participant. Therefore, Asset Management staff will continue to assume that the provision of such a certificate will demonstrate a passing score on required material. Although trainers may wish to make such changes to their provided certificates and the Department generally supports this idea, the Department is not currently requiring such changes and will continue to enforce its RFQ criteria for review and approval of Fair Housing training providers. Staff recommends no change to the rule section.

**§10.403 – Review of HOME, NSP, TCAP-RF, and National Housing Trust Fund Rents, Applicability**

COMMENT SUMMARY: Staff noticed prior to routing the rule for adoption that this section of rule refers to an inaccurate citation reference. It references a citation as 24 CFR §92.252(d)(4), but it appears that it should be 24 CFR §92.252(d)(2). The section previously read: “The Department is also required by 24 CFR §92.219 and §92.252(d)(4) to approve rents where Multifamily Direct Loan funds are used as HOME match.” The second citation has been updated as stated above.

STAFF RESPONSE: Staff recommends the above technical correction to the rule section.

**§10.404(d)(4) – Special Reserve Account**

COMMENT SUMMARY: Commenter (1) made comments in support of staff’s rule change to the Special Reserve Account section as a minimum for what a property should be required to do to connect residents to the underused source of special reserve funding. The commenter requested that the issue be made the subject of future roundtables or Committee Meetings in order to make funds more readily available to tenants.

STAFF RESPONSE: Staff thanks the Commenter for support of the rule change and will look forward to bringing this topic forward for discussion and consideration during next year's rule cycle. Staff recommends no change to the rule section.

#### **§10.406(f)(2) – Ownership Transfers, Nonprofit Organizations**

COMMENT SUMMARY: Commenter (3) stated that after an investor exits the ownership structure at the end of 15 years, Foundation Communities (FC) will typically transfer ownership of a property to an FC affiliate nonprofit entity with a tax exempt status under Foundation Communities with a common board of directors and believes that the Community Housing Development Organization (CHDO) exemption should extend to these affiliates. The commenter suggested the below language:

(2) If the LURA requires ownership or material participation in ownership by a nonprofit organization or CHDO, the Development Owner must show that the transferee is a nonprofit organization or CHDO, as applicable, that complies with the LURA. If the transferee has been certified as a CHDO by TDHCA prior to 2016 or has not previously been certified as a CHDO by TDHCA, a new CHDO certification package must be submitted for review. If the transferee was certified as a CHDO by TDHCA after 2016, provided no new federal guidance or rules concerning CHDO have been released and the proposed ownership structure at the time of review meets the requirements in 24 CFR Part 92, the CHDO may instead submit a CHDO Self-Certification form with the Ownership Transfer package. A nonprofit affiliate of a certified CHDO with a common board of directors and similar exempt purpose will be considered a certified CHDO.

STAFF RESPONSE: While staff understands the nature of the request, the HOME Final Rule Definitions in 24 CFR §§92.2 and 92.300 contain specific provisions that must be met in order for an entity to qualify as a CHDO (including but not limited to items such as meeting specific requirements for financial accountability, having paid staff, and having a history of community service over a specific period of time). As a recipient of Federal funds, TDHCA reviews entities on a case by case basis to determine whether these requirements are met by an entity, and cannot make the blanket statement recommended by the commenter. Staff recommends no change to the rule section.

#### **§10.407(c) – Right of First Refusal, Required Documentation**

COMMENT SUMMARY: Commenters (1) and (3) made comments in support of staff's changes to include a more robust notification requirement for the Development's offering a Right of First Refusal (ROFR) under their Land Use Restriction Agreements (LURAs). Commenter (1) stated that such comprehensive notice requirements as those proposed have been critical to state and local affordable housing preservation efforts across the country. Commenter (3) stated that the additional notification requirements are a critical aspect of an effective preservation strategy. Alternatively, Commenter (2) was not in support of these changes and raised concerns about the revisions to the notice requirements and stated that the rule dramatically increases the scope and volume of people and parties that must be contacted in the event of a sale and provided information about a ROFR purchase. In addition the Commenter stated that having to research such various parties and send emails would be a significant amount of work and there is no way to know whether any such parties will have an interest or the funds necessary to purchase a property. The Commenter stated that it makes more sense for TDHCA to rely upon its existing systems to notify potential buyers such as their website and email subscriber list.

STAFF RESPONSE: While Staff does not disagree with the fact that the new notice requirements may add a small amount of one-time additional work and effort to the process of submitting a ROFR package for review (as described in the proposed rule preamble), it also seems apparent based on community feedback during the rules cycle and the Asset Management round table discussions that while Commenter

(2) finds the current practice acceptable, other community members and external stakeholders (including Commenters 1 and 3) do not. Because the Right of First Refusal is a provision that largely depends on qualified entities having an awareness of an Owner's intent to sell, staff believes it is prudent to widen the scope of parties to be notified to ensure that the right of first refusal extended under IRS Code can be adequately accessed by intended parties. Staff also considers that providing a notice to external parties rather than assuming all external stakeholders and community members know where to access listings on the TDHCA website and how to join the appropriate TDHCA listserv will assist in limiting potential unintended barriers to the negotiation process. Staff recommends no change to the rule section.

STATUTORY AUTHORITY. The new sections are proposed pursuant to TEX. GOV'T CODE, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute.

## Post Award and Asset Management Requirements

### **§10.400. Purpose.**

(a) The purpose of this subchapter is to establish the requirements governing the post award and asset management activities associated with awards of multifamily Development assistance pursuant to Tex. Gov't Code, Chapter 2306 and its regulation of multifamily funding provided through the Texas Department of Housing and Community Affairs (the "Department") as authorized by the legislature. This subchapter is designed to ensure that Developers and Development Owners of low-income Developments that are financed or otherwise funded through the Department maintain safe, decent and affordable housing for the term of the affordability period. Therefore, unless otherwise indicated in the specific section of this subchapter, any uncorrected issues of noncompliance outside of the corrective action period or outstanding fees (related to the Development subject to the request) owed to the Department, must be resolved to the satisfaction of the Department before a request for any post award activity described in this subchapter will be acted upon.

(b) The capitalized terms in this subchapter shall have the meaning as defined in this title in Chapter 1 relating to Administration, Chapter 2 relating to Enforcement, Chapter 10 relating to Uniform Multifamily Rules, Chapter 11 relating to the Qualified Action Plan, Chapter 12 relating to the Multifamily Housing Revenue Bond Rules, Chapter 13 relating to the Multifamily Direct Loan Rule, Tex. Gov't Code Chapter 2306, Internal Revenue Code (the Code) §42, the HOME Final Rule, the NHTF Interim Rule, and other federal or Department rules, as applicable.

### **§10.401. General Commitment or Determination Notice Requirements and Documentation.**

(a) A Commitment or Determination Notice shall not be issued with respect to any Development for an unnecessary amount in accordance with §42(m)(2)(A) or where the cost for the total development, acquisition, construction or rehabilitation exceeds the limitations established by the Department and the Board.

(b) All Commitments or Determination Notices, whether reflected in the Commitment or Determination Notice or not, are made subject to full compliance with all applicable provisions of law and the Department's rules, all provisions of Commitment and Contract, satisfactory completion of underwriting, and satisfactory resolution of any conditions of underwriting, award, and administrative deficiencies.

(c) The Department shall notify, in writing, the mayor, county judge, or other appropriate official of the municipality or county, as applicable, in which the Development is located informing him/her of the Board's issuance of a Commitment Notice, as applicable.

(d) The Department may cancel a Commitment, Determination Notice or Carryover Allocation prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or completion of construction with respect to a Development and/or apply administrative penalties if:

(1) The Applicant, Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure, to meet any of the conditions of such Commitment, Determination Notice or Carryover Allocation or any of the undertakings and commitments made by the Development Owner in the Application process for the Development;

(2) Any material statement or representation made by the Development Owner or made with respect to the Development Owner or the Development is untrue or misleading;

(3) An event occurs with respect to the Applicant or the Development Owner which would have made the Application ineligible for funding pursuant to Subchapter C of Chapter 11 of this title (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and

Waiver of Rules) if such event had occurred prior to issuance of the Commitment, Determination Notice or Carryover Allocation; or

(4) The Applicant, Development Owner, or the Development, as applicable, fails after written notice and a reasonable opportunity to cure, to comply with this chapter or other applicable Department rules, procedures, or requirements of the Department.

**§10.402. Housing Tax Credit and Tax Exempt Bond Developments.**

**(a) Commitment.** For Competitive HTC Developments, the Department shall issue a Commitment to the Development Owner which shall confirm that the Board has approved the Application and state the Department's commitment to make a Housing Credit Allocation to the Development Owner in a specified amount, subject to the feasibility determination described in Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) and the determination that the Development satisfies the requirements of this chapter and other applicable Department rules. The Commitment shall expire on the date specified therein, which shall be 30 calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Commitment, pays the required fee specified in §11.901 of this title (relating to Fee Schedule, Appeals, and other Provisions), and satisfies any conditions set forth therein by the Department. The Commitment expiration date may not be extended.

**(b) Determination Notices.** For Tax Exempt Bond Developments, the Department shall issue a Determination Notice which shall confirm the Board's determination that the Development satisfies the requirements of this chapter as applicable and other applicable Department rules in accordance with the §42(m)(1)(D) of the Internal Revenue Code (the Code). The Determination Notice shall also state the Department's determination of a specific amount of housing tax credits that the Development may be eligible for, subject to the requirements set forth in the Department's rules, as applicable. The Determination Notice shall expire on the date specified therein, which shall be 30 calendar days from the effective date, unless the Development Owner indicates acceptance by executing the Determination Notice, pays the required fee specified in Chapter 11, Subchapter E of this title, and satisfies any conditions set forth therein by the Department. The Determination Notice expiration date may not be extended. The Determination Notice will be rescinded if the Tax Exempt Bonds are not closed within the timeframe provided for by the Board on its approval of the Determination Notice, by the expiration of the Certificate of Reservation associated with the Determination Notice, or if there are material changes to the financing or Development as determined by the Department pursuant to its rules and any conditions of approval included in the Board approval or underwriting report.

**(c) Tax Credit Amount.** The amount of tax credits reflected in the IRS Form(s) 8609 may be greater or less than the amount set forth in the Determination Notice based upon the Department's determination as of each building's placement in service. Any increase of tax credits will only be permitted if it is determined necessary by the Department, as required by §42(m)(2)(D) of the Code through the submission of the Cost Certification package. Increases to the amount of tax credits that exceed 110% of the amount of credits reflected in the Determination Notice must be approved by the Board. Increases to the amount of tax credits that do not exceed 110% of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director or designee and are subject to the Credit Increase Fee as described in Chapter 11, Subchapter E of this title (relating to Fee Schedule, Appeals, and other Provisions).

**(d) Documentation Submission Requirements at Commitment of Funds.** No later than the expiration date of the Commitment (or no later than December 31 for Competitive HTC Applications, whichever is earlier) or Determination Notice, the documentation described in paragraphs (1) - (6) of this subsection must be provided. Failure to provide these documents may cause the Commitment or Determination Notice to be rescinded:

(1) For entities formed outside the state of Texas, evidence that the entity filed a Certificate of Application for foreign qualification in Texas, a Franchise Tax Account Status from the Texas Comptroller of Public Accounts, and a Certificate of Fact from the Office of the Secretary of State. If the entity is newly registered in Texas and the Franchise Tax Account Status or Certificate of Fact are not available, a statement can be provided to that effect;

(2) For Texas entities, a copy of the Certificate of Filing for the Certificate of Formation from the Office of the Secretary of State; a Certificate of Fact from the Secretary of State, and a Franchise Tax Account Status from the Texas Comptroller of Public Accounts. If the entity is newly registered and the Certificate of Fact and the Franchise Tax Account Status are not available, a statement can be provided to that effect;

(3) Evidence that the signer(s) of the Commitment or Determination Notice have sufficient authority to sign on behalf of the Applicant in the form of a corporate resolution which indicates the sub-entity in Control consistent with the entity contemplated and described in the Application;

(4) Evidence of final zoning that was proposed or needed to be changed pursuant to the Development plan;

(5) Evidence of satisfaction of any conditions identified in the Credit Underwriting Analysis Report, any conditions from the Executive Award Review and Advisory Committee as provided for in 10 TAC Chapter 1, Subchapter C (relating to Previous Participation), or any other conditions of the award required to be met at Commitment or Determination Notice; and

(6) Documentation of any changes to representations made in the Application subject to §10.405 of this subchapter (relating to Amendments and Extensions).

(7) For Applications underwritten with a property tax exemption, documentation must be submitted in the form of a letter from an attorney identifying the statutory basis for the exemption and indicating that the exemption is reasonably achievable, subject to appraisal district review. Additionally, any Development with a proposed Payment in Lieu of Taxes (PILOT) agreement must provide evidence regarding the statutory basis for the PILOT and its terms.

**(e) Post Bond Closing Documentation Requirements.** Regardless of the issuer of the bonds, no later than 60 calendar days following closing on the bonds, the Development Owner must submit the documentation in paragraphs (1) - (5) of this subsection.

(1) Training certificate(s) from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager has attended and passed at least five hours of Fair Housing training. The certificate(s) must not be older than two years from the date of submission and must verify that all parts or phases of the offered training have been completed; two certificates supplied for the same part or phase of an offered training will not be counted towards the five hour required minimum, even if they were attended on different dates;

(2) A training certificate from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineer responsible for certifying compliance with the Department's accessibility and construction standards has attended and passed at least five hours of Fair Housing training. The certificate must not be older than two years from the date of

submission and must verify that all parts or phases of the offered training have been completed; two certificates supplied for the same part or phase of an offered training will not be counted towards the five hour required minimum, even if they were attended on different dates;

(3) Evidence that the financing has closed, such as an executed settlement statement;

(4) A confirmation from the Compliance Division evidencing receipt of the CMTS Filing Agreement form pursuant to §10.607(a) of this chapter; and

(5) An initial construction status report consisting of items (1) – (5) of §10.402(h) of this subchapter (relating to Construction Status Reports).

**(f) Carryover (Competitive HTC Only).** All Developments which received a Commitment, and will not be placed in service and receive IRS Form(s) 8609 in the year the Commitment was issued, must submit the Carryover documentation, in the form prescribed by the Department in the Carryover Manual, no later than the Carryover Documentation Delivery Date as identified in §11.2 of this title (relating to Program Calendar for Competitive Housing Tax Credits) of the year in which the Commitment is issued pursuant to §42(h)(1)(C) of the Code.

(1) Commitments for credits will be terminated if the Carryover documentation has not been received by this deadline, unless an extension has been approved. This termination is subject to right of appeal directly to the Board, and if so determined by the Board, immediately upon final termination by the Board, staff is directed to award the credits to other qualified Applicants on the approved waiting list.

(2) If the interim or permanent financing structure, syndication rate, amount of debt or syndication proceeds are finalized but different at the time of Carryover from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be re-evaluated by the Department for a reduction of credit or change in conditions.

(3) All Carryover Allocations will be contingent upon the Development Owner providing evidence that they have and will maintain Site Control through the 10% Test or through the anticipated closing date, whichever is earlier. For purposes of this paragraph, any changes to the Development Site acreage between Application and Carryover must be addressed by written explanation or, as appropriate, in accordance with §10.405 of this subchapter (relating to Amendments and Extensions).

(4) Confirmation of the right to transact business in Texas, as evidenced by the Franchise Tax Account Status (the equivalent of the prior Certificate of Account Status) from the Texas Comptroller of Public Accounts and a Certificate of Fact from the Office of the Secretary of State must be submitted with the Carryover Allocation.

**(g) 10% Test (Competitive HTC Only).** No later than July 1 of the year following the submission of the Carryover Allocation Agreement or as otherwise specified in the applicable year's Qualified Allocation Plan, documentation must be submitted to the Department verifying that the Development Owner has expended more than 10% of the Development Owner's reasonably expected basis, pursuant to §42(h)(1)(E)(i) and (ii) of the Code and Treasury Regulations, 26 CFR §1.42-6. The Development Owner must submit, in the form prescribed by the Department, documentation evidencing paragraphs (1) - (7) of this subsection, along with all information outlined in the Post Award Activities Manual. Satisfaction of the 10% Test will be contingent upon the submission of the items described in paragraphs (1) - (7) of this

subsection as well as all other conditions placed upon the Application in the Commitment. Requests for an extension will be reviewed on a case by case basis as addressed in §10.405(c) of this subchapter and §11.2 of this title, as applicable, and a point deduction evaluation will be completed in accordance with Tex. Gov't Code §2306.6710(b)(2) and §11.9(f) of this title. Documentation to be submitted for the 10% Test includes:

(1) An Independent Accountant's Report and Taxpayer's Basis Schedule form. The report must be prepared on the accounting firm's letterhead and addressed to the Development Owner or an Affiliate of the Development Owner. The Independent Accountant's Report and Taxpayers Basis Schedule form must be signed by the Development Owner. If, at the time the accountant is reviewing and preparing their report, the accountant has concluded that the taxpayer's reasonably expected basis is different from the amount reflected in the Carryover Allocation agreement, then the accountant's report should reflect the taxpayer's reasonably expected basis as of the time the report is being prepared;

(2) Any conditions of the Commitment or Real Estate Analysis underwriting report due at the time of 10% Test submission;

(3) Evidence that the Development Owner has purchased, transferred, leased, or otherwise has ownership of the Development Site. The Development Site must be identical to the Development Site that was submitted at the time of Application submission. For purposes of this paragraph, any changes to the Development Site acreage between Application and 10% Test must be addressed by written explanation or, as appropriate, in accordance with §10.405 of this subchapter (relating to Amendments and Extensions);

(4) A current survey or plat of the Development Site, prepared and certified by a duly licensed Texas Registered Professional Land Surveyor. The survey or plat must clearly delineate the flood plain boundary lines and show all easements and encroachments;

(5) For New Construction, Reconstruction, and Adaptive Reuse Developments, a certification from a Third Party civil engineer or architect stating that all necessary utilities will be available at the Development Site and that there are no easements, licenses, royalties, or other conditions on or affecting the Development that would materially or adversely impact the ability to acquire, develop, and operate as set forth in the Application. Copies of supporting documents may be required by the Department;

(6) For the Development Owner and on-site or regional property manager, training certificate(s) from a Department approved "property owner and manager Fair Housing trainer" showing that the Development Owner and on-site or regional property manager attended and passed at least five hours of Fair Housing training. For architects and engineers, training certificate(s) from a Department approved "architect and engineer Fair Housing trainer" showing that the lead architect or engineers responsible for certifying compliance with the Department's accessibility and construction standards has attended and passed at least five hours of Fair Housing training. Certifications required under this paragraph must not be older than two years from the date of submission of the 10% Test Documentation, and must verify that all parts or phases of the offered training have been completed; two certificates supplied for the same part or phase of an offered training will not be counted towards the five hour required minimum, even if they were attended on different dates; and

(7) A Certification from the lender and syndicator identifying all known Guarantors. If identified Guarantors have changed from the Guarantors or Principals identified at the time of Application,

a non-material amendment may be required in accordance with §10.405 of this subchapter (relating to Amendments and Extensions), and the new Guarantors or Principals must be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation).

**(h) Construction Status Report (All Multifamily Developments).** All multifamily developments must submit a construction status report. Construction status reports shall be due by the tenth day of the month following each reporting quarter's end (January, April, July, and October) and continue on a quarterly basis until the entire Development is complete as evidenced by one of the following: Certificates of occupancy for each building, the Architect's Certificate(s) of Substantial Completion (AIA Document G704 or equivalent form) for the entire Development, the final Application and Certificate for Payment (AIA Document G702 and G703), or an equivalent form approved for submission by the construction lender and/or investor. For Competitive Housing Tax Credit Developments, the initial report must be submitted no later than October 10<sup>th</sup> following the year of award (this includes Developments funded with HTC and TDHCA Multifamily Direct Loans), and for Developments awarded under the Department's Multifamily Direct Loan programs only, the initial report must be submitted 90 calendar days after loan closing. For Tax Exempt Bond Developments, the initial construction status report must be submitted as part of the Post Bond Closing Documentation due no later than 60 calendar days following closing on the bonds as described in §10.402(e) of this section (relating to Post Bond Closing Documentation Requirements). The initial report for all multifamily Developments shall consist of the items identified in paragraphs (1) – (6) of this subsection, unless stated otherwise. All subsequent reports shall contain items identified in subparagraphs (4) – (6) of this paragraph and must include any changes or amendments to items in subparagraphs (1) – (3) if applicable:

(1) The executed partnership agreement with the investor or, for Developments receiving an award only from the Department's Direct Loan Programs, other documents setting forth the legal structure and ownership. If identified Guarantors or Principals of a Guarantor entity were not already identified as a Principal of the Owner, Developer, or Guarantor at the time of Application, a non-material amendment must be requested in accordance with §10.405 of this subchapter, and the new Guarantors and all of its Principals, as applicable, must be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation);

(2) The executed construction contract for the General Contractor, prime subcontractor(s) and Affiliates or Related Party subcontractor(s);

(3) The construction loan agreement. If the loan has not closed, the anticipated closing date must be provided and, upon closing, the agreement must be provided to the Department;

(4) The most recent Application and Certificate for Payment (AIA Document G702 and G703) certified by the Architect of Record (or equivalent form approved for submission by the construction lender and/or investor) for the General Contractor, prime subcontractor(s) and Affiliates or Related Party subcontractor(s); and

(5) All Third Party construction inspection reports not previously submitted. If the lender and/or investor does not require third party construction inspection reports, the Development Owner must hire a third party inspector to perform these inspections on a quarterly basis and submit the reports to the Department. Third Party construction inspection reports must include, at a minimum, a discussion of site conditions as of the date of the site visit, current photographs of the construction site and exterior and interior of buildings, an estimated percentage of construction completion as of the date of the site visit, identification of construction delays and other relevant progress issues, if any, and the anticipated construction completion date;

(6) Minority Owned Business Report (HTC only) showing the attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses as required and further described in Tex. Gov't Code §2306.6734.

**(i) LURA Origination.**

(1) The Development Owner must request origination of the HTC LURA as directed in the Post Award Activities Manual. The Department will draft a LURA for the Development Owner that will impose the income and rent restrictions identified in the Development's final underwriting report and other representations made in the Application, including but not limited to specific commitments to provide tenant services, to lease to Persons with Disabilities, and/or to provide specific amenities. After origination, the Department executed LURA and all exhibits and addendums will be sent to the Development Owner to execute and record in the real property records for the county in which the Development is located. A copy of the fully executed, recorded LURA must be returned to the Department no later than the end of the first year of the Credit Period. In general, no Housing Tax Credits are allowed to be issued for a building unless there is a properly executed and recorded LURA in effect at the end of the first year of the Credit Period. Nothing in this section negates a Development Owner's responsibility for full compliance with §42(h)(6) of the Code. The Department will not issue IRS Form(s) 8609 until it receives a copy of the fully executed, recorded LURA.

(2) LURAs for Direct Loan awardees will be prepared by the Department's Legal Division and executed at loan closing.

**(j) Cost Certification (Competitive and Non-Competitive HTC, and related activities only).** The Department conducts a feasibility analysis in accordance with §42(m)(2)(C)(i)(III) of the Code and Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) to make a final determination on the allocation of Housing Tax Credits. The requirements for cost certification include those identified in paragraphs (1) - (3) of this subsection.

(1) Development Owners must file cost certification documentation no later than January 15 following the first year of the Credit Period, as defined in §42(f)(1) of the Code.

(2) The Department will evaluate the cost certification documentation and notify the Development Owner of any additional required documentation needed to complete the review. The Department reserves the right to request additional documents or certifications as it deems necessary or useful in the determination of the Development's eligibility for a final Housing Tax Credit allocation amount. Any communication issued to the Development Owner pertaining to the cost certification documentation may also be sent to the syndicator.

(3) IRS Form(s) 8609 will not be issued until the conditions as stated in subparagraphs (A) - (G) of this paragraph have been met. The Development Owner has:

(A) Provided evidence that all buildings in the Development have been placed in service by:

(i) December 31 of the year the Commitment was issued;

(ii) December 31 of the second year following the year the Carryover Allocation Agreement was executed; or

*(iii)* the approved Placed in Service deadline;

(B) Provided a complete final cost certification package in the format prescribed by the Department. As used herein, a complete final cost certification package means a package that meets all of the Department's criteria with all required information and exhibits listed in clauses (i) - (xxxv) of this subparagraph, and pursuant to the Post Award Activities Manual. If any item on this list is determined to be unclear, deficient, or inconsistent with the cost certification review completed by the Department, a Request for Information (RFI) will be sent to the Development Owner.

*(i)* Owner's signed and notarized Statement of Certification verifying the CPA firm's licenses and validity, including any restrictions;

*(ii)* Owner Summary & Organization Charts for the Owner, Developer, and Guarantors;

*(iii)* Evidence of Qualified Nonprofit or CHDO Participation;

*(iv)* Certification and evidence of Historically Underutilized Business (HUB) Participation;

*(v)* Development Team List;

*(vi)* Development Summary with Architect's Certification;

*(vii)* Development Change Documentation;

*(viii)* As Built Survey;

*(ix)* A copy of the fully executed Closing Statement for each parcel of land and/or buildings purchased and included in the Development;

*(x)* Development Owner's Title Policy for the Development;

*(xi)* Title Policy Update;

*(xii)* Placement in Service;

*(xiii)* Evidence of Placement in Service;

*(xiv)* Architect's Certification of Completion Date and Date Ready for Occupancy (for Developments located in areas where Certificates of Occupancy (COs) are not issued by a local government or rehabilitation Developments that cannot provide COs);

*(xv)* Auditor's Certification of Acquisition/Rehabilitation Placement in Service Election;

*(xvi)* Independent Auditor's Report;

- (xvii)* Independent Auditor's Report of Bond Financing;
- (xviii)* Development Cost Schedule;
- (xix)* Contractor's Application for Final Payment (G702/G703) for the General Contractor, all prime subcontractors, Affiliated Contractors, and Related Party Contractors;
- (xx)* Additional Documentation of Offsite Costs;
- (xxi)* Rent Schedule;
- (xxii)* Utility Allowances;
- (xxiii)* Annual Operating Expenses;
- (xxiv)* 30 Year Rental Housing Operating Pro Forma;
- (xxv)* Current Operating Statement in the form of a trailing twelve month statement;
- (xxvi)* Current Rent Roll;
- (xxvii)* Summary of Sources and Uses of Funds;
- (xxviii)* Final Limited Partnership Agreement with all amendments and exhibits;
- (xxix)* All Loan Agreements and Promissory Notes (except for Agreements and Notes issued directly by the Department);
- (xxx)* Architect's Certification of Accessibility Requirements;
- (xxxi)* Development Owner Assignment of Individual to Compliance Training;
- (xxxii)* TDHCA Compliance Training Certificate (not older than two years from the date of cost certification submission);
- (xxxiii)* TDHCA Final Inspection Clearance Letter or evidence of submitted final inspection request to the Compliance Division (IRS Form(s) 8609 will not be issued without a TDHCA Final Inspection Clearance Letter);
- (xxxiv)* As required by 24 CFR §93.406(b) and the Multifamily Direct Loan Rule §13.11 (relating to Post-Award Requirements), for NHTF Developments layered with HTCs, a separate, additional cost certification form completed by an independent, licensed, certified public accountant of all Development costs (including project costs), subject to the conditions and limitations set forth in the executed Direct Loan Contract; and
- (xxxv)* Other Documentation as Required, including but not limited to conditions to be satisfied at cost certification as reflected in the Development's latest Underwriting Report;

(C) Informed the Department of and received written approval for all amendments, extensions, and changes in ownership relating to the Development in accordance with §10.405 of this subchapter (relating to Amendments and Extensions) and §10.406 of this subchapter (relating to Ownership Transfers (§2306.6713));

(D) Paid all applicable Department fees, including any past due fees;

(E) Met all conditions noted in the Department underwriting report, Determination Notice, and Commitment;

(F) Corrected all issues of noncompliance, including but not limited to noncompliance status with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for the subject Development, as described in this chapter. Developments in the corrective action period and/or with any uncorrected issues of noncompliance outside of the corrective action period will not be issued IRS Form(s) 8609s until all events of noncompliance are corrected or otherwise approved by the Executive Director or designee;

(G) Completed an updated underwriting evaluation in accordance with Chapter 11, Subchapter D of this title based on the most current information at the time of the review.

#### **§10.403. Review of Annual HOME, NSP, TCAP-RF, and National Housing Trust Fund Rents.**

**(a) Applicability.** For participants of the Department's Multifamily HOME and NSP Direct Loan program, where Commitment of Funds occurred on or after August 23, 2013, the Department is required by 24 CFR §92.252(f) and for all National Housing Trust Fund (NHTF) participants by 24 CFR §93.302(c)(2), to review and approve or disapprove HOME/NSP/NHTF rents on an annual basis. The Department is also required by 24 CFR §92.219 and §92.252(d)(2) to approve rents where Multifamily Direct Loan funds (including TCAP-RF) are used as HOME match. Development Owners must submit documentation for the review of HOME/NSP/NHTF/TCAP-RF rents by no later than July 1st of each year as further described in the Post Award Activities Manual.

**(b) Documentation for Review.** The Department will furnish a rent approval request packet for this purpose that will include a request for Development information and an Owner's proposed rent schedule and will require submission of a current rent roll or unit status report, a copy of information used to determine gross Direct Loan rents, and utility allowance information. The Department may request additional documentation to perform a determination, as needed, including but not limited to annual operating statements, market surveys, or other information related to determining whether rents are sufficient to maintain the financial viability of a project or are in compliance with maximum rent limits.

**(c) Review Process.** Rents will be approved or disapproved within 30 days of receipt of all items required to be submitted by the Development Owner, and will be issued in the form of a signed letter from the Asset Management Division. Development Owners must keep copies of all approval letters on file at the Development site to be reviewed at the time of Compliance Monitoring reviews.

**(d) Compliance.** Development Owners for whom this section is applicable are subject to compliance under §10.622 of this chapter (relating to Special Rules Regarding Rents and Limit Violations) and may be subject to penalties under §10.625 of this chapter (relating to Events of Noncompliance). Approval of rents by the Asset Management Division will be limited to a review of the documentation submitted and will not guarantee compliance with the Department's rules or otherwise absolve an Owner of any past,

current, or future non-compliance related to Department rules, guidance, Compliance Monitoring visits, or any other rules or guidance to which the Development or its Owner may be subject.

**§10.404. Reserve Accounts.**

**(a) Replacement Reserve Account (§2306.186).** The Department will require Development Owners to provide regular maintenance to keep housing sanitary, safe and decent by establishing and maintaining a reserve for replacement account for the Development in accordance with Tex. Gov't Code, §2306.186. The reserve account must be established, in accordance with paragraphs (3), (4), (5), and (6) of this subsection, and maintained through annual or more frequent regularly scheduled deposits, for each Unit in a Development of 25 or more rental Units regardless of the amount of rent charged for the Unit. If the Department is processing a request for loan modification or other request under this subchapter and the Development does not have an existing replacement reserve account or sufficient funds in the reserve to meet future capital expenditure needs of the Development as determined by a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in this section, or as indicated by the number or cost of repairs included in a third party Physical Needs Assessment (PNA), the Development Owner will be required to establish and maintain a replacement reserve account or review whether the amount of regular deposits to the replacement reserve account can be increased, regardless of the number of Units at the Development. The Department shall, through cooperation of its divisions responsible for asset management and compliance, ensure compliance with this section. The duties of the Development Owner under this section cease on the date of a change in ownership of the Development; however, the subsequent Development Owner of the Development is subject to the requirements of this section and any additional or revised requirements the Department may impose after reviewing a Development's compliance history, a PNA submitted by the Owner, or the amount of reserves that will be transferred at the time of any property sale.

(1) The LURA requires the Development Owner to begin making annual deposits to the replacement reserve account on the later of the:

(A) Date that occupancy of the Development stabilizes as defined by the First Lien Lender or, in the absence of a First Lien Lender other than the Department, the date the Property is at least 90% occupied; or

(B) The date when the permanent loan is executed and funded.

(2) The Development Owner shall continue making deposits into the replacement reserve account until the earliest of the:

(A) Date on which the owner suffers a total casualty loss with respect to the Development or the date on which the Development becomes functionally obsolete, if the Development cannot be or is not restored;

(B) Date on which the Development is demolished;

(C) Date on which the Development ceases to be used as a multifamily rental property; or

(D) End of the Affordability Period specified by the LURA, or if an Affordability Period is not specified and the Department is the First Lien Lender, then when the Department's loan has been fully repaid or as otherwise agreed by the Owner and Department.

(3) If the Department is the First Lien Lender with respect to the Development or if the establishment of a Reserve Account for repairs has not been required by the First Lien Lender or Bank Trustee, each Development Owner receiving Department assistance for multifamily rental housing shall deposit annually into a separate, Development-specific Reserve Account through the date described in paragraph (2) of this subsection:

(A) For New Construction Developments, not less than \$250 per Unit. Withdrawals from such account will be restricted for up to five years following the date of award except in cases in which written approval from the Department is obtained relating to casualty loss, natural disaster, reasonable accommodations, or demonstrated financial hardship (but not for the construction standards required by the NOFA or program regulations); or

(B) For Adaptive Reuse, Rehabilitation and Reconstruction Developments, the greater of the amount per Unit per year either established by the information presented in a Scope and Cost Review in conformance with Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) or \$300 per Unit per year.

(4) For all Developments, a PNA must be conducted at intervals that are consistent with requirements of the First Lien Lender, other than the Department. If the Department is the First Lien Lender, or the First Lien Lender does not require a Third Party PNA, a PNA must be conducted at least once during each five year period beginning with the 11th year after the awarding of any financial assistance from the Department. PNAs conducted by the Owner at any time or for any reason other than as required by the Department in the year beginning with the 11th year of award must be submitted to the Department for review within 30 days of receipt by the Owner.

(5) Where there is a First Lien Lender other than the Department or a Bank Trustee as a result of a bond trust indenture or tax credit syndication, the Development Owner shall comply with the lesser of the replacement reserve requirements of the First Lien Lender or the requirements in paragraph (3) of this subsection. In addition, the Department should be listed as a party to receive notice under any replacement reserve agreement entered into by the Development Owner. The Development Owner shall submit on an annual basis, within the Department's required Development Owner's Financial Certification packet, requested information regarding:

(A) The reserve for replacement requirements under the first lien loan agreement (if applicable) referencing where those requirements are contained within the loan documents;

(B) Compliance with the first lien lender requirements outlined in subparagraph (A) of this paragraph;

(C) If the Owner is not in compliance with the lender requirements, the Development Owner's plan of action to bring the Development in compliance with all established reserve for replacement requirements; and

(D) Whether a PNA has been ordered and the Owner's plans for any subsequent capital expenditures, renovations, repairs, or improvements.

(6) Where there is no First Lien Lender but the allocation of funds by the Department and Tex. Gov't Code, §2306.186 requires that the Department oversee a Reserve Account, the Development Owner shall provide at their sole expense an escrow agent acceptable to the Department to act as Bank Trustee as necessary under this section. The Department shall retain

the right to replace the escrow agent with another Bank Trustee or act as escrow agent at a cost plus fee payable by the Development Owner due to breach of the escrow agent's responsibilities or otherwise with 30 days prior notice of all parties to the escrow agreement.

(7) Penalties and Non-Compliance. If the Development Owner fails to comply with the replacement reserve account requirements stated herein, and request for extension or waiver of these requirements is not approved by the Department, then a penalty of up to \$200 per dwelling Unit in the Development and/or characterization of the Development as being in default with this requirement, may be imposed:

(A) A Reserve Account, as described in this section, has not been established for the Development;

(B) The Department is not a party to the escrow agreement for the Reserve Account, if required;

(C) Money in the Reserve Account:

(i) is used for expenses other than necessary repairs, including property taxes or insurance; or

(ii) falls below mandatory annual, monthly, or Department approved deposit levels;

(D) Development Owner fails to make any required deposits;

(E) Development Owner fails to obtain a Third-Party PNA as required under this section or submit a copy of a PNA to the Department within 30 days of receipt; or

(F) Development Owner fails to make necessary repairs in accordance with the Third Party PNA or §10.621 of this chapter (relating to Property Condition Standards).

(8) Department-Initiated Repairs. The Department or its agent may make repairs to the Development within 30 calendar days of written notice from the Department if the Development Owner fails to complete necessary repairs indicated in the submitted PNA or identified by Department physical inspection. Repairs may be deemed necessary if the Development Owner fails to comply with federal, state, and/or local health, safety, or building code requirements. Payment for necessary repairs must be made directly by the Development Owner or through a replacement Reserve Account established for the Development under this section. The Department or its agent will be allowed to produce a Request for Bids to hire a contractor to complete and oversee necessary repairs. On a case-by-case basis, the Department may determine that the money in the Reserve Account may be used for expenses other than necessary repairs, including property taxes or insurance, if:

(A) Development income before payment of return to Development Owner or deferred Developer Fee is insufficient to meet operating expense and debt service requirements; or

(B) Development income after payment of operating expenses, but before payment of return to Development Owner or deferred developer fee is insufficient to fund the mandatory deposit levels.

(C) In the event of subparagraph (A) or (B) of this paragraph, funds withdrawn must be replaced from Cash Flow after payment of Operating Expenses but before return to Development Owner or deferred Developer Fee until the mandatory deposit level is replenished. The Department reserves the right to re-evaluate payments to the reserve, increase such payments or require a lump sum deposit to the reserve, or require the Owner to enter into a separate Reserve Agreement if necessary to protect the long term feasibility of the Development.

(9) Exceptions to Replacement Reserve Account. This section does not apply to a Development for which the Development Owner is required to maintain a Reserve Account under any other provision of federal or state law.

(10) In the event of paragraph (7) or (8) of this subsection, the Department reserves the right to require by separate Reserve Agreement a revised annual deposit amount and/or require Department concurrence for withdrawals from the Reserve Account to bring the Development back into compliance. Establishment of a new Bank Trustee or transfer of reserve funds to a new, separate and distinct account may be required if necessary to meet the requirements of such Agreement. The Agreement will be executed by the Department, Development Owner, and financial institution representative.

**(b) Lease-up Reserve Account.** A lease-up reserve funds start-up expenses in excess of the revenue produced by the Development prior to stabilization. The Department will consider a reasonable lease-up reserve account based on the documented requirements from a third-party lender, third-party syndicator, or the Department. During the underwriting at the point of the Cost Certification review, the lease-up reserve may be counted as a use of funds only to the extent that it represents operating shortfalls net of escrows for property taxes and property insurance. Funds from the lease-up reserve used to satisfy the funding requirements for other accounts may not be included as a use of funds for the lease-up reserve. Funds from the lease-up reserve distributed or distributable as cash flow to the Development Owner will be considered and restricted as developer fee.

**(c) Operating Reserve Account.** At various stages during the application, award process, and during the operating life of a Development, the Department will conduct a financial analysis of the Development's total development costs and operating budgets, including the estimated operating reserve account deposit required. For example, this analysis typically occurs at application and cost certification review. The Department will consider a reasonable operating reserve account deposit in this analysis based on the needs of the Development and requirements of third-party lenders or investors. The amount used in the analysis will be the amount described in the project cost schedule or balance sheet, if it is within the range of two to six months of stabilized operating expenses plus debt service. The Department may consider a greater amount proposed or required by the Department, any superior lien lender, or syndicator, if the detail for such greater amount is reasonable and well documented. Reasonable operating reserves in this chapter do not include capitalized asset management fees, guaranty reserves, or other similar costs. In no instance will operating reserves exceed 12 months of stabilized operating expenses plus debt service (exclusive of transferred replacement reserves for USDA or HUD financed rehabilitation transactions). Operating reserves are generally for the term of the permanent loan. In no instance will operating reserves released within five years be included as a cost.

**(d) Special Reserve Account.** If the funding program requires or allows for the establishment and maintenance of a Special Reserve Account for the purpose of assisting residents at the Development with expenses associated with their tenancy, this will be established in accordance with a written agreement with the Development Owner.

(1) The Special Reserve Account is funded through a one-time payment or annually through an agreed upon percentage of net cash flow generated by the Development, excess development funds at completion as determined by the Department, or as otherwise set forth in the written agreement. For the purpose of this account, net cash flow is defined as funds available from operations after all expenses and debt service required to be paid have been considered. This does not include a deduction for depreciation and amortization expense, deferred developer fee payment, or other payments made to Related Parties or Affiliates, except as allowed by the Department for property management. Proceeds from any refinancing or other fund raising from the Development will be considered net cash flow for purposes of funding the Special Reserve Account unless otherwise approved by the Department. The account will be structured to require Department concurrence for withdrawals.

(2) All disbursements from the account must be approved by the Department.

(3) The Development Owner will be responsible for setting up a separate and distinct account with a financial institution acceptable to the Department. A Special Reserve Account Agreement will be drafted by the Department and executed by the Department and the Development Owner.

(4) The Development Owner must make reasonable efforts to notify tenants of the existence of the Special Reserve Account and how to submit an application to access funds from the Special Reserve. Documentation of such efforts must be kept onsite and made available to the Department upon request.

**(e) Other Reserve Accounts.** Additional reserve accounts may be recognized by the Department as necessary and required by the Department, superior lien lender, or syndicator.

**§10.405. Amendments and Extensions.**

**(a) Amendments to Housing Tax Credit (HTC) Application or Award Prior to Land Use Restriction Agreement (LURA) recording or amendments that do not result in a change to the LURA (§2306.6712).** The Department expects the Development Owner to construct or rehabilitate, operate, and own the Development consistent with the representations in the Application. The Department must receive notification of any amendments to the Application. Regardless of development stage, the Board shall re-evaluate a Development that undergoes a material change, as identified in paragraph (3) of this subsection at any time after the initial Board approval of the Development (§2306.6731(b)). The Board may deny an amendment request and subsequently may rescind any Commitment or Determination Notice issued for an Application, and may reallocate the credits to other Applicants on the waiting list.

(1) Requesting an amendment. The Department shall require the Applicant to file a formal, written request for an amendment to the Application. Such request must include a detailed explanation of the amendment request and other information as determined to be necessary by the Department, and the applicable fee as identified in Chapter 11, Subchapter E of this title (relating to Fee Schedule) in order to be received and processed by the Department. Department staff will evaluate the amendment request to determine if the change would affect an allocation of Housing Tax Credits by changing any item that received points, by significantly affecting the most recent underwriting analysis, or by materially altering the Development as further described in this subsection.

(2) Notification Items. The Department must be notified of the changes described in subparagraphs (A) - (F) of this paragraph. The changes identified are subject to staff agreement based on a review of the amendment request and any additional information or documentation

requested. Notification items will be considered satisfied when an acknowledgment of the specific change(s) is received from the Department.

(A) Changes to Development Site acreage required by the City or other local governmental authority, or changes resulting from survey discrepancies, as long as such change does not also result in a modification to the residential density of more than 5%;

(B) Minor modifications to the site plan that will not significantly impact development costs, including, but not limited to, relocation or rearrangement of buildings on the site (as long as the number of residential and non-residential buildings remains the same), and movement, addition, or deletion of ingress/egress to the site;

(C) Increases or decreases in net rentable square footage or common areas that do not result in a material amendment under §10.405(a)(4) of this section;

(D) Changes in amenities that do not require a change to the recorded LURA and do not negatively impact scoring, including changes to outdated amenities that could be replaced by an amenity with equal benefit to the resident community;

(E) Changes in Developers or Guarantors (notifications for changes in Guarantors that are also the General Contractor or are only providing guaranties during the construction period are not required) with no new Principals (who were not previously checked by Previous Participation review that retain the natural person(s) used to meet the experience requirement in Chapter 11 of this title (relating to Required Documentation for Application Submission); and

(F) Any other amendment not identified in paragraphs (3) and (4) of this subsection.

(3) Non-material amendments. The Executive Director or designee may administratively approve all non-material amendments, including, but not limited to:

(A) Any amendment that is determined by staff to exceed the scope of notification acknowledgement, as identified in paragraph (2) of this subsection but not to rise to a material alteration, as identified in paragraph (4) of this subsection;

(B) Changes in the natural person(s) used to meet the experience requirement in Chapter 11, §11.204(6) of this title provided that an appropriate substitute has been approved by the Multifamily Division prior to receipt of the amendment request (relating to Required Documentation for Application Submission);

(C) Changes in Developers or Guarantors (excluding changes in Guarantors that are also the General Contractor or are only providing guaranties during the construction period) not addressed in §10.405(a)(2)(E). Changes in Developers or Guarantors will be subject to Previous Participation requirements as further described in Chapter 11 of this title and the credit limitation described in §11.4(a) of this title; and

(D) For Exchange Developments only, requests to change elections made on line 8(b) of the IRS Form(s) 8609 to group buildings together into one or more multiple building projects. The request must include an attached statement identifying the buildings in the project. The change to the election may only be made once during the Compliance Period.

(4) Material amendments. Amendments considered material pursuant to paragraph (4) of this subsection must be approved by the Board. When an amendment request requires Board approval, the Development Owner must submit the request and all required documentation necessary for staff's review of the request to the Department at least 45 calendar days prior to the Board meeting in which the amendment is anticipated to be considered. Before the 15th day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting (§2306.6717(a)(4)). Material Amendment requests may be denied if the Board determines that the modification proposed in the amendment would materially alter the Development in a negative manner or would have adversely affected the selection of the Application in the Application Round. Material alteration of a Development includes, but is not limited to:

- (A) A significant modification of the site plan;
- (B) A modification of the number of Units or bedroom mix of units;
- (C) A substantive modification of the scope of tenant services;
- (D) A reduction of 3% or more in the square footage of the Units or common areas;
- (E) A significant modification of the architectural design of the Development;
- (F) A modification of the residential density of at least 5%;
- (G) A request to implement a revised election under §42(g) of the Code prior to filing of IRS Form(s) 8609;
- (H) Exclusion of any requirements as identified in Chapter 11, Subchapter B of this title (relating to Site and Development Requirements and Restrictions) and Chapter 11, Subchapter C of this title (relating to Application Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules); or
- (I) Any other modification considered material by the staff and therefore required to be presented to the Board as such.

(5) Amendment requests will be denied if the Department finds that the request would have changed the scoring of an Application in the competitive process such that the Application would not have received a funding award or if the need for the proposed modification was reasonably foreseeable or preventable by the Applicant at the time the Application was submitted, unless good cause is found for the approval of the amendment.

(6) This section shall be administered in a manner that is consistent with §42 of the Code. If a Development has any uncorrected issues of noncompliance outside of the corrective action period (other than the provision being amended) or otherwise owes fees to the Department, such non-compliance or outstanding payment must be resolved to the satisfaction of the Department before a request for amendment will be acted upon.

(7) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants identified in the Application and Credit Underwriting Analysis Report at the time of award and as approved by the Board, the procedure described in

subparagraphs (A) and (B) of this paragraph will apply to the extent such request is not prohibited based on statutory and/or regulatory provisions:

(A) For amendments that involve a reduction in the total number of Low-Income Units, or a reduction in the number of Low-Income Units at any rent or income level, as approved by the Board, evidence noted in either clause (i) or (ii) of this subparagraph must be presented to the Department to support the amendment.

*(i)* In the event of a request to implement (rent to a household at an income or rent level that exceeds the approved AMI limits established by the minimum election within the Development's Application or LURA) a revised election under §42(g) of the Code prior to an Owner's submission of IRS Forms 8609 to the IRS, Owners must submit updated information and exhibits to the Application as required by the Department and all lenders and the syndicator must submit written acknowledgement that they are aware of the changes being requested and confirm any changes in terms as a result of the new election; or

*(ii)* For all other requests for reductions in the total number of Low-Income Units or reductions in the number of Low-Income Units at any rent or income level, prior to issuance of IRS Forms 8609 by the Department, the lender and syndicator must submit written confirmation that the Development is infeasible without the adjustment in Units. The Board may or may not approve the amendment request; however, any affirmative recommendation to the Board is contingent upon concurrence from Department staff that the Unit adjustment is necessary for the continued financial feasibility of the Development; and

(B) If it is determined by the Department that the loss of low-income targeting points would have resulted in the Application not receiving an award in the year of allocation, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all Persons or entities with any ownership interest in the Application (excluding any tax credit purchaser/syndicator), from participation in the Housing Tax Credit Program (for both the Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for 24 months from the time that the amendment is approved.

**(b) Amendments to the LURA.** Department approval shall be required for any amendment to a LURA in accordance with this section. An amendment request shall be submitted in writing, containing a detailed explanation of the request, the reason the change is necessary, the good cause for the change, financial information related to any financial impact on the development, information related to whether the necessity of the amendment was reasonably foreseeable at the time of application, and other information as determined to be necessary by the Department, along with any applicable fee as identified in Chapter 11, Subchapter E of this title (relating to Fee Schedule, Appeals, and other Provisions). The Department may order or require the Development Owner to order a Market Study or appraisal at the Development Owner's expense. If a Development has any uncorrected issues of noncompliance outside of the corrective action period (other than the provision being amended) or otherwise owes fees to the Department, such non-compliance or outstanding payment must be resolved to the satisfaction of the Department, before a request for amendment will be acted upon. The Department will not approve changes that would violate state or federal laws including the requirements of §42 of the Code, 24 CFR Part 92 (HOME Final Rule), 24 CFR Part 93 (NHTF Interim Rule), Chapter 1 of this title (relating to Administrative Requirements), Chapter 11 of this title (relating to Qualified Allocation Plan), Chapter 12 of this title (relating to Multifamily Housing Revenue Bond Rules), Chapter 13 of this title (relating to

Multifamily Direct Loan Rule), Tex. Gov't Code, Chapter 2306, and the Fair Housing Act. For Tax-Exempt Bond Developments, compliance with their Regulatory Agreement and corresponding bond financing documents. Prior to staff taking a recommendation to the Board for consideration, the procedures described in paragraph (3) of this subsection must be followed.

(1) Non-Material LURA Amendments. The Executive Director or designee may administratively approve all LURA amendments not defined as Material LURA Amendments pursuant to paragraph (2) of this subsection. A non-material LURA amendment may include but is not limited to:

(A) HUB participation removal. Removal of a HUB participation requirement will only be processed as a non-material LURA amendment after the issuance of 8609s and requires that the Department find that:

*(i)* the HUB is requesting removal of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

*(ii)* the participation by the HUB has been substantive and meaningful, or would have been substantive or meaningful had the HUB not defaulted under the organizational documents of the Development Owner, enabling it to realize not only financial benefit but to acquire skills relating to the ownership and operating of affordable housing; and

*(iii)* where the HUB will be replaced as a general partner or special limited partner that is not a HUB and will sell its ownership interest, an ownership transfer request must be submitted as described in §10.406 of this subchapter;

(B) A change resulting from a Department work out arrangement as recommended by the Department's Asset Management Division; or

(C) A correction of error.

(2) Material LURA Amendments. Development Owners seeking LURA amendment requests that require Board approval must submit the request and all required documentation necessary for staff's review of the request to the Department at least 45 calendar days prior to the Board meeting at which the amendment is anticipated to be considered. Before the 15th day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and Department staff regarding the amendment will be posted to the Department's website and the Applicant will be notified of the posting. (§2306.6717(a)(4)). The Board must consider the following material LURA amendments:

(A) Reductions to the number of Low-Income Units;

(B) Changes to the income or rent restrictions;

(C) Changes to the Target Population;

(D) The removal of material participation by a Nonprofit Organization as further described in §10.406 of this subchapter;

(E) A change in the Right of First Refusal period as described in amended §2306.6726 of the Tex. Gov't Code;

(F) Any amendment that affects a right enforceable by a tenant or other third party under the LURA; or

(G) Any LURA amendment deemed material by the Executive Director.

(3) Prior to staff taking a recommendation to the Board for consideration, the Development Owner must provide notice and hold a public hearing regarding the requested amendment(s) at least 15 business days prior to the scheduled Board meeting where the request will be considered. Development Owners will be required to submit a copy of the notification with the amendment request. If a LURA amendment is requested prior to issuance of IRS Forms 8609 by the Department, notification must be provided to the recipients described in subparagraphs (A) - (E) of this paragraph. If an amendment is requested after issuance of IRS Forms 8609 by the Department, notification must be provided to the recipients described in subparagraph (A) - (B) of this paragraph.

(A) Each tenant of the Development;

(B) The current lender(s) and investor(s);

(C) The State Senator and State Representative of the districts whose boundaries include the Development Site;

(D) The chief elected official for the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction); and

(E) The county commissioners of the county in which the Development Site is located (if the Development Site is located outside of a municipality).

(4) Contents of Notification. The notification must include, at a minimum, all of the information described in subparagraphs (A) - (D) of this paragraph.

(A) The Development Owner's name, address and an individual contact name and phone number;

(B) The Development's name, address, and city;

(C) The change(s) requested; and

(D) The date, time and location of the public hearing where the change(s) will be discussed.

(5) Verification of public hearing. Minutes of the public hearing and attendance sheet must be submitted to the Department within three business days after the date of the public hearing.

(6) Approval. Once the LURA Amendment has been approved administratively or by the Board, as applicable, Department staff will provide the Development Owner with a LURA amendment for execution and recording in the county where the Development is located.

**(c) HTC Extensions.** Extensions must be requested if the original deadline associated with Carryover, the 10% Test (including submission and expenditure deadlines), construction status reports, or cost certification requirements will not be met. Extension requests submitted at least 30 calendar days in advance of the applicable deadline will not be required to submit an extension fee as described in §11.901 of this title. Any extension request submitted fewer than 30 days in advance of the applicable deadline or after the applicable deadline will not be processed unless accompanied by the applicable fee. Extension requests will be approved by the Executive Director or designee, unless, at staff's discretion it warrants Board approval due to extenuating circumstances stated in the request. The extension request must specify a requested extension date and the reason why such an extension is required. If the Development Owner is requesting an extension to the Carryover submission or 10% Test deadline(s), a point deduction evaluation will be completed in accordance with Tex. Gov't Code, §2306.6710(b)(2), and §11.9(f) of this title (relating to Factors Affecting Scoring and Eligibility in current and future Application Rounds). Therefore, the Development Owner must clearly describe in their request for an extension how the need for the extension was beyond the reasonable control of the Applicant/Development Owner and could not have been reasonably anticipated. Carryover extension requests will not be granted an extended deadline later than December 1st of the year the Commitment was issued.

**§10.406. Ownership Transfers (§2306.6713).**

**(a) Ownership Transfer Notification.** All multifamily Development Owners must provide written notice and a completed Ownership Transfer packet, if applicable, to the Department at least 45 calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Except as otherwise provided herein, the Executive Director's prior written approval of any such transfer is required. The Executive Director may not unreasonably withhold approval of the transfer requested in compliance with this section.

**(b) Exceptions.** The following exceptions to the ownership transfer process outlined herein apply:

(1) A Development Owner shall be required to notify the Department but shall not be required to obtain Executive Director approval when the transferee is an Affiliate of the Development Owner with no new Principals or the transferee is a Related Party who does not Control the Development and the transfer is being made for estate planning purposes.

(2) Transfers that are the result of an involuntary removal of the general partner by the investment limited partner do not require advance approval but must be reported to the Department as soon as possible due to the sensitive timing and nature of this decision. In the event the investment limited partner has proposed a new general partner or will permanently replace the general partner, a full Ownership Transfer packet must be submitted.

(3) Changes to the investment limited partner, non-Controlling limited partner, or other non-Controlling partners affiliated with the investment limited partner do not require Executive Director approval. A General Partner's acquisition of the interest of the investment limited partner does not require Executive Director approval, unless some other change in ownership is occurring as part of the same overall transaction.

(4) Changes resulting from foreclosure do not require advance approval but acquiring parties must notify the Department as soon as possible of the revised ownership structure and ownership contact information.

**(c) General Requirements.**

(1) Any new Principal in the ownership of a Development must be eligible under §11.202 of Subchapter C (relating to Ineligible Applicants and Applications). In addition, Principals will be reviewed in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation).

(2) Changes in Developers or Guarantors must be addressed as non-material amendments to the application under §10.405 of this subchapter.

(3) To the extent an investment limited partner or its Affiliate assumes a Controlling interest in a Development Owner, such acquisition shall be subject to the Ownership Transfer requirements set forth herein. Principals of the investment limited partner or Affiliate will be considered new Principals and will be reviewed as stated under paragraph (1) of this subsection.

(4) Simultaneous transfer or concurrent offering for sale of the General Partner's and Limited Partner's control and interest will be subject to the Ownership Transfer requirements set forth herein and will trigger a Right of First Refusal, if applicable.

**(d) Transfer Actions Warranting Debarment.** If the Department determines that the transfer, involuntary removal, or replacement was due to a default by the General Partner under the Limited Partnership Agreement, or other detrimental action that put the Development at risk of failure or the Department at risk for financial exposure as a result of non-compliance, staff will refer the matter to the Enforcement Committee for debarment consideration pursuant to §2.401 of this title (relating to Enforcement, Debarment from Participation in Programs Administered by the Department). In addition, a record of transfer involving Principals in new proposed awards will be reported and may be taken into consideration in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation), prior to recommending any new financing or allocation of credits.

**(e) Transfers Prior to 8609 Issuance or Construction Completion.** Prior to the issuance of IRS Form(s) 8609 (for Housing Tax Credits) or the completion of construction (for all Developments funded through other Department programs) an Applicant may request an amendment to its ownership structure to add Principals. The party(ies) reflected in the Application as having Control must remain in the ownership structure and retain Control, unless approved otherwise by the Executive Director. A development sponsor, General Partner or Development Owner may not sell the Development in whole or voluntarily end their Control prior to the issuance of 8609s.

**(f) Nonprofit Organizations.** If the ownership transfer request is to replace a nonprofit organization within the Development ownership entity, the replacement nonprofit entity must adhere to the requirements in paragraph (1) or (2) of this subsection.

(1) If the LURA requires ownership or material participation in ownership by a Qualified Nonprofit Organization, and the Development received Tax Credits pursuant to §42(h)(5) of the Code, the transferee must be a Qualified Nonprofit Organization that meets the requirements of §42(h)(5) of the Code and Tex. Gov't Code §2306.6706, if applicable, and can demonstrate planned participation in the operation of the Development on a regular, continuous, and substantial basis.

(2) If the LURA requires ownership or material participation in ownership by a nonprofit organization or CHDO, the Development Owner must show that the transferee is a nonprofit organization or CHDO, as applicable, that complies with the LURA. If the transferee has been certified as a CHDO by TDHCA prior to 2016 or has not previously been certified as a CHDO by TDHCA, a new CHDO certification package must be submitted for review. If the transferee was certified as a CHDO by TDHCA after 2016, provided no new federal guidance or rules concerning

CHDO have been released and the proposed ownership structure at the time of review meets the requirements in 24 CFR Part 92, the CHDO may instead submit a CHDO Self-Certification form with the Ownership Transfer package.

(3) Exceptions to paragraphs (1) and (2) of this subsection may be made on a case by case basis if the Development (for MFDL) is past its Federal Affordability Period or (for HTC Developments) is past its Compliance Period, was not reported to the IRS as part of the Department's Nonprofit Set Aside in any HTC Award year, and follows the procedures outlined in §10.405(b)(1) - (5) of this subchapter (relating to LURA Amendments that require Board Approval). The Board must find that:

(A) The selling nonprofit is acting of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner;

(B) The participation by the nonprofit was substantive and meaningful during the full term of the Compliance Period but is no longer substantive or meaningful to the operations of the Development; and

(C) The proposed purchaser is an affiliate of the current Owner or otherwise meets the Department's standards for ownership transfers.

**(g) Historically Underutilized Business (HUB) Organizations.** If a HUB is the general partner or special limited partner of a Development Owner and it determines to sell its ownership interest, after the issuance of 8609's, the purchaser of that partnership interest or the general or special limited partner is not required to be a HUB as long as the procedure described in §10.405(b)(1) of this chapter (relating to Non-Material LURA Amendments) has been followed and approved.

**(h) Documentation Required.** A Development Owner must submit documentation requested by the Department to enable the Department to understand fully the facts and circumstances pertaining to the transfer and the effects of approval or denial. Documentation must be submitted as directed in the Post Award Activities Manual, which includes but is not limited to:

(1) A written explanation outlining the reason for the request;

(2) Ownership transfer information, including but not limited to the type of sale, terms of any new financing introduced as a result of the transfer, amount of Development reserves to transfer in the event of a property sale, and the prospective closing date;

(3) Pre and post transfer organizational charts with TINs of each organization down to the level of natural persons in the ownership structure as described in §11.204(13)(A) of Subchapter C of this title (relating to Required Documentation for Application Submission);

(4) A list of the names and contact information for transferees and Related Parties;

(5) Previous Participation information for any new Principal as described in §11.204(13)(B) of this title (relating to Required Documentation for Application Submission);

(6) Agreements among parties associated with the transfer;

(7) Owners Certifications with regard to materials submitted as further described in the Post Award Activities Manual;

(8) Detailed information describing the organizational structure, experience, and financial capacity of any party holding a controlling interest in any Principal or Controlling entity of the prospective Development Owner;

(9) Evidence and certification that the tenants in the Development have been notified in writing of the proposed transfer at least 30 calendar days prior to the date the transfer is approved by the Department. The ownership transfer approval letter will not be issued until this 30 day period has expired;

(10) Any required exhibits and the list of exhibits related to specific circumstances of transfer or Ownership as detailed in the Post Award Activities Manual.

**(i)** Once the Department receives all necessary information under this section and as required under the Post Award Activities Manual, staff shall initiate a qualifications review of a transferee, in accordance with Chapter 1, Subchapter C of this title (relating to Previous Participation), to determine the transferee's past compliance with all aspects of the Department's programs, LURAs and eligibility under this chapter and §11.202 of this title (relating to Ineligible Applicants and Applications).

**(j) Credit Limitation.** As it relates to the Housing Tax Credit amount further described in §11.4(a) of this title (relating to Tax Credit Request and Award Limits), the credit amount will not be applied in circumstances described in paragraphs (1) and (2) of this subsection:

(1) In cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(2) In cases where the general partner is being replaced if the award of credits was made at least five years prior to the transfer request date.

**(k) Penalties, Past Due Fees and Underfunded Reserves.** The Development Owner must comply with any additional documentation requirements as stated in Subchapter F of this chapter (relating to Compliance Monitoring) and Subchapter G of this chapter (relating to Affirmative Marketing and Written Policies and Procedures). The Development Owner on record with the Department will be liable for any penalties or fees imposed by the Department (even if such penalty can be attributable to the new Development Owner) unless an ownership transfer has been approved by the Department. In the event a transferring Development has a history of uncorrected UPCS violations, ongoing issues related to keeping housing sanitary, safe, and decent, an account balance below the annual reserve deposit amount as specified in §10.404(a) (relating to Replacement Reserve Accounts), or that appears insufficient to meet capital expenditure needs as indicated by the number or cost of repairs included in a PNA or SCR, the prospective Development Owner may be required to establish and maintain a replacement reserve account or increase the amount of regular deposits to the replacement reserve account by entering into a Reserve Agreement with the Department. The Department may also request a plan and timeline relating to needed repairs or renovations that will be completed by the departing and/or incoming Owner as a condition to approving the Transfer. A PNA or SCR may be requested if one has not already been received under §10.404 of this section (relating to Reserve Accounts).

**(l) Ownership Transfer Processing Fee.** The ownership transfer request must be accompanied by the corresponding ownership transfer fee as outlined in §11.901 of this title (relating to Fee Schedule, Appeals, and other Provisions).

#### **§10.407. Right of First Refusal.**

**(a) General.** This section applies to Development Owners that agreed to offer a Right of First Refusal (ROFR) to a Qualified Entity or as applicable a Qualified Nonprofit Organization, as memorialized in the applicable LURA. For the purposes of this section a Qualified Nonprofit Organization also includes an entity 100% owned by a Qualified Nonprofit Organization pursuant to §42(h)(5)(C) of the Code and operated in a similar manner. The purpose of this section is to provide administrative procedures and guidance on the process and valuation of properties under the LURA. All requests for ROFR submitted to the Department, regardless of existing regulations, must adhere to this process.

(1) The Development Owner may market the Property for sale and sell the Property to a Qualified Entity, or as applicable a Qualified Nonprofit Organization without going through the ROFR process outlined in this section unless otherwise restricted or prohibited and only in the following circumstances:

(A) The LURA includes a 90-day ROFR and the Development Owner is selling to a Qualified Nonprofit Organization;

(B) The LURA includes a two year ROFR and the Development Owner is selling to a Qualified Nonprofit Organization that meets the definition of a Community Housing Development Organization (CHDO) under 24 CFR Part 92, as approved by the Department; or

(C) The LURA includes a 180-day ROFR, and the Development Owner is selling to a Qualified Entity that meets the definition of a CHDO under 24 CFR Part 92, or that is controlled by a CHDO, as approved by the Department. Where the Development Owner is not required to go through the ROFR process, it must go through the ownership transfer process in accordance with §10.406 of this subchapter.

(2) A ROFR request must be made in accordance with the LURA for the Development. If there is a conflict between the Development's LURA and this subchapter, every effort will be made to harmonize the provisions. If the conflict cannot be resolved, requirements in the LURA will supersede this subchapter. If there is a conflict between the Development's LURA and Tex. Gov't Code Chapter 2306, every effort will be made to harmonize the provisions. A Development Owner may request a LURA amendment to make the ROFR provisions in the LURA consistent with Tex. Gov't Code Chapter 2306 at any time.

(3) If a LURA includes the ROFR provision, the Development Owner may not request a Preliminary Qualified Contract (if such opportunity is available under the applicable LURA and §10.408) until the requirements outlined in this section have been satisfied.

(4) The Department reviews and approves all ownership transfers pursuant to §10.406 of this subchapter. Thus, if a proposed purchaser is identified in the ROFR process, the Development Owner and proposed purchaser must complete the ownership transfer process. A Development Owner may not transfer a Development to a Qualified Nonprofit Organization or Qualified Entity that is considered an ineligible entity under the Department's rules. In addition, ownership transfers to a Qualified Entity or as applicable a Qualified Nonprofit Organization pursuant to the ROFR process are subject to Chapter 1, Subchapter C of this title (relating to Previous Participation).

(5) Satisfying the ROFR requirement does not terminate the LURA or the ongoing application of the ROFR requirement to any subsequent Development Owner.

(6) If there are multiple buildings in the Development, the end of the 15<sup>th</sup> year of the Compliance Period will be based upon the date the last building(s) began their credit period(s). For example, if five buildings in the Development began their credit periods in 2005 and one in 2006, the 15<sup>th</sup> year would be 2020. The ROFR process is triggered upon:

(A) The Development Owner's determination to sell the Development to an entity other than as permitted in paragraph (1) of this subsection; or

(B) The simultaneous transfer or concurrent offering for sale of a General Partner's and limited partner's interest in the Development Owner's ownership structure.

(7) The ROFR process is not triggered if a Development Owner seeks to transfer the Development to a newly formed entity:

(A) That is under common control with the Development Owner; and

(B) The primary purpose of the formation of which is to facilitate the financing of the rehabilitation of the Development using assistance administered through a state financing program.

(8) This section applies only to a Right of First Refusal memorialized in the Department's LURA. This section does not authorize a modification of any other agreement between the Development Owner and a Qualified Nonprofit Organization or Qualified Entity. The enforceability of a contractual agreement between the Development Owner and a Qualified Nonprofit Organization or Qualified Entity may be impacted by the Development Owner's commitments at Application and recorded LURA.

**(b) Right of First Refusal Offer Price.** There are two general expectations of the ROFR offer price identified in the outstanding LURAs. The descriptions in paragraphs (1) and (2) of this subsection do not alter the requirements or definitions included in the LURA but provide further clarification as applicable:

(1) Fair Market Value is established using either a current appraisal (completed within three months prior to the ROFR request and in accordance with §11.304 of this title (relating to Appraisal Rules and Guidelines)) of the Property or an executed purchase offer that the Development Owner would like to accept. In either case the documentation used to establish Fair Market Value will be part of the ROFR property listing on the Department's website. The purchase offer must contain specific language that the offer is conditioned upon satisfaction of the ROFR requirement. If a subsequent ROFR request is made within six months of the previously approved ROFR posting, the lesser of the prior ROFR posted value or new appraisal/purchase contract amount must be used in establishing Fair Market Value;

(2) Minimum Purchase Price, pursuant to §42(i)(7)(B) of the Code, is the sum of the categories listed in (A) and (B) of this paragraph:

(A) The principal amount of outstanding indebtedness secured by the project (other than indebtedness incurred within the five year period immediately preceding the date of said notice); and

(B) All federal, state, and local taxes incurred or payable by the Development Owner as a consequence of such sale. If the Property has a minimum Applicable Fraction of less than one, the offer must take this into account by multiplying the purchase price by the

applicable fraction and the fair market value of the non-Low-Income Units. Documentation submitted to verify the Minimum Purchase Price calculation will be part of the ROFR property listing on the Department's website.

**(c) Required Documentation.** Upon establishing the ROFR offer price, the ROFR process is the same for all types of LURAs. To proceed with the ROFR request, documentation must be submitted as directed in the Post Award Activities Manual, which includes:

(1) ROFR fee as identified in §11.901 of this title (relating to Fee Schedule, Appeals, and other Provisions);

(2) A notice of intent to the Department;

(3) Certification that the Development Owner has provided, to the best of their knowledge and ability, a notice of intent to all additional required persons and entities in subparagraph (A) of this paragraph and that such notice includes, at a minimum the information in subparagraph (B) of this paragraph;

(A) Copies of the letters or emailed notices provided to all persons and entities listed in clauses (i) to (vi) of this subparagraph as described above and applicable to the Development at the time of the submission of the ROFR documentation must be attached to the Certification:

(i) All tenants and tenant organizations, if any, of the Development;

(ii) Mayor of the municipality (if the Development is within a municipality or its extraterritorial jurisdiction);

(iii) All elected members of the Governing Body of the municipality (if the Development Site is within a municipality or its extraterritorial jurisdiction);

(iv) Presiding officer of the Governing Body of the county in which the Development is located;

(v) The local housing authority, if any; and

(vi) All qualified buyers maintained on the Department's list of qualified buyers.

(B) Letters must include, at a minimum, all of the information required in clauses (i) to (vii) of this subparagraph and must not contain any statement that violates Department rules, statute, Code, or federal requirements:

(i) The Development's name, address, city, and county;

(ii) The Development Owner's name, address, individual contact name, phone number, and email address;

(iii) Information about tenants' rights to purchase the Development through the ROFR;

(iv) The date that the ROFR notice period expires;

(v) The ROFR offer price;

(vi) A physical description of the Development, including the total number of Units and total number of Low-Income Units; and

(vii) Contact information for the Department staff overseeing the Development's ROFR application.

(4) Documentation evidencing any contractual ROFR between the Development Owner and a Qualified Nonprofit Organization or Qualified Entity, along with evidence that such Qualified Nonprofit Organization or Qualified Entity is in good standing in the state of its organization;

(5) Documentation verifying the ROFR offer price of the Property:

(A) If the Development Owner receives an offer to purchase the Property from any buyer other than a Qualified Entity or Qualified Nonprofit Organization that the Development Owner would like to accept, the Development Owner may execute a sales contract, conditioned upon satisfaction of the ROFR requirement, and submit the executed sales contract to establish fair market value; or

(B) If the Development Owner of the Property chooses to establish fair market value using an appraisal, the Development Owner must submit an appraisal of the Property completed during the last three months prior to the date of submission of the ROFR request, establishing a value for the Property in compliance with Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy) in effect at the time of the request. The appraisal should take into account the existing and continuing requirements to operate the Property under the LURA and any other restrictions that may exist. Department staff will review all materials within 30 calendar days of receipt. If, after the review, the Department does not agree with the fair market value proposed in the Development Owner's appraisal, the Department may order another appraisal at the Development Owner's expense; or

(C) If the LURA requires valuation through the Minimum Purchase Price calculation, submit documentation verifying the calculation of the Minimum Purchase Price as described in subsection (b)(2) of this section regardless of any existing offer or appraised value;

(6) Description of the Property, including all amenities and current zoning requirements;

(7) Copies of all documents imposing income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Property;

(8) A current title commitment or policy not older than six months prior to the date of submission of the ROFR request;

(9) The most recent Physical Needs Assessment, pursuant to Tex. Gov't Code §2306.186(e) conducted by a Third-Party. If the PNA/SCR identifies the need for critical repairs that significantly impact habitability and tenant safety, the identified repairs and replacements must be resolved to the satisfaction of the Department before the Development will be considered eligible to proceed with a Right of First Refusal Request;

(10) Copy of the monthly operating statements, including income statements and balance sheets for the Property for the most recent 12 consecutive months (financial statements should identify amounts held in reserves);

(11) The three most recent consecutive annual operating statements (audited would be preferred);

(12) Detailed set of photographs of the Property, including interior and exterior of representative units and buildings, and the Property's grounds;

(13) Current and complete rent roll for the entire Property; and

(14) If any portion of the land or improvements is leased for other than residential purposes, copies of the commercial leases.

**(d) Posting and offers.** Within 30 business days of receipt of all required documentation, the Department will review the submitted documents and notify the Development Owner of any deficiencies. During that time, the Department will notify any Qualified Entity or as applicable any Qualified Nonprofit Organization identified by the Development Owner as having a contractual ROFR of the Development Owner's intent to sell. Once any deficiencies are resolved and the Development Owner and Department come to an agreement on the ROFR offer price of the Property, the Department will list the Property for sale on the Department's website and contact entities on the buyer list maintained by the Department to inform them of the availability of the Property at a price as determined under this section. The Department will notify the Development Owner when the Property has been listed. The ROFR posting period commences on the date the Property is posted for sale on the Department's website. During the ROFR posting period, a Qualified Nonprofit Organization or Qualified Entity can submit an offer to purchase as follows:

(1) if the LURA requires a 90 day ROFR posting period with no priority for any particular kind of Qualified Nonprofit Organization or tenant organization, any Qualified Nonprofit Organization or tenant organization may submit an offer to purchase the property.

(2) If the LURA requires a two year ROFR posting period, a Qualified Nonprofit Organization may submit an offer to purchase the Property as follows:

(A) During the first six months of the ROFR posting period, only a Qualified Nonprofit Organization that is a Community Housing Development Organization (CHDO) under 24 CFR Part 92, or that is 100% owned by a CHDO, as approved by the Department, may submit an offer;

(B) During the next six months of the ROFR posting period, only a Qualified Nonprofit Organization as described by Tex. Gov't Code §2306.6706, or that is 100% owned by Qualified Nonprofit Organization as described by Tex. Gov't Code §2306.6706, or a tenant organization may submit an offer; and

(C) During the final 12 months of the ROFR posting period, any Qualified Nonprofit Organization may submit an offer.

(3) If the LURA requires a 180-day ROFR posting period a Qualified Entity may submit an offer to purchase the Property as follows:

(A) During the first 60 days of the ROFR posting period, only a Qualified Entity that is a CHDO under 24 CFR Part 92, or that is controlled by CHDO, as approved by the Department, may submit an offer;

(B) During the second 60 days of the ROFR posting period, only a Qualified Entity as described by Tex. Gov't Code §2306.6706, or that is controlled by Qualified Entity as described by Tex. Gov't Code §2306.6706, or a tenant organization such may submit an offer;

(C) During the final 60 days of the ROFR posting period, any Qualified Entity may submit an offer.

(4) If the LURA does not specify a required ROFR posting timeframe, or, is unclear on the required ROFR posting timeframe, and the required ROFR value is determined by the Minimum Purchase Price method, any Development that received a tax credit allocation prior to September 1, 1997, is required to post for a 90-day ROFR period and any Development that received a tax credit allocation on or after September 1, 1997, and until September 1, 2015, is required to post for a two year ROFR, unless the LURA is amended under §10.405(b), or after September 1, 2015 is required to post for a 180-day ROFR period as described in Tex. Gov't Code, §2306.6726.

**(e) Acceptance of offers.** A Development Owner may accept or reject any offer received during the ROFR posting period; provided however, that to the extent the LURA gives priority to certain classifications of Qualified Nonprofit Organizations or Qualified Entities to make offers during certain portions of the ROFR posting period, the Development Owner can only negotiate a purchase contract with such classifications of entities during their respective periods. For example, during the CHDO priority period, the Development Owner may only accept an offer from and enter into negotiations with a Qualified Nonprofit Organization or Qualified Entity in that classification. A property may not be transferred under the ROFR process for less than the Minimum Purchase Price, but if the sequential negotiation created by statute yields a higher price, the higher price is permitted.

**(f) Satisfaction of ROFR.**

(1) A Development Owner that has posted a Property under the ROFR process is deemed to have satisfied the ROFR requirements in the following circumstances:

(A) The Development Owner does not receive any bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period;

(B) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Development Owner accepts the offer, the Qualified Nonprofit Organization or Qualified Entity fails to close the purchase, the failure is determined to not be the fault of the Development Owner, and the Development Owner received no other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period;

(C) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Qualified Nonprofit Organization or Qualified Entity is not approved by the Department during the ownership transfer review due to issues identified during the Previous Participation

Review process pursuant to Chapter 1, Subchapter C of this title (relating to Previous Participation), and the Development Owner received no other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period;

(D) An offer from a Qualified Nonprofit Organization or Qualified Entity is received at a price below the posted ROFR offer price, and the Development Owner received no other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the required ROFR posting period at or above the posted ROFR offer price; or

(2) A Development Owner with a LURA that identifies a specific Qualified Nonprofit Organization or Qualified Entity to be the beneficiary of the ROFR will satisfy the ROFR if:

(A) The identified beneficiary is in existence and conducting business;

(B) The Development Owner offers the Development to the identified beneficiary pursuant to the terms of the ROFR;

(C) If the ROFR includes a priority for a certain type of Qualified Entity (such as a CHDO) to have the first opportunity make an offer to acquire the Development, the identified beneficiary meets such classification; and

(D) The identified entity declines to purchase the Development in writing, and such evidence is submitted to and approved by the Department.

**(g) Non-Satisfaction of ROFR.** A Development Owner that has posted a Property under the ROFR process does not satisfy the ROFR requirements in the following circumstances:

(1) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), and the Development Owner does not accept the offer;

(2) The LURA identifies a specific Qualified Nonprofit Organization or Qualified Entity to be the beneficiary of the ROFR, and such entity no longer exists or is no longer conducting business and the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period and fails to accept any of such other offers;

(3) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Development Owner accepts the offer, the Qualified Nonprofit Organization or Qualified Entity fails to close the purchase, the failure is determined to not be the fault of the Development Owner, the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period and then fails to accept any of such other offers;

(4) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Development Owner accepts the offer, the Qualified Nonprofit Organization or Qualified Entity fails to close the purchase, and such failure is determined to be the fault of the Development Owner;

(5) A bona fide offer from a Qualified Nonprofit Organization or Qualified Entity is received at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation), the Qualified Nonprofit Organization or Qualified Entity is not approved by the Department during the ownership transfer review due to issues identified during the Previous Participation Review process pursuant to Chapter 1, Subchapter C of this title (relating to Previous Participation), the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period and fails to accept any of such other offers; or

(6) An offer from a Qualified Nonprofit Organization or Qualified Entity is received at a price below the posted ROFR offer price, the Development Owner received other bona fide offers from a Qualified Nonprofit Organization or Qualified Entity during the ROFR posting period at or above the posted ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation in), and the Development Owner fails to accept any of such offers.

**(h) Activities Following ROFR.**

(1) If a Development Owner satisfies the ROFR requirement pursuant to subsection (f)(1) - (2) of this section, it may request a Preliminary Qualified Contract (if such opportunity is available under §10.408) or proceed with the sale to an entity that is not a Qualified Nonprofit Organization or Qualified Entity at or above the ROFR offer price (or, in the case of a posted minimum purchase price, at the price yielded by the sequential negotiation).

(2) Following notice that the ROFR requirement has been met, if the Development Owner does not post the Property for Qualified Contract in accordance with §10.408 or sell the Property to an entity that is not a Qualified Nonprofit Organization or Qualified Entity within 24 months of the Department's written indication that the ROFR has been satisfied, the Development Owner must follow the ROFR process for any subsequent transfer.

(3) If the Department determines that the ROFR requirement has not been met during the ROFR posting period, the Owner may not re-post under this provision at a ROFR offer price that is higher than the originally posted ROFR offer price until 24 months has expired from the Department's written indication that the ROFR has not been satisfied. The Development Owner may market the Property for sale and sell the Property to a Qualified Nonprofit Organization or Qualified Entity during this 24 month period in accordance with subsection (a)(1) of this section.

**(i) Sale and closing.**

(1) Prior to closing a sale of the Property, the Development Owner must obtain Department approval of the transfer through the ownership transfer process in accordance with §10.406 of this chapter (relating to Ownership Transfers (§2306.6713)). The request should include, among other required transfer documents outlined in the Post Award Activities Manual, the final settlement statement and final sales contract with all amendments.

(2) If the closing price is materially less than the ROFR offering price or the terms and conditions of the sale change materially from what was submitted in the ROFR posting, in the Department's sole determination, the Development Owner must go through the ROFR process again with a revised ROFR offering price equal to the reduced closing price or adjusted terms and conditions based upon the revised terms, before disposing of the Property.

**(j) Appeals.** A Development Owner may appeal a staff decision in accordance with §11.902 of this title (relating to Appeals Process).

**§10.408. Qualified Contract Requirements.**

**(a) General.** Pursuant to §42(h)(6) of the Code, after the end of the 14th year of the Compliance Period, the Development Owner of a Development utilizing Housing Tax Credits can request that the allocating agency find a buyer at the Qualified Contract Price. If a buyer cannot be located within one year, the Extended Use Period will expire. This section provides the procedures for the submittal and review of a Qualified Contract Request.

**(b) Eligibility.** Development Owners who received an award of credits on or after January 1, 2002, are not eligible to request a Qualified Contract prior to the 30 year anniversary of the date the property was placed in service (§2306.185); if the property's LURA indicates a commitment to an Extended Use Period beyond 30 years, the Development Owner is not eligible to request a Qualified Contract until the expiration of the Extended Use Period. Development Owners awarded credits prior to 2002 may submit a Qualified Contract Request at any time after the end of the year preceding the last year of the Initial Affordability Period, provided it is not precluded by the terms of the LURA, following the Department's determination that the Development Owner is eligible. The Initial Affordability Period starts concurrently with the credit period, which begins at placement-in-service or is deferred until the beginning of the next tax year, if there is an election. Unless the Development Owner has elected an Initial Affordability Period longer than the Compliance Period, as described in the LURA, this can commence at any time after the end of the 14th year of the Compliance Period. References in this section to actions which can occur after the 14th year of the Compliance Period shall refer, as applicable, to the year preceding the last year of the Initial Affordability Period, if the Development Owner elected an Initial Affordability Period longer than the Compliance Period.

(1) If there are multiple buildings placed in service in different years, the end of the Initial Affordability Period will be based upon the date the last building placed in service. For example, if five buildings in the Development began their credit periods in 2005 and one began in 2006, the 15th year would be 2020.

(2) If a Development received an allocation in multiple years, the end of the Initial Affordability Period will be based upon the last year of a multiple allocation. For example, if a Development received its first allocation in 2004 and a subsequent allocation and began the credit period in 2006, the 15th year would be 2020.

**(c) Preliminary Qualified Contract Request.** All eligible Development Owners must file a Preliminary Qualified Contract Request.

(1) In addition to determining the basic eligibility described in subsection (b) of this section, the pre-request will be used to determine that:

(A) The Development does not have any uncorrected issues of noncompliance outside the corrective action period;

(B) There is a Right of First Refusal (ROFR) connected to the Development that has been satisfied;

(C) The Compliance Period under the LURA has expired; and

(2) In order to assess the validity of the pre-request, the Development Owner must submit:

(A) Preliminary Request Form;

(B) Qualified Contract Pre-Request fee as outlined in §11.901 of this title (relating to Fee Schedule);

(C) Copy of all regulatory agreements or LURAs associated with the Property (non-TDHCA);

(D) Copy of a Physical Needs Assessment, conducted by a Third Party, that is no more than 12 months older than the request date. If the PNA identifies the need for critical repairs that significantly impact habitability and tenant safety, the identified repairs and replacements must be resolved to the satisfaction of the Department before the Development will be considered eligible to submit a Qualified Contract Request.

(3) The pre-request will not bind the Development Owner to submit a Request and does not start the One Year Period (1YP). A review of the pre-request will be conducted by the Department within 90 days of receipt of all documents and fees described in paragraph (2) of this subsection. If the Department determines that this stage is satisfied, a letter will be sent to the Development Owner stating that they are eligible to submit a Qualified Contract (QC) Request.

**(d) Qualified Contract Request.** A Development Owner may file a QC Request any time after written approval is received from the Department verifying that the Development Owner is eligible to submit the Request.

(1) Documentation that must be submitted with a Request is outlined in subparagraphs (A) - (P) of this paragraph:

(A) A completed application and certification;

(B) The Qualified Contract price calculation worksheets completed by a licensed Third-Party certified public accountant (CPA). The CPA shall certify that they have reviewed annual partnership tax returns for all years of operation, loan documents for all secured debt, and partnership agreements. They shall also certify that they are not being compensated for the assignment based upon a predetermined outcome;

(C) A thorough description of the Development, including all amenities;

(D) A description of all income, rental and other restrictions (non-TDHCA), if any, applicable to the operation of the Development;

(E) A current title report;

(F) A current appraisal with the effective date within six months of the date of the QC Request and consistent with Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy);

(G) A current Phase I Environmental Site Assessment (and Phase II, if necessary) with the effective date within six months of the date of the QC Request and consistent with Chapter 11, Subchapter D of this title (relating to Underwriting and Loan Policy);

(H) A copy of the most recent Physical Needs Assessment of the property conducted by a Third Party, if different from the assessment submitted during the preliminary qualified contract request, consistent with Chapter 11, Subchapter D of this title;

(I) A copy of the monthly operating statements for the Development for the most recent 12 consecutive months;

(J) The three most recent consecutive annual operating statements (audited would be preferred) for the Development;

(K) A detailed set of photographs of the Development, including interior and exterior of representative units and buildings, and the property's grounds;

(L) A current and complete rent roll for the entire Development;

(M) A certification that all tenants in the Development have been notified in writing of the request for a Qualified Contract. A copy of the letter used for the notification must also be included;

(N) If any portion of the land or improvements is leased, copies of the leases;

(O) The Qualified Contract Fee as identified in §11.901 of this title (relating to Fee Schedule); and

(P) Additional information deemed necessary by the Department.

(2) Unless otherwise directed by the Department pursuant to subsection (g) of this section, the Development Owner shall contract with a broker to market and sell the Property. The Department may, at its sole discretion, notify the Owner that the selected Broker is not approved by the Department. The fee for this service will be paid by the seller, not to exceed 6% of the QC Price.

(3) Within 90 days of the submission of a complete Request, the Department will notify the Development Owner in writing of the acceptance or rejection of the Development Owner's QC Price calculation. The Department will have one year from the date of the acceptance letter to find a Qualified Purchaser and present a QC. The Department's rejection of the Development Owner's QC Price calculation will be processed in accordance with subsection (e) of this section and the 1YP will commence as provided therein.

**(e) Determination of Qualified Contract Price.** The QC Price calculation is not the same as the Minimum Purchase Price calculation for the ROFR. The CPA contracted by the Development Owner will determine the QC Price in accordance with §42(h)(6)(F) of the Code taking the following into account:

(1) Outstanding indebtedness secured by, or with respect to, the building;

(2) Distributions to the Development Owner of any and all cash flow, including incentive management fees, capital contributions not reflected in outstanding indebtedness or adjusted investor equity, and reserve balance distributions or future anticipated distributions, but excluding payments of any eligible deferred developer fee. These distributions can only be confirmed by a review of all prior year tax returns for the Development;

(3) All equity contributions will be adjusted based upon the lesser of the consumer price index or 5% for each year, from the end of the year of the contribution to the end of year fourteen or the end of the year of the request for a QC Price if requested at the end of the year or the year prior if the request is made earlier than the last year of the month; and

(4) These guidelines are subject to change based upon future IRS Rulings and/or guidance on the determination of Development Owner distributions, equity contributions and/or any other element of the QC Price.

**(f) Appeal of Qualified Contract Price.** The Department reserves the right, at any time, to request additional information to document the QC Price calculation or other information submitted. If the documentation does not support the price indicated by the CPA hired by the Development Owner, the Department may engage its own CPA to perform a QC Price calculation and the cost of such service will be paid for by the Development Owner. If a Development Owner disagrees with the QC Price calculated by the Department, a Development Owner may appeal in writing in accordance with §11.901(5) of this title (relating to Fee Schedule). A meeting will be arranged with representatives of the Development Owner, the Department and the CPA contracted by the Department to attempt to resolve the discrepancy. The 1YP will not begin until the Department and Development Owner have agreed to the QC Price in writing. Further appeals can be submitted in accordance with §11.902 of this title (relating to Appeals Process (§2306.0321; §2306.6715)).

**(g) Marketing of Property.** By submitting a Request, the Development Owner grants the Department the authority to market the Development and provide Development information to interested parties. Development information will consist of pictures of the Development, location, amenities, number of Units, age of building, etc. Development Owner or broker contact information will also be provided to interested parties. The Development Owner is responsible for providing staff any requested information to assist with site visits and inspections. Marketing of the Development will continue until such time that a Qualified Contract is presented or the 1YP has expired. Notwithstanding subsection (d)(2) of this section, the Department reserves the right to contract directly with a Third Party in marketing the Development. Cost of such service, including a broker's fee, will be paid for by the existing Development Owner. The Department must have continuous cooperation from the Development Owner. Lack of cooperation will cause the process to cease and the Development Owner will be required to comply with requirements of the LURA for the remainder of the Extended Use Period. Responsibilities of the Development Owner include but are not limited to the items described in paragraphs (1) - (3) of this subsection. The Development Owner must:

- (1) Allow access to the Property and tenant files;
- (2) Keep the Department informed of potential purchasers; and
- (3) Notify the Department of any offers to purchase.

**(h) Presentation of a Qualified Contract.** If the Department finds a Qualified Purchaser willing to present an offer to purchase the property for an amount at or above the QC Price, the Development Owner may accept the offer and enter into a commercially reasonable form of earnest money agreement or other contract of sale for the property and provide a reasonable time for necessary due diligence and closing of the purchase. If the Development Owner chooses not to accept the QC offer that the Department presents, the QC request will be closed and the possibility of terminating the Extended Use Period through the Qualified Contract process is eliminated; the Property remains bound by the provisions of the LURA for the remainder of the Extended Use Period. If the Development Owner decides to sell the development for the QC Price pursuant to a QC, the purchaser must complete all requirements of an ownership transfer

request and be approved by the Department prior to closing on the purchase, but the consummation of such a sale is not required for the LURA to continue to bind the Development for the remainder of the Extended Use Period.

(1) The Department will attempt to procure a QC only once during the Extended Use Period. If the transaction closes under the contract, the new Development Owner will be required to fulfill the requirements of the LURA for the remainder of the Extended Use Period.

(2) If the Department fails to present a QC before the end of the 1YP, the Department will file a release of the LURA and the Development will no longer be restricted to low-income requirements and compliance. However, in accordance with §42(h)(6)(E)(ii) of the Code, for a three year period commencing on the termination of the Extended Use Period, the Development Owner may not evict or displace tenants of Low-Income Units for reasons other than good cause and will not be permitted to increase rents beyond the maximum tax credit rents. Additionally, the Development Owner should submit to the Department a request to terminate the LURA and evidence, in the form of a signed certification and a copy of the letter, to be approved by the Department, that the tenants in the Development have been notified in writing that the LURA will be terminated and have been informed of their protections during the three year time frame.

(3) Prior to the Department filing a release of the LURA, the Development Owner must correct all instances of noncompliance at the Development.

**(i) Compliance Monitoring during Extended Use Period.** For Developments that continue to be bound by the LURA and remain affordable after the end of the Compliance Period, the Department will monitor in accordance with the applicable requirements in Subchapters F and G of this chapter (relating to Uniform Multifamily Rules).

1f

BOARD ACTION REQUEST  
TEXAS HOMEOWNERSHIP DIVISION  
JANUARY 16, 2020

Presentation, discussion, and possible action on the adoption of the repeal of 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule; the adoption of new 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule; and directing their submission for adoption to the Texas Register

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the Department) is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule, has not been revised since 2012, and requires changes to bring it up to date; and

WHEREAS, such rulemaking was published in the Texas Register for public comment, such comment was accepted from October 25, 2019, to November 25, 2019, and no public comment was received;

NOW, therefore, it is hereby

RESOLVED, that the repeal of 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule, and new 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule, are adopted without changes to be submitted to the Texas Register; and

FURTHER RESOLVED, that the Executive Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the repeal of 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule and new 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule, in the form presented to this meeting, to be submitted to the Texas Register for adoption, and in connection therewith make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles and any requested changes to the preambles.

BACKGROUND

Tex. Gov't Code §2306.053 authorizes the Department to adopt rules governing the administration of the Department and its programs. The authority for this rule is also provided by Tex. Gov't Code, Chapter 2306, Subchapter MM, Texas First-Time Homebuyer Program. This rule lays out the parameters for administration of the Texas First Time Homebuyer Program.

The new rule being adopted reflects notable changes that include:

- Clarifying that 10 TAC Chapter 20, the Single Family Programs Umbrella Rule, does not apply to this program and rule;
- Revising several definitions;
- Removing §27.3, Procedures for Submitting Requests or Inviting Proposals, because the section had referenced the Department releasing requests for proposals for the purchase and sale of Mortgage Loans, which the Department does not do;
- Adding Residential Property Standards;
- Clarifying that borrower's receiving down payment assistance must repay all or a portion of the assistance no later than upon repayment of the associated first Mortgage Loan, whether due to sale of the property, refinance, or otherwise;
- Clarifying that certain occupancy and use requirements may be waived by the Executive Director or their designee;
- Clarifying that federal income tax recapture provisions are only applicable for Mortgage Loans that are financed with the proceeds of tax-exempt Bonds or for which a Mortgage Credit Certificate has been or will be issued; and
- Making other minor technical corrections.

The proposed rule actions were published in the Texas Register and released for public comment from October 25, 2019, through November 25, 2019. No public comment was received and the rules are being adopted as proposed. Behind the preamble is a clean copy of the rule being adopted.

Attachment 1: Preamble, including required analysis, for the adoption of the repeal of 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption making changes to the rule governing the Texas First Time Homebuyer Program Rule.

2. The repeal does not require a change in work that will require the creation of new employee positions, nor will the repeal reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous re-adoption making changes to the existing procedures for the Texas First time Homebuyer Program.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will be no economic effect

on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will be no economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between October 25, 2019, and November 25, 2019. No comments were received regarding the proposed repeal.

The Board adopted the final order authorizing the repeal on January 16, 2020.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the repealed sections affect no other code, article, or statute.

10 TAC Chapter 27, Texas First Time Homebuyer Program Rule

§27.1 Purpose

§27.2 Definitions

§27.3 Procedures for Submitting Requests or Inviting Proposals

§27.4 Restrictions on Residences Financed and Applicant

§27.5 Occupancy and Use Requirements

§27.6 Application Procedure and Requirements for Commitments by Mortgage Lenders

§27.7 Criteria for Approving Participating Mortgage Lenders

§27.8 Resale of the Residence

§27.9 Conflicts with Bond Indentures and Applicable Law

§27.10 Waiver

Attachment B: Preamble, including required analysis, for adoption of new 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 27, Texas First Time Homebuyer Program Rule. The purpose of the new sections is to make changes that clarify that 10 TAC Chapter 20, the Single Family Programs Umbrella Rule, does not apply to this program and rule; revise several definitions; remove §27.3, Procedures for Submitting Requests or Inviting Proposals, because the section had referenced the Department releasing requests for proposals for the purchase and sale of Mortgage Loans, which the Department does not do; add Residential Property Standards; clarify that borrower's receiving down payment assistance must repay all or a portion of the assistance no later than upon repayment of the associated first Mortgage Loan, whether due to sale of the property, refinance, or otherwise; clarify that federal income tax recapture provisions are only applicable for Mortgage Loans that are financed with the proceeds of tax-exempt bonds or for which a Mortgage Credit Certificate has been or will be issued; and make other minor technical corrections.

Tex. Gov't Code §2001.0045(b) does not apply to the rule being adopted, because it meets the exceptions described under items (c)(4) and (9) of that section. The rules relate to a program through which the Department accesses federal bond authority to provide affordable housing opportunities to low income Texans under Treasury Regulations §143. The rule also ensures compliance with Tex. Gov't Code, Subchapter MM, Texas First-Time Homebuyer Program. Despite these exceptions, it should be noted that no costs are associated with this action that would have prompted a need to be offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the re-adoption of this rule which makes changes to the rules that govern the Texas First Time Homebuyer Program.
2. The new rule does not require a change in work that would require the creation of new employee positions, nor will it reduce work load to a degree that eliminates any existing employee positions.
3. The new rule does not require additional future legislative appropriations.
4. The new rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The rule will not limit, expand or repeal an existing regulation but merely revises a rule.

7. The new rule does not increase or decrease the number of individuals to whom this rule applies; and

8. The new rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule relates to the general program guidelines for the First Time Homebuyer Program. The beneficiaries of this program are individual households, therefore no small or micro-businesses are subject to the rule.

3. The Department has determined that because this rule relates only to a revision to a rule that applies to a program for which individual households are the beneficiaries, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates to homebuyer assistance to individual households, not limited to any given community or area within the state; therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rule relates only to the continuation of the rules in place there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new rule will be a more updated rule reflecting transparent compliant regulations. There will be no economic cost to any individuals required to comply with the new rule because the activities described by the rule has already been in existence.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments as this rule relates only to a process that already exists and is not being significantly revised.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between October 25, 2019, and November 25, 2019. No comments were received regarding the proposed rule and the rule is being adopted without changes.

The Board adopted the final order authorizing the rule adoption on January 16, 2020.

STATUTORY AUTHORITY. The new rule is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the new sections affect no other code, article, or statute.

## CHAPTER 27 TEXAS FIRST TIME HOMEBUYER PROGRAM RULE

### §27.1 Purpose

(a) The purpose of the Texas First Time Homebuyer Program is to facilitate the origination of single-family Mortgage Loans for eligible first time homebuyers, and to provide to qualifying homebuyers down payment and closing cost assistance. The Texas First Time Homebuyer Program is administered in accordance with Texas Government Code, Chapter 2306. Chapter 20 of this title (relating to the Single Family Programs Umbrella Rule) does not apply to the activities under this chapter, except if these activities are combined with activities subject to Chapter 20 of this title.

(b) Assistance under this Program is dependent, in part, on the availability of funds. The Department may cease offering all or a part of the assistance available under the program at any time and in its sole discretion.

### §27.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context or the Participation Packet indicates otherwise. Other definitions may be found in Texas Government Code, Chapter 2306; Chapter 1 of this title (relating to Administration); and Chapter 2 of this title (relating to Enforcement).

(1) Applicable Median Family Income--The Department's determination, as permitted by Texas Government Code, §2306.123, of the median income of an individual or family for an area using a source or methodology acceptable under federal law or rule. The Applicable Median Family Income, as updated from time to time, may be found on the Department's website ([www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)) in the "Combined Income and Purchase Price Limits Table."

(2) Applicant--A person or persons applying for financing of a Mortgage Loan under the Program.

(3) Areas of Chronic Economic Distress--Those areas in the state, whether one or more, designated from time to time as areas of chronic economic distress by the state and approved by the U.S. Secretaries of Treasury and Housing and Urban Development, respectively, pursuant to §143(j) of the Code.

(4) Average Area Purchase Price--With respect to a Residence financed under the Program, the average purchase price of single-family residences in the statistical area in which the Residence is located which were purchased during the most recent twelve (12) month period for which statistical information is available, as determined in accordance with §143(e) of the Code.

(5) Code--The Internal Revenue Code of 1986, as amended from time to time.

(6) Contract for Deed Exception--The exception for certain Mortgage Loan eligibility requirements, as provided in the Master Mortgage Origination Agreement, available with respect to a principal residence owned under a contract for deed by a person whose family income is not more than 50% of the area's Applicable Median Family Income.

(7) Federal Housing Administration--A division of the U.S. Department of Housing and Urban Development, also known as FHA.

(8) First Time Homebuyer--A person who has not owned a home during the three (3) years preceding the date on which an application under this program is filed. A person will be considered to have owned a home if the person had a present ownership interest in a home during the three (3) years preceding the date on which the application was filed. In the event there is more than one person applying with respect to a home, each applicant must separately meet this three year requirement.

(9) Master Mortgage Origination Agreement--The contract between the Department and a Mortgage Lender, together with any amendments thereto, setting forth certain terms and conditions relating to the origination and sale of Mortgage Loans by the Mortgage Lender and the financing of such Mortgage Loans by the Department.

(10) Mortgage Lender--the entity, as defined in §2306.004 of the Tex. Gov't Code, that is participating in the Program and signatory to the Master Mortgage Origination Agreement.

(11) Participation Packet--The application submitted to the Department by the proposed Mortgage Lender to participate in the Program.

(12) Program--The Texas First Time Homebuyer Program.

(13) Purchase Price Limit--The Purchase Price Limits published and updated from time to time in the "Combined Income and Purchase Price Limits Table" found on the Department's website equal to 90% of the Average Area Purchase Price, subject to certain exceptions for Targeted Area Loans.

(14) Qualified Veteran Exemption to First Time Homebuyer Requirement--A qualified veteran who has not previously received financing as a first time homebuyer through a single family mortgage revenue bond program is exempt from the requirement to be a first time homebuyer. The veteran must certify that he or she has not previously obtained a Mortgage Loan financed by single family mortgage revenue bonds and is utilizing the veteran exception set forth in §143(d)(2)(D) of the IRS Code. Qualified veterans must also complete a worksheet evidencing qualification as a veteran and provide copies of discharge papers.

(15) Residence--A dwelling in Texas in which an Applicant intends to reside as the Applicant's principal living space. This is intended to have the same meaning as Home as defined in §2306.1071 of the Tex. Gov't Code.

(16) Rural Housing Service--A division of the United States Department of Agriculture, also known as RHS.

(17) Targeted Area--A qualified census tract, as determined in accordance with §6(a)103A-(2)(b)(4) of the Regulations or any successor regulations thereto, an Area of Chronic Economic

Distress. Applicants purchasing in Targeted Areas may have higher income and purchase price limits as set forth in the "Combined Income and Purchase Price Limits Table" found on the Department's website.

(18) Targeted area exemption to first time homebuyer requirement--Borrower's purchasing homes in targeted areas financed through the program are exempt from the requirement to be a first time homebuyer and income and purchase price limits may be higher as found in the "Combined Income and Purchase Price Limits Table" located on the Department's website.

(19) United States Department of Veterans Affairs--Also known as VA.

### §27.3 Restrictions on Residences Financed and Applicant

(a) Type of Residence and Number of Units. To be eligible for assistance under the Program an Applicant must apply with respect to a home that is either a new or existing single family residence, new or existing condominium or townhome, or manufactured housing that has been converted to real property in accordance with the Texas Occupations Code, Chapter 1201 or FHA guidelines, as required by the Department. A duplex may be financed under the Program as long as one unit of the duplex is occupied by the Applicant as his or her Residence, and the duplex was first occupied for residential purposes at least five years prior to the closing of the Mortgage Loan.

(b) Homebuyer Education. Each Applicant must complete a Department approved pre-purchase homebuyer education course.

(c) Income Limits. An Applicant applying for a Mortgage Loan must meet Applicable Median Family Income requirements.

(d) Down Payment Assistance. An Applicant meeting the Applicable Median Family Income requirements in subsection (c) of this section may qualify for down payment and closing cost assistance in connection with the Mortgage Loan on a first come, first served basis, subject to availability of funds.

(e) Residential Property Standards. The Residence must meet all standards required by the State of Texas, local jurisdiction, and as required by the Federal Mortgage Lender.

### §27.4 Occupancy and Use Requirements

(a) Occupancy requirement. The Applicant must occupy the property within 60 days after the date of closing as his or her Residence. Borrower's receiving down payment assistance must repay all or a portion of the assistance no later than upon repayment of the associated first Mortgage Loan, whether due to sale of the property, refinance, or otherwise.

(b) Use for a business. Homebuyer may not use more than 15% of the residence in a trade or business (including childcare services) on a regular basis for compensation. If the residence is to be used, in part, for a trade or business, a schematic drawing from an appraiser must be provided.

(c) Borrower may not use the Residence, or any part thereof, as an investment property, rental property, vacation or second home, or recreational home, and shall continue to occupy the Residence as Borrower's principal living space, unless waived by the Executive Director or their

designee, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

#### §27.5 Application Procedure and Requirements for Commitments by Mortgage Lenders

(a) An Applicant seeking assistance under the Program must first contact a participating Mortgage Lender. A list of participating Mortgage Lenders may be obtained on the Department's website or by contacting the Department.

(b) Applicant shall complete an application with a participating Mortgage Lender.

(c) Application Fees. Fees that may be collected by the Mortgage Lender from the Applicant relating to a Mortgage Loan include:

(1) an appropriate, as determined by the Department, origination fee and/or buyer/seller points; and

(2) all usual and reasonable settlement or financing costs that are permitted to be so collected by FHA, RHS, VA, Freddie Mac or Fannie Mae, as applicable, and other applicable laws, but only to the extent such charges do not exceed the usual and reasonable amounts charged in the area in which the Residence is located. Such usual and reasonable settlement or financing costs shall include an application fee as determined by the Department, the total estimated costs of a credit report on the Applicants and an appraisal of the property to be financed with the Mortgage Loan, title insurance, survey fees, credit reference fees, legal fees, appraisal fees and expenses, credit report fees, FHA insurance premiums, private Mortgage guaranty insurance premiums, VA guaranty fees, VA funding fees, RHS guaranty fees, hazard or flood insurance premiums, abstract fees, tax service fees, recording or registration fees, escrow fees, and file preparation fees.

(d) The Department will determine from time to time, a schedule of fees and charges necessary for expenses and reserves of the housing finance division as set forth in a Board resolution.

(e) The Mortgage Lender must register the Mortgage Loan in accordance with the Department's published procedures.

#### §27.6 Criteria for Approving Participating Mortgage Lenders

(a) To be approved by the Department for participation in the program, a Mortgage Lender must meet the requirements in the Participation Packet to be a qualified Mortgage Lender as specified by:

(1) FHA;

(2) RHS;

(3) VA; or

(4) be a lender currently participating in the conventional home lending market for loans originated in accordance with Fannie Mae's and/or Freddie Mac's requirements.

(b) As a condition for participation in the Program, a qualified Mortgage Lender must:

(1) agree to originate Mortgage Loans and assign those loans and related Mortgages and servicing to the Department's master servicer;

(2) originate, process, underwrite, close and fund originated loans; and

(3) be an approved Mortgage Lender with the Program's master servicer.

#### §27.7 Resale of the Residence

Mortgage Loans that are financed with the proceeds of tax-exempt bonds, or for which a Mortgage Credit Certificate has been or will be issued, will be subject to federal income tax recapture provisions. Assumption of a Mortgage Loan is allowed under the Program if the new owner meets the Program requirements at the time of the sale of the Residence.

#### §27.8 Conflicts with Bond Indentures and Applicable Law

(a) All assistance provided under the Program is funded through or facilitated by the Department's mortgage revenue bond indentures and is subject to changes in the mortgage revenue bond indentures and applicable law. If there is a conflict between this chapter and any bond indenture or applicable law regarding the use of the funds from mortgage revenue bonds, the mortgage revenue bond indenture or applicable law shall control.

#### §27.9 Waiver

The Board, in its discretion and within the limits of federal and state law, may waive any one or more of the rules governing this Program, except 10 TAC §27.8, if the Board finds that waiver is appropriate to fulfill the purposes or polices of Texas Government Code, Chapter 2306.

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BOARD ACTION REQUEST  
TEXAS HOMEOWNERSHIP DIVISION  
JANUARY 16, 2020

Presentation, discussion, and possible action on the adoption of the repeal of 10 TAC Chapter 28, Taxable Mortgage Program; the adoption of new 10 TAC Chapter 28, Taxable Mortgage Program; and directing their submission for adoption to the Texas Register

RECOMMENDED ACTION

WHEREAS, pursuant to Tex. Gov't Code §2306.053, the Texas Department of Housing and Community Affairs (the Department) is authorized to adopt rules governing the administration of the Department and its programs;

WHEREAS, 10 TAC Chapter 28, Taxable Mortgage Program, has not been revised since 2012, and requires changes to bring it up to date; and

WHEREAS, such rulemaking was published in the Texas Register for public comment, such comment was accepted from October 25, 2019, to November 25, 2019, and no public comment was received;

NOW, therefore, it is hereby

RESOLVED, that the repeal of 10 TAC Chapter 28, Taxable Mortgage Program, and new 10 TAC Chapter 28, Taxable Mortgage Program, are adopted without changes to be submitted to the Texas Register; and

FURTHER RESOLVED, that the Executive Director and his designees, be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the repeal of 10 TAC Chapter 28, Taxable Mortgage Program and the new 10 TAC Chapter 28, Taxable Mortgage Program, in the form presented to this meeting, to be submitted to the Texas Register for adoption, and in connection therewith make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing, including the preparation of the subchapter specific preambles and any requested changes to the preambles.

BACKGROUND

Tex. Gov't Code §2306.053 authorizes the Department to adopt rules governing the administration of the Department and its programs. This rule lays out the parameters for administration of the Taxable Mortgage Program (TMP).

The new rule being proposed reflects notable changes that include:

- Clarifying that 10 TAC Chapter 20, the Single Family Programs Umbrella Rule, does not apply to this program and rule;
- Revising several definitions;
- Removing 10 TAC §28.3, Procedures for Submitting Requests or Inviting Proposals, because the section had referenced the Department releasing requests for proposals for the purchase and sale of Mortgage Loans, which the Department does not do;
- Adding Residential Property Standards;
- Clarifying that borrower's receiving down payment assistance must repay all or a portion of the assistance no later than upon repayment of the associated first Mortgage Loan, whether due to sale of the property, refinance, or otherwise;
- Clarifying that certain occupancy and use requirements may be waived by the Executive Director or their designee;
- Clarifying that federal income tax recapture provisions are only applicable for Mortgage Loans that are financed with the proceeds of tax-exempt Bonds or for which a Mortgage Credit Certificate has been or will be issued; and
- Making other minor technical corrections.

The proposed rule actions were published in the Texas Register and released for public comment from October 25, 2019, through November 25, 2019. No public comment was received and the rules are being adopted as proposed. Behind the preamble is a clean copy of the rule being adopted.

Attachment 1: Preamble, including required analysis, for the adoption of the repeal of 10 TAC Chapter 28, Taxable Mortgage Program

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 28, Taxable Mortgage Program. The purpose of the repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous adoption making changes to the rule governing the Taxable Mortgage Program.

2. The repeal does not require a change in work that will require the creation of new employee positions, nor will the repeal reduce work load to a degree that any existing employee positions are eliminated.

3. The repeal does not require additional future legislative appropriations.

4. The repeal does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to the existing procedures for the Taxable Mortgage Program.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect there will be no economic effect on local employment; therefore no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be an elimination of an outdated rule while adopting a new updated rule under separate action. There will be no economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between October 25, 2019, and November 25, 2019. No comments were received regarding the proposed repeal.

The Board adopted the final order authorizing the repeal on January 16, 2020.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the repealed sections affect no other code, article, or statute.

## 10 TAC Chapter 28, Taxable Mortgage Program

§28.1 Purpose

§28.2 Definitions

§28.3 Procedures for Submitting Requests or Inviting Proposals

§28.4 Restrictions on Residences Financed and Applicant

§28.5 Occupancy and Use Requirements

§28.6 Application Procedure and Requirements for Commitments by Mortgage Lenders

§28.7 Criteria for Approving Participating Mortgage Lenders

§28.8 Resale of the Residence

§28.9 Waiver

Attachment B: Preamble, including required analysis, for adoption of new 10 TAC Chapter 28, Taxable Mortgage Program Rule

The Texas Department of Housing and Community Affairs (the Department) adopts, without changes, new 10 TAC Chapter 28, Taxable Mortgage Program Rule. The purpose of the new sections is to make changes that clarify that 10 TAC Chapter 20, the Single Family Programs Umbrella Rule, does not apply to this program and rule; revise several definitions; remove §28.3, Procedures for Submitting Requests or Inviting Proposals, because the section had referenced the Department releasing requests for proposals for the purchase and sale of Mortgage Loans, which the Department does not do; add Residential Property Standards; clarify that borrower's receiving down payment assistance must repay all or a portion of the assistance no later than upon repayment of the associated first Mortgage Loan, whether due to sale of the property, refinance, or otherwise; clarify that federal income tax recapture provisions are only applicable for Mortgage Loans that are financed with the proceeds of tax-exempt bonds or for which a Mortgage Credit Certificate has been or will be issued; and make other minor technical corrections.

Tex. Gov't Code §2001.0045(b) does apply to the rule being adopted and no exceptions apply. However, no costs are associated with this action that would have prompted a need to be offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to the rules that govern the Taxable Mortgage Program.
2. The new rule does not require a change in work that would require the creation of new employee positions, nor will it reduce work load to a degree that eliminates any existing employee positions.
3. The new rule does not require additional future legislative appropriations.
4. The new rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The rule will not limit, expand or repeal an existing regulation but merely revises a rule.
7. The new rule does not increase or decrease the number of individuals to whom this rule applies; and
8. The new rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule relates to the general program guidelines for the Taxable Mortgage Program. The beneficiaries of this program are individual households, therefore no small or micro-businesses are subject to the rule.

3. The Department has determined that because this rule relates only to a revision to a rule that applies to a program for which individual households are the beneficiaries, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate or authorize a taking by the Department, therefore no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule relates to homebuyer assistance to individual households, not limited to any given community or area within the state; therefore no local employment impact statement is required to be prepared for the rule.

Texas Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rule relates only to the continuation of the rules in place there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new rule will be a more updated rule reflecting transparent compliant regulations. There will be no economic cost to any individuals required to comply with the new rule because the activities described by the rule have already been in existence.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments as this rule relates only to a process that already exists and is not being significantly revised.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between October 25, 2019, and November 25, 2019. No comments were received regarding the proposed rule and the rule is being adopted without changes.

The Board adopted the final order authorizing the adoption of the rule on January 16, 2020.

STATUTORY AUTHORITY. The rule is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the new sections affect no other code, article, or statute.

## CHAPTER 28 TAXABLE MORTGAGE PROGRAM

### §28.1 Purpose

(a) The purpose of the Taxable Mortgage Program is to facilitate the origination of single-family mortgage loans and to refinance existing Mortgage Loans for eligible homebuyers and in both cases to provide down payment and closing cost assistance. Chapter 20 of this title (relating to the Single Family Programs Umbrella Rule) does not apply to the activities under this chapter, except if these activities are combined with activities subject to Chapter 20 of this title.

(b) Assistance under this program is dependent, in part, on the availability of funds. The Department may cease offering all or a part of the assistance available under the program at any time and in its sole discretion.

### §28.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context or the Participation Packet indicates otherwise. Other definitions may be found in Texas Government Code, Chapter 2306; Chapter 1 of this title (relating to Administration); and Chapter 2 of this title (relating to Enforcement).

(1) Applicable Median Family Income--The Department's determination, as permitted by Texas Government Code, §2306.123, of the median income of an individual or family for an area using a source or methodology acceptable under federal law or rule. The Applicable Median Family Income, as updated from time to time, may be found on the Department's website ([www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)) in the "Combined Income and Purchase Price Limits Table."

(2) Applicant--A person or persons applying for financing of a Mortgage Loan under the Program.

(3) Areas of Chronic Economic Distress--Those areas in the state, whether one or more, designated from time to time as areas of chronic economic distress by the state and approved by the U.S. Secretaries of Treasury and Housing and Urban Development, respectively, pursuant to §143(j) of the Code.

(4) Average Area Purchase Price--With respect to a Residence financed under the Program, the average purchase price of single-family residences in the statistical area in which the Residence is located which were purchased during the most recent twelve (12) month period for which statistical information is available, as determined in accordance with §143(e) of the Code.

(5) Code--The Internal Revenue Code of 1986, as amended from time to time.

(6) Department Designated Areas of Special Need--Geographic areas designated by the Department from time to time as areas of special need.

(7) Federal Housing Administration--A division of the U.S. Department of Housing and Urban Development, also known as FHA.

(8) Master Mortgage Origination Agreement--The contract between the Department and a Mortgage Lender, together with any amendments thereto, setting forth certain terms and

conditions relating to the origination and sale of Mortgage Loans by the Mortgage Lender and the financing of such Mortgage Loans by the Department.

(9) Mortgage Lender--the entity, as defined in §2306.004 of the Tex. Gov't Code, participating in the Program and signatory to the Master Mortgage Origination Agreement.

(10) Participation Packet--The application submitted to the Department by the proposed Mortgage Lender to participate in the Program.

(11) Program--The Taxable Mortgage Program.

(12) Purchase Price Limit--The Purchase Price Limits published and updated from time to time in the "Combined Income and Purchase Price Limits Table" found on the Department's website equal to 90 percent of the Average Area Purchase Price, subject to certain exceptions for Targeted Area Loans.

(13) Regulations--The applicable proposed, temporary or final Treasury Regulations promulgated under the Code or, to the extent applicable to the Code, under the Internal Revenue Code of 1954, as such regulations may be amended or supplemented from time to time.

(14) Residence--A dwelling in Texas in which an Applicant intends to reside as the Applicant's principal living space. Has the same meaning as Home in Chapter 2306 of the Tex. Gov't Code.

(15) Rural Housing Service--A division of the United States Department of Agriculture, also known as RHS.

(16) Targeted Area--A qualified census tract, as determined in accordance with §6(a)103A-(2)(b)(4) of the Regulations or any successor regulations thereto, an Area of Chronic Economic Distress, or a Department Designated Area of Special Need. Applicants purchasing in Targeted Areas may have higher income and purchase price limits as set forth in the "Combined Income and Purchase Price Limits Table" found on the Department's website.

(17) United States Department of Veterans Affairs--Also known as VA.

### §28.3 Restrictions on Residences Financed and Applicant

(a) Type of Residence and Number of Units. To be eligible for assistance under the Program an Applicant must apply with respect to a home that is either a new or existing single family residence, new or existing condominium or townhome, or manufactured housing that has been converted to real property in accordance with the Texas Occupations Code, Chapter 1201 or FHA guidelines, as required by the Department. A duplex may be financed under the Program as long as one unit of the duplex is occupied by the Applicant as his or her Residence, and the duplex was first occupied for residential purposes at least five years prior to the closing of the Mortgage Loan.

(b) Homebuyer Education. Each Applicant must complete a Department approved pre-purchase homebuyer education course.

(c) Income Limits. An Applicant applying for a Mortgage Loan must meet Applicable Median Family Income requirements.

(d) Down Payment Assistance. An Applicant meeting the Applicable Median Family Income requirements in subsection (c) of this section may qualify for down payment and closing cost

assistance in connection with the Mortgage Loan on a first come, first served basis, subject to availability of funds.

(e) Residential Property Standards. The Residence must meet all standards required by the State of Texas, local jurisdiction, and as required by the Mortgage Lender.

#### §28.4 Occupancy and Use Requirements

(a) Occupancy requirement. The Applicant must occupy the property within 60 days after the date of closing as his or her Residence. Borrower's receiving down payment assistance must repay all or a portion of the assistance no later than upon repayment of the associated first Mortgage Loan, whether due to sale of the property, refinance, or otherwise.

(b) Use for a business. Homebuyer may not use more than 15% of the Residence in a trade or business (including childcare services) on a regular basis for compensation. If the Residence is to be used, in part, for a trade or business, a schematic drawing from an appraiser must be provided.

(c) Borrower may not use the Residence, or any part thereof, as an investment property, rental property, vacation or second home, or recreational home, and shall continue to occupy the Residence as Borrower's principal living space, unless waived by the Executive Director or their designee, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

#### §28.5 Application Procedure and Requirements for Commitments by Mortgage Lenders

(a) An Applicant seeking assistance under the Program must first contact a participating Mortgage Lender. A list of participating Mortgage Lenders may be obtained on the Department's website or by contacting the Department.

(b) Applicant shall complete an application with a participating Mortgage Lender.

(c) Application Fees. Fees that may be collected by the Mortgage Lender from the Applicant relating to a Mortgage Loan include:

(1) an appropriate, as determined by the Department, origination fee and/or buyer/seller points; and

(2) all usual and reasonable settlement or financing costs that are permitted to be so collected by FHA, RHS, VA, Freddie Mac or Fannie Mae, as applicable, and other applicable laws, but only to the extent such charges do not exceed the usual and reasonable amounts charged in the area in which the Residence is located. Such usual and reasonable settlement or financing costs shall include an application fee as determined by the Department, the total estimated costs of a credit report on the Applicants and an appraisal of the property to be financed with the Mortgage Loan, title insurance, survey fees, credit reference fees, legal fees, appraisal fees and expenses, credit report fees, FHA insurance premiums, private Mortgage guaranty insurance premiums, VA guaranty fees, VA funding fees, RHS guaranty fees, hazard or flood insurance premiums, abstract fees, tax service fees, recording or registration fees, escrow fees, and file preparation fees.

(d) The Department will determine from time to time, a schedule of fees and charges necessary for expenses and reserves of the housing finance division as set forth in a Board resolution.

(e) The Mortgage Lender must register the Mortgage Loan in accordance with the Department's published procedures.

#### §28.6 Criteria for Approving Participating Mortgage Lenders

(a) To be approved by the Department for participation in the program, a Mortgage Lender must meet the requirements in the Participation Packet to be a qualified Mortgage Lender as specified by:

- (1) FHA;
- (2) RHS;
- (3) VA; or

(4) be a lender currently participating in the conventional home lending market for loans originated in accordance with Fannie Mae's and/or Freddie Mac's requirements.

b) As a condition for participation in the Program, a qualified Mortgage Lender must:

- (1) agree to originate Mortgage Loans and assign those loans and related Mortgages and servicing to the Department's master servicer;
- (2) originate, process, underwrite, close and fund originated loans; and
- (3) be an approved Mortgage Lender with the Program's master servicer.

#### §28.7 Resale of the Residence

Mortgage Loans that are financed with the proceeds of tax-exempt bonds, or for which a Mortgage Credit Certificate has been or will be issued, will be subject to federal income tax recapture provisions. Assumption of a Mortgage Loan is allowed under the Program if the new owner meets the Program requirements at the time of the sale of the Residence.

#### §28.8 Conflicts with Bond Indentures and Applicable Law

All assistance provided under the Program is funded through or facilitated by the Department's mortgage revenue bond indentures and is subject to changes in the mortgage revenue bond indentures and applicable law. If there is a conflict between this chapter and any bond indenture or applicable law regarding the use of the funds from mortgage revenue bonds, the mortgage revenue bond indenture or applicable law shall control.

#### §28.9 Waiver

The Board, in its discretion and within the limits of federal and state law, may waive any one or more of the rules governing this Program, except 10 TAC §28.8, if the Board finds that waiver is appropriate to fulfill the purposes or policies of Texas Government Code, Chapter 2306, or for good cause, as determined by the Board.

1h

**BOARD ACTION REQUEST**

**HOME AND HOMELESS PROGRAMS DIVISION**

**JANUARY 16, 2020**

Presentation, discussion, and possible action on awards for the 2019 HOME Investment Partnerships Program Single Family Development Open Cycle Notice of Funding Availability

**RECOMMENDED ACTION**

**WHEREAS**, through Board action on February 21, 2019, the Texas Department of Housing and Community Affairs (TDHCA or the Department) made available approximately \$4,000,000 of Community Housing Development Organization (CHDO) set-aside deobligated funds for use for Single Family Development (SFD), and \$200,000 in funding from HOME Investment Partnerships (HOME) Program funds for CHDO operating expenses in an Open Application Cycle Notice of Funding Availability (NOFA);

**WHEREAS**, three applicants requesting contract awards of CHDO funding totaling \$3,419,600 and contract awards of CHDO operating expenses totaling \$150,000 were submitted during the application acceptance period;

**WHEREAS**, the Executive Award and Review Advisory Committee (EARAC) has conditionally approved the compliance history of two applicants requesting a total of two contract awards totaling \$1,636,600 in CHDO funds and \$100,000 in CHDO operating expenses; and

**WHEREAS**, following Board approval of the two awards presented herein, funding remaining under the NOFA will total \$2,364,000 in CHDO set-aside funds and \$100,000 in CHDO operating funds;

**NOW, therefore, it is hereby**

**RESOLVED**, that awards of HOME funding from the 2019 HOME Single Family Programs SFD Open Cycle NOFA totaling \$1,636,000 in CHDO set-aside funds and \$100,000 in CHDO operating funds are hereby approved in the form presented at this meeting, conditioned as described below, and as may be amended by the Board.

**BACKGROUND**

On February 21, 2019, the TDHCA board approved a Notice of Funding Availability for Single Family Development (SFD) in the amount of \$4,000,000 in deobligated CHDO set-aside funds and \$100,000 in deobligated funding for CHDO operating expenses for use for SFD for eligible

CHDOs, in accordance with 10 Texas Administrative Code (TAC), §1.19, Reallocation of Financial Assistance.

Requests for funds under the NOFA allowed CHDO applicants to request up to \$1,000,000 per application for the development of new and/or rehabilitation of existing single family housing for sale to low-income households. CHDO operating expense funds may be awarded in an amount not to exceed \$50,000 per applicant to provide operational support to the CHDO during the development period. Applicants could apply for more than one award of CHDO funds for development projects that were distinct in location, but could not be considered for more than one award of CHDO operating expenses.

Applicants were required meet the minimum threshold requirements established in 10 TAC Chapter 23 for the Single Family Development Program to be considered for award. A total of four applications were received during the application acceptance period from three applicants, with a total of \$3,409,600 of CHDO set-aside funds requested and a total of \$150,000 of CHDO operating expense funds requested.

Two applications submitted by Community Development Corporation of Brownsville are still under review as of the date of board book posting. Applications from Adults and Youth United Development Association (AYUDA) and Alliance of Border Collaboratives (ABC) have been reviewed, and are recommended for an award of CHDO set-aside funds in the amount of \$818,000 each, conditioned upon final certification of CHDO status for each applicant.

Additionally, the awards of CHDO operating funds recommended today may not be placed under contract with AYUDA or ABC before June 25, 2020, and are also conditioned upon completion of the CHDO certification review. Both AYUDA and ABC have existing contracts for CHDO operating funds which expire on June 24, 2020. Per 10 TAC §23.71(b), a CHDO may not receive more than one grant of CHDO operating funds in an amount not to exceed \$50,000 within any one year period, and may not draw more than \$25,000 in CHDO operating funds in any 12 month period. This allows the Department to comply with the requirements in 24 CFR §92.300(f). Delay of commencement of a CHDO operating grant contract allows the Department to ensure compliance with the administrative and federal rules governing the funds.

**Award Recommendation Log**

<b>App #</b>	<b>HOME Applicant</b>	<b>CHDO set-aside funds</b>	<b>CHDO operating funds</b>	<b>Region</b>	<b>Area Served</b>
2019-1500	Adults and Youth United Development Assoc	\$818,000	\$50,000	13	City of San Elizario
2019-1501	Alliance of Border Collaboratives	\$818,000	\$50,000	13	City of San Benito
	<b>TOTAL</b>	<b>\$1,636,000</b>	<b>\$100,000</b>		

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## TDHCA Outreach Activities, December-January

A compilation of outreach and educational activities designed to enhance the awareness of TDHCA programs and services among key stakeholder groups and the general public.

Activity	Event	Date	Location	Division
Roundtable	Emerging Compliance Monitoring Issues Roundtable	Dec. 13	Austin	Compliance
Public Hearing	Draft 2020 State of Texas Low Income Housing Plan and Annual Report (SLIHP)	Dec. 19	Austin	Housing Resource Center

### Internet Postings of Note

*A list of new or noteworthy postings to the Department's website.*

#### **Amy Young Barrier Removal Program**

- Posted updated links for Program Resources (2020 NOFA, Application to Access the Reservation System, Amended 2019 STATEWIDE Allocation NOFA, Qualified Inspector Certification, Map of State Service Regions, list of Urban and Rural Cities and Counties/MSAs)
- Posted updated grant amounts to Program Details (\$22,500), and qualifying AMFI percentage
- Posted updated Qualified Inspector Certification, added List of Urban and Rural Cities and Counties/MSAs
- Added FAF Limits Admin, Phase 1 amounts graphic

#### **Asset Management**

- Added Presentation, discussion and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement (#01057 Beckley Townhomes, #09007 Mill Stone Apartments, #060062 Enclave at Parkview Apartments)
- Added Presentation, discussion and possible action regarding a Material Amendment to the Housing Tax Credit Exchange Land Use Restriction Agreement (#07131/09914 StoneLeaf at Dalhart)

#### **Bootstrap Loan Program**

- Posted updated Exhibit 9 Applications and Compliance Checklist Part A-Loan Processing, Exhibit 9 Closing Compliance Checklist Part B, and Form 3 Loan Submission Form

#### **Colonia Self-Help Center**

- Added Qualified Inspector Certification form

#### **Communications:**

- Replaced homepage article, "Three steps to find an affordable apartment"

#### **Community Affairs**

- Added 10 TAC Chapter 6 Rule Changes Impacting CSBG
- Added 10 TAC Chapter 6 Rule Changes Impacting CEAP
- Added 10 TAC Chapter 6 Rule Changes Impacting CEAP Webinar to Video Library

- Added Community Assessment Tool Instructions to CSBG page
- Posted updated US Citizenship/US National and SAVE Certification Form

### **Compliance**

- Posted updated 2019 Project Income and Rent Tool

### **Ending Homelessness Fund**

- Posted State Fiscal Year 2020 EHF subrecipients – allocations and contacts

### **HOME and Homeless:**

- Added Homebuyer Assistance with New Construction (HANC) Program Overview, HANC Project Documentation Checklist, HANC Single Family Development Applicant Qualification Guide, HANC Project Setup Checklist, HANC Activity Setup and Lost Acquisition/Interim Construction Loan Checklist, HANC Checklist for Homebuyer Loan Closing
- Added TBRA Program Design
- Posted updated Application Submission Procedures Manual – HOME Single Family Program Reservation System Participation, and Application – HOME Single Family Program Reservation System Participation
- Added in Video Library – ESG Compliance Monitoring and handouts
- Replaced ESG Match Guidance Handout
- Added Module 2 – Qualifying Income Recorded Webinar and presentation slides
- Added HOME Program Repayable Loan Underwriting Series (Dec. 6, 2019, Module 1: Credit Review; Module 1: Credit Review Recorded Webinar; presentation slides)

### **Housing Resource Center**

- Added First Substantial Amendment to the 2019 One-Year Action Plan (Update of NHTF Methods of Distribution)

### **Housing Trust Fund**

- Added 2020-2021 HTF Biennial Plan, amended on December 12, 2019

### **Internal Audit**

- Added Annual Internal Audit Report for Fiscal Year 2019
- Added Fiscal Year 2020 Internal Audit Plan
- Added 2019 Internal Audit of Performance Measure Processes
- Added 2019 Internal Audit of Enforcement Committee

### **Multifamily:**

- Added Neighborhood Risk Factors Report and Multifamily Uniform Application Webinar Q&A (under 2020 Multifamily Uniform Application Supporting Information)
- Posted 2020 4% HTC Applications link (Bond Status Log as of Dec. 20, 2019)
- Added 4% HTC and Tax Exempt Bond Process Manual 2020
- Posted updated 2019 4% HTC Bond Status Log (Dec. 17, 2019)
- Posted updated 2019-1 Multifamily Direct Loan NOFA Application Log (Dec. 13, 2019)
- Added 2020-2 Application Cycle Information and 2020-2 Multifamily Direct Loan NOFA Application Log (Dec. 17, 2019)
- Added Competitive HTC Pre-application Form
- Posted 2020 QCP Neighborhood Information Packet
- Posted final 2018 4% Bond Status Log (Dec. 5, 2019)
- Added 2020 Multifamily Direct Loan Rule
- Added Uniform Application Templates 2020 and 2020 Multifamily Application Procedures Manual

## NOFA

- 2020-2021 Texas Bootstrap Loan Program NOFA
- Multifamily Direct Loan 2020-1 NOFA: Annual
- Multifamily Direct Loan 2020-2 NOFA: Special Purpose
- Multifamily Direct Loan 2020-3 NOFA: Special Purpose-Disaster Impacted Area

## Public Comment

- Draft 2020 State of Texas Low Income Housing Plan and Annual Report

## Frequently Used Acronyms

AMFI	Area Median Family Income	LURA	Land Use Restriction Agreement
AYBR	Amy Young Barrier Removal Program	MF	Multifamily
CEAP	Comprehensive Energy Assistance Program	MFTH	My First Texas Home Program
CFD	Contract for Deed Program	MRB	Mortgage Revenue Bond Program
CFDC	Contract for Deed Conversion Assistance Grants	NHTF	National Housing Trust Fund
CHDO	Community Housing Development Organization	NOFA	Notice of Funding Availability
CMTS	Compliance Monitoring and Tracking System	NSP	Neighborhood Stabilization Program
CSBG	Community Services Block Grant Program	OIG	Office of Inspector General
ESG	Emergency Solutions Grants Program	QAP	Qualified Allocation Plan
EHF	Ending Homelessness Fund	QCP	Quantifiable Community Participation
FAQ	Frequently Asked Questions	REA	Real Estate Analysis
HBA	Homebuyer Assistance Program	RFA	Request for Applications
HHSCC	Housing and Health Services Coordination Council	RFO	Request for Offer
HHSP	Homeless Housing and Services Program	RFP	Request for Proposals
HRA	Homeowner Rehabilitation Assistance Program	RFQ	Request for Qualifications
HRC	Housing Resource Center	ROFR	Right of First Refusal
HTC	Housing Tax Credit	SLIHP	State of Texas Low Income Housing Plan
HTF	Housing Trust Fund	TA	Technical Assistance
HUD	U.S. Department of Housing and Urban Development	TBRA	Tenant Based Rental Assistance Program
IFB	Invitation for Bid	TICH	Texas Interagency Council for the Homeless
		TSHEP	Texas Statewide Homebuyer Education Program
		TXMCC	Texas Mortgage Credit Certificate
		VAWA	Violence Against Women Act
		WAP	Weatherization Assistance Program

2b

BOARD REPORT ITEM

BOND FINANCE DIVISION

JANUARY 16, 2020

Report on the Department's Swap Portfolio and recent activities with respect thereto

BACKGROUND

Between 2004 and 2007, the Department entered into five interest rate swaps to hedge interest rate risk associated with its tax-exempt, single family variable rate mortgage revenue bonds. One swap was terminated in conjunction with a refunding of the underlying bonds, and four swaps remain outstanding, two of which were restructured in 2014.

In accordance with the Department's Interest Rate Swap Policy, the Bond Finance Division has the day-to-day responsibility of managing the swaps. The outstanding bonds associated with each of the swaps are reduced by scheduled redemptions and maturing amounts, and by amounts representing principal and prepayments received on the mortgage-backed securities that secure each bond issue. Under state law, the notional amount of swap outstanding cannot exceed the par amount of related bonds outstanding. To avoid being overswapped, staff closely monitors the amount of swap outstanding, the related outstanding bond amount, and any upcoming bond redemptions to ensure enough swap is called to comply with State law.

In addition to monitoring state law compliance, staff works closely with the Department's Financial Advisor, Stifel, Nicolaus & Company, Incorporated, to identify opportunities to terminate or reduce swaps by exercising par optional terminations, or call rights, on those swaps. Staff analyzes the economic benefit of the proposed termination and evaluates potential interest rate or other associated risks. When both economically beneficial and prudent to do so, optional termination rights are exercised on portions of the underlying swaps.

The attached report reflects the status of the Department's swaps as of December 1, 2019. Series 2005A and Series 2007A swaps are matched amortization swaps; as such, a reduction in the outstanding swap amount for these series is the direct result of principal payments and prepayments received on the underlying mortgage loans. The reduction of approximately \$3,260,000 in the outstanding swap for Series 2004B and \$1,965,000 for Series 2004D was due to principal and prepayments on the underlying mortgage loans, with \$1,745,000 for Series 2004B and \$1,905,000 for Series 2004D terminated at par in accordance with its terms for a slight economic benefit. State law requires that the bonds outstanding equal or exceed the amount of swap outstanding at all times.

Since 2004, when the Department first utilized swaps to hedge variable rate bonds, the total notional amount of swaps has been reduced from an initial \$354,005,000 to the current outstanding amount of \$62,380,000.

**Texas Department of Housing and Community Affairs**  
**Swap Portfolio Update**  
**January 16, 2020**

<b>Matched Amortization Swaps</b>							
Related Bonds	Swap Counterparty	Effective Date	Maturity Date	Original Notional Amount	Swap Outstanding Notional as of 6/1/2019	Swap Outstanding Notional as of 12/1/2019	CHANGE in Swap Outstanding
2005A	JP Morgan	8/1/2005	9/1/2036	\$ 100,000,000	\$ 19,095,000	\$ 17,685,000	\$ (1,410,000)
2007A	JP Morgan	6/5/2007	9/1/2038	\$ 143,005,000	\$ 20,155,000	\$ 17,900,000	\$ (2,255,000)

<b>Amortizing Swaps with Optionality</b>							
Related Bonds	Swap Counterparty	Effective/Restructured Date	Maturity Date	Original Notional Amount	Swap Outstanding Notional as of 6/1/2019	Swap Outstanding Notional as of 12/1/2019	CHANGE in Swap Outstanding
2004B	BNY Mellon	3/1/2014	9/1/2034	\$ 40,000,000	\$ 18,730,000	\$ 15,470,000	\$ (3,260,000)
2004D	Goldman Sachs	1/1/2005	3/1/2035	\$ 35,000,000	\$ 13,290,000	\$ 11,325,000	\$ (1,965,000)
2006H	BNY Mellon	3/1/2014	9/1/2025	\$ 36,000,000	\$ -	\$ -	\$ -

<b>TOTAL SWAPS</b>				<b>\$ 354,005,000</b>	<b>\$ 71,270,000</b>	<b>\$ 62,380,000</b>	<b>\$ (8,890,000)</b>
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2004B - UBS AG was the original counterparty and the original notional at issuance was \$53,000,000.

<b>Variable Rate Bonds Associated with Matched Amortization Swaps</b>							
Related Bonds	Swap Counterparty	Effective Date	Maturity Date	Original Notional Amount	Bonds Outstanding 6/1/2019	Bonds Outstanding 12/1/2019	CHANGE in Bonds Outstanding
2005A	JP Morgan	8/1/2005	9/1/2036	\$ 100,000,000	\$ 19,095,000	\$ 17,685,000	\$ (1,410,000)
2007A	JP Morgan	6/5/2007	9/1/2038	\$ 143,005,000	\$ 20,155,000	\$ 17,900,000	\$ (2,255,000)

<b>Variable Rate Bonds Associated with Amortizing Swaps with Optionality</b>							
Related Bonds	Swap Counterparty	Effective Date	Maturity Date	Original Notional Amount	Bonds Outstanding 6/1/2019	Bonds Outstanding 12/1/2019	CHANGE in Bonds Outstanding
2004B	BNY Mellon	3/1/2014	9/1/2034	\$ 40,000,000	\$ 19,910,000	\$ 18,395,000	\$ (1,515,000)
2004D	Goldman Sachs	1/1/2005	3/1/2035	\$ 35,000,000	\$ 13,290,000	\$ 12,425,000	\$ (865,000)
2006H	BNY Mellon	3/1/2014	9/1/2025	\$ 36,000,000	\$ -	\$ -	\$ -

<b>TOTAL BONDS</b>				<b>\$ 354,005,000</b>	<b>\$ 72,450,000</b>	<b>\$ 66,405,000</b>	<b>\$ (6,045,000)</b>
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3

**BOARD ACTION REQUEST**  
**COMMUNITY AFFAIRS DIVISION**  
**JANUARY 16, 2020**

Presentation, discussion, and possible action regarding authorization to reprogram Community Services Block Grant discretionary funds towards the procurement of one or more providers to provide fiscal and cost allocation related training and technical assistance for Community Services Block Grant eligible entities

**RECOMMENDED ACTION**

**WHEREAS**, Community Services Block Grant (CSBG) funds are awarded annually to the Texas Department of Housing and Community Affairs (the Department) by the U.S. Department of Health and Human Services (USHHS);

**WHEREAS**, the Department reserves 90% of the allotment for CSBG eligible entities to provide services/assistance to the low-income population in all 254 counties; up to 5% for state administration expenses; and the remaining amount for state discretionary use;

**WHEREAS**, on June 29, 2017, the Board approved the usage of CSBG Program 2019 CSBG discretionary (CSBG-D) funds in the 2018-2019 CSBG State Plan, and on July 25, 2019, the Board approved the usage of 2020-2021 CSBG discretionary (CSBG-D) funds in the 2020-2021 CSBG State Plans;

**WHEREAS**, the funding activities for 2019 have not resulted in the full utilization of CSBG-D funds, and the funding activities for 2020 and 2021 have not yet been programmed into their proposed uses in the 2020-2021 CSBG State Plan;

**WHEREAS**, based upon monitoring trends and survey feedback from the network of eligible entities, the Department has identified a critical need for eligible entities to have training made available to them that addresses fiscal and cost allocation issues, and that this need can best be addressed through the Department contracting with one or more fiscal and/or accounting providers to provide targeted training and technical assistance; and

**WHEREAS**, the Department wishes to reprogram 2019 and 2020-2021 CSBG-D funds to procure one or more providers to provide fiscal and cost allocation related training and technical assistance to those CSBG eligible entities who request such training and to release a Request for Proposal (RFP) towards this effort;

**NOW, therefore, it is hereby**

**RESOLVED**, that Department staff be granted the authority to redirect 2019 and 2020-2021 CSBG-D funds as needed, in amounts not exceeding \$400,000, from previously approved discretionary activities towards the procurement of one or more contractors to provide fiscal and cost allocation related training and technical assistance to selected CSBG eligible entities;

**FURTHER RESOLVED**, that Department staff be granted the authority to release an RFP towards this effort; and

**FURTHER RESOLVED**, that should any funds designated towards this effort remain unused after August 31 of the subsequent year for which the funds were programmed (e.g., August 31, 2020 for PY 2019), the Executive Director or designee may reprogram the remaining funds back into previously approved activities to avoid funds not being expended by the expenditure deadline of September 30 of each year.

### **BACKGROUND**

Each year the Department sets aside 5% (approximately \$1,600,000 to \$1,700,000) of its anticipated annual CSBG allocation for state discretionary use (i.e., CSBG-D funds). On June 29, 2017, and July 25, 2019, the Board approved the usage of 2019 and 2020-2021 CSBG-D funds for specific activities. However, since Board approval, Department staff received the results of a survey completed by CSBG eligible entities in Texas in which they strongly request and indicate a need for fiscal and cost allocation training and resources. Additionally, monitoring trends confirm an increase in findings related to procurement and cost allocation, and training staff have received an increase in training requests from the network for cost allocation.

In an effort to act on the needs of the network as observed by trends in monitoring results and feedback received from the network, and acknowledging that the Department's existing training staff do not have the capacity or technical expertise to provide widespread training on accounting and cost allocation methodologies, the Department wishes to procure one or more providers to provide fiscal and cost allocation related training and technical assistance to those CSBG eligible entities who request the assistance. To fund this effort, the Department must first reprogram 2019 and 2020-2021 CSBG-D funds amongst previously approved CSBG-D activities. Staff recommends redirecting 2019 and 2020-2021 CSBG-D funds based on funds left unrequested from previously approved activities and unobligated balances for this purpose. Staff anticipates that up to half of the eligible entities will request this training (i.e., 20 entities) and pulling funds from across three Program years ensures this activity will be sufficiently funded, while not negatively affecting any one year of funding disproportionately.

In the event there are no responsive providers to the RFP, or the Department does not have requests for this procured training at a level to utilize the allotted funding, the Department may, at the discretion of the Executive Director, reprogram the funds from this new activity into another eligible discretionary activity specified in previously approved CSBG State Plans or to the network for provision of services to low-income individuals and communities.

If approved by the Board, staff will release an RFP with the objective of securing a contract with one or more providers to provide the necessary training and technical assistance on fiscal and cost allocation related issues needed across the network. The anticipated duration of training is through August of 2022.

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BOARD ACTION REQUEST

FAIR HOUSING, DATA MANAGEMENT AND REPORTING

JANUARY 16, 2020

Presentation, discussion, and possible action authorizing the Department to submit an application for the Fair Housing Initiative Program – Education and Outreach Initiative (FR-6300-N-21-A) released by the U.S. Department of Housing and Urban Development, and if successfully awarded to operate such program

RECOMMENDED ACTION

WHEREAS, on December 19, 2019, the U.S. Department of Housing and Urban Development (HUD) released a Notice of Funding Availability (NOFA) for the Fair Housing Initiative Program-Education and Outreach Initiative to enable eligible applicants, which include agencies of state government, to develop, implement, carry out, and coordinate education and outreach programs designed to inform members of the public concerning their rights and obligations under the provisions of the Fair Housing Act;

WHEREAS, the Texas Department of Housing and Community Affairs (TDHCA or the Department) currently operates a Fair Housing, Data Management, and Reporting group (FHDMR) that provides training, education, and outreach on Fair Housing related issues and recently completed its 2019 Analysis of Impediments to Fair Housing Choice which identified the need for greater outreach and education; and

WHEREAS, TDHCA's existing FHDMR group operates successfully and has the appropriate expertise, partnerships and systems in place to pursue additional funds and, if awarded to perform such work;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to submit an application for up to \$1 million in funding in response to the NOFA, and provide any other appropriate responsive documents to HUD; and

FURTHER RESOLVED, that if HUD makes an award from this NOFA to the Department, the Department is authorized to proceed with accepting such an award and implementing the program in accordance with the rules and policies in place for the Fair Housing Initiatives Program – Education and Outreach Initiatives.

## BACKGROUND

On December 19, 2019, HUD released a NOFA announcing the availability of \$7.45 million for the Fair Housing Initiatives Program – Education and Outreach Initiative which seeks to increase, compliance with the Fair Housing Act by developing, implementing, carrying out, and coordinating education and outreach programs designed to inform members of the public concerning their rights and obligations under the provisions of the Fair Housing Act. HUD expects to make approximately 55 awards with a maximum award amount of \$1 million and minimum award amount of \$125,000. The NOFA allows agencies of state governments to develop or bolster their capacity to educate members of the public about their Fair Housing rights and responsibilities.

The NOFA requires that funds be used for eligible activities, including, but not limited to developing educational advertising campaigns, developing and distributing materials, and conducting educational activities such as workshops, conferences, or seminars, that inform people of their rights and responsibilities under the Fair Housing Act.

The Department will propose in the grant application that funds be used in two primary ways. The extent of funding, if awarded, will determine to what extent these goals and purposes will be implemented.

- The first effort will be expanding the Department's training efforts:
  - to increase the number of attendees and registrants for the Department's annual Fair Housing webinars that take place every April,
  - to offer the webinars, and other similar webinars, more frequently throughout the year, and
  - to offer trainings in other training formats across the state.
- To produce Fair Housing materials that are specific to the State of Texas and TDHCA programs that can be distributed by Department staff when attending conferences or other events, and be provided to local organizations who serve low income households.

Surveys of previous webinar attendees indicate that these webinars have been very useful and the content presented was helpful to attendees. Previous webinars have been attended by an average of approximately 275 individuals.

Staff recommends the Department be authorized to apply to HUD for the 2019 Fair Housing Initiative Program – Education and Outreach Initiative NOFA, and to have the flexibility in designing TDHCA's application to develop a responsive program design.

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**BOARD ACTION REQUEST**

**OCI, HTF AND NSP DIVISION**

**JANUARY 16, 2020**

Presentation, discussion, and possible action on an amendment to the Neighborhood Stabilization Program 1 Agreement 77090000601 and associated loan documents with City Wide Community Development Corporation and authorization to award additional funding from Neighborhood Stabilization Program – Program Income

**RECOMMENDED ACTION**

**WHEREAS**, the Texas Department of Housing and Community Affairs (the Department or TDHCA) entered into a Neighborhood Stabilization Program 1 (NSP1) Reservation System Agreement with Urban Progress Community Development Corporation Texas, Inc. (UPCDC) on March 1, 2013, for the acquisition of 23.5 acres of Land Bank property in Dallas County to be developed into 30 multifamily units as its final eligible use;

**WHEREAS**, UPCDC was unable to begin or complete the project, and on September 10, 2018, UPCDC assigned its duties and responsibilities under the Agreement to City Wide Community Development Corporation (CWDC) and CWDC assumed the obligations under the associated loan documents with consent from the Department;

**WHEREAS**, CWDC has requested (1) authorization to modify the project scope for the final eligible use from multifamily development to single family development with additional financing, (2) to increase the original award amount by \$700,000, and (3) a waiver of the program requirement that at least 25% of the NSP award be used for the purchase and redevelopment of properties that will provide permanent housing to households with incomes no greater than 50 percent of area median income (AMI);

**WHEREAS**, staff finds that the proposal by CWDC to change the project scope for final use from multifamily to single family development is reasonable and will result in homeownership for households at 120% of AMI or below;

**WHEREAS**, staff finds that the proposal by CWDC to have a portion of the project as a public facilities activity will allow the entire land bank property to be brought to a final eligible use;

**WHEREAS**, based on its 2008 Action Plan and reflective of project feasibility, staff may recommend an award structure where less than 25% of the homebuyer units are reserved for households at 50% AMI or below;

**WHEREAS**, staff will continue to work closely with CWDC to provide technical

assistance and actively monitor progress toward contract completion; and

**WHEREAS**, although EARAC has considered this award and recommends it with no conditions, Program staff recommends the award be made under the condition that any pending tax suits are resolved prior to contract execution;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Department may modify the project scope for final eligible use from multifamily development to single family development with portions of the project dedicated to a public facility use upon a further 24 CFR Part 58 review (if needed) and to make corresponding amendments to the contract and modifications to the associated loan documents;

**FURTHER RESOLVED**, staff will hold available \$700,000 in NSP-PI for potential use as an additional loan to CWCDC for development of up to 48 single family units for a period not to exceed six months in order to allow CWCDC to (1) secure additional financing for non-Eligible NSP costs, (2) complete the environmental review, and (3) submit and allow the Development to finalize underwriting for the transition;

**FURTHER RESOLVED**, the loan closing deadline for the new loan may be extended for good cause by the Executive Director or his designee for up to an additional three months;

**FURTHER RESOLVED**, that CWCDC will have an 18-month development period (from the time of loan closing, inclusive of sale to the homebuyer) for the development of the single family units under the new loan, with an ability for this deadline to be extended for good cause by the Executive Director for up to an additional six months;

**FURTHER RESOLVED**, that any pending tax suits must be resolved prior to contract execution; and

**FURTHER RESOLVED**, that the Executive Director or his designee are hereby authorized, empowered, and directed, for and on behalf of this Board to amend to enable full, timely, and compliant contract completion and in connection therewith to execute, deliver, and cause to be performed such amendments, documents, and other writings as they or any of them may deem necessary or advisable to effectuate the foregoing.

## **BACKGROUND**

The Neighborhood Stabilization Program (NSP) is a HUD-funded program authorized by H.R. 3221, the Housing and Economic Recovery Act (HERA) of 2008, as a supplemental allocation to the Community Development Block Grant (CDBG) Program through an amendment to the existing State of Texas 2008 CDBG Action Plan. The purpose of the program is to redevelop, or acquire and hold, abandoned and foreclosed properties in areas with declining property values resulting from excessive foreclosures.

On March 1, 2013, the Department awarded UPCDC \$1,871,100 from the TDHCA NSP1 allocation for construction of up to 30 multifamily rental units (part of a total of 927 units) in Kleberg Village, Dallas County. \$1,485,000 of the \$1,871,100 award was used to acquire 23.581 acres of land. Unfortunately, UPCDC was not able to complete the project and worked proactively with local developer, CWCDC, to transfer ownership of the Land Bank property with TDHCA's guidance. On September 10, 2018, CWCDC formally assumed the responsibility under the contract and the loan documents for the NSP project.

CWCDC has reassessed the feasibility of the original plans on the tract of land, and recommends a change of scope of the project's final eligible use to now develop 42 single family units (between approximately 1600 and 2400 square feet) to be sold to income-eligible households up to 120% AMI, and six units to be sold to income-eligible households up to 50% AMI. Three of these units will be designed to meet the needs of homebuyers with mobility impairments, and one unit will be designed to meet the needs of a homebuyer with sensory impairments in accordance with the 2010 ADA Standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities", 79 Federal Register 29671. Homebuyer Assistance will be provided to each household funded through loan repayments by CWCDC to TDHCA under the original acquisition loan and the new development loan, and will take the form of either a deferred-forgivable loan, an amortized loan, or a deferred repayable loan, as determined by each household's financial need.

CWCDC also requested an additional \$700,000 in NSP1 funds in the form of a grant for housing development. However, a grant may not be used on NSP transactions, as the Department must have a mechanism it can use under state law to enforce the affordability and use restrictions required under 24 CFR §92.254 and 24 CFR §570.505. The Department proposes to award CWDC as the developer an amount of up to \$700,000 (based on final underwriting) utilizing a non-amortizing interim construction loan, with a 0% annual interest rate, to be repaid proportionally upon the completion of each single family unit with a final payment of the remaining unpaid and unforgiven loan balance due at the end of the loan term.

Of the 23.581 acres, CWCDC will voluntarily transfer approximately 11 acres to the City of Dallas for park land, and one acre will be used as a community center open to the public. Staff recommends that the Department forgive approximately \$758,297 of the \$1,485,000 in acquisition expenses (the final amount to be determined upon examination of a survey) because both the park land and community center will meet a National Objective as Public Facilities use under the NSP when the

Department files land use agreements for the park land and the community center, which will be done before transferring to the City of Dallas and/or other subsequent ownership entities. The original acquisition loan assumed by CWCDC will be extended and modified accordingly.

The Housing and Economic Recovery Act of 2008 requires that the state ensure that at least 25% of households assisted with NSP funds be awarded to households earning less than 50% of the Area Median Family Income. While the federal regulation does not require that every project meet such a requirement, TDHCA chose to pass this requirement down to subrecipients, in order to ensure that the Department met its obligations, but its 2008 Action Plan Amendment allowed the Board to approve a lower amount based on project feasibility. Based on TDHCA's most recent NSP quarterly report, the Department's NSP portfolio exceeds the 25% Low Income Set-Aside requirement by 29%. Therefore, the 25% Set-Aside requirement is not necessary to be incorporated into this homeownership project to meet the federal requirement. After examining the sources and uses of the proposed homeownership project, the Department is recommending that six units, in various sizes and scattered throughout the Development, be available to households earning 50% or below. Approximately \$327,750 of the total original acquisition loan (based on final underwriting this number could be reduced to \$300,000 or rise up to \$400,000 without further Board Action) will be forgiven upon sale to a qualified homebuyer earning 50% or below.

The Department recommends that staff hold available up to \$700,000 in NSP-PI funds for potential use as an additional loan to CWCDC for development of up to 48 single family units for a period not to exceed six months in order to allow CWCDC to (1) secure additional financing for non-Eligible NSP costs, (2) complete the environmental review, and (3) submit and allow the Development to finalize underwriting for the transition. The loan closing deadline of the new development loan may be extended for good cause by the Executive Director or his designee for up to an additional three months. For the new development loan, CWCDC will have an 18-month development period (from the time of loan closing, inclusive of sale to the homebuyer), with an ability for this deadline to be extended for good cause by the Executive Director for up to an additional six months.

Recently, the Department was notified of a tax suit related to the 23-acre tract of land for \$4,697.19 in back taxes (plus possible additional penalties, interest, and costs) owed to Dallas County taxing entities by CWCDC. Program staff recommends the approval of the award of the additional \$700,000 in NSP-PI funds to CWCDC, but that the execution of the contract be contingent upon confirmation of the taxing entities' receipt of all back taxes and related penalties, interest, and costs for the Kleberg Village property. If CWCDC does not resolve this tax suit related to the Land Bank property by March 16, 2020, the Department may deobligate this award. The Executive Director may extend this deadline for up to an additional three months for good cause. In the meantime, the Department is referring this suit to the Office of Attorney General to file a reply and, if needed, work with the taxing authority to preserve the Department's Land Use Restriction Agreement on the property to protect the Department's position.

6a

**TO BE POSTED  
NOT LATER THAN  
THE THIRD DAY  
BEFORE THE  
DATE OF THE  
MEETING**

6b

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**JANUARY 16, 2020**

Presentation, discussion, and possible action regarding a waiver of certain requirements in 10 TAC §11.1(d)(122)(E)(ii) regarding the definition of Supportive Housing

**RECOMMENDED ACTION**

**WHEREAS**, the Governor approved the 2020 Qualified Allocation Plan (QAP) on November 26, 2019, after the Board made certain changes to 10 TAC §11.1(d)(122)(E)(ii) related to the definition of Supportive Housing at the November 7, 2019 meeting;

**WHEREAS**, the Board had changed 10 TAC §11.1(d)(122)(E)(ii) to read as follows: “(ii) financed with debt that meets feasibility requirements under Subchapter D of this chapter without exemptions and must also be supported by project-based rental or operating subsidies for a minimum of 25% of all Units, and meet all of the criteria in subclauses (I) through (VIII) of this clause;”;

**WHEREAS**, on December 20, 2019, the *Texas Register* published the 2020 QAP without the change made by the Board to the definition of Supportive Housing;

**WHEREAS**, an amendment to the 2020 QAP to correct the error is not feasible, and therefore to ensure the implementation of the change made by the Board a waiver of 10 TAC §11.1(d)(122)(E)(ii) is necessary; and

**WHEREAS**, staff recommends waiving the project-based or operating subsidy requirement in 10 TAC §11.1(d)(122)(E)(ii) for 75% of the “all Units” required by the published rule, (which would leave the requirement that a minimum of 25% of all Units in a supportive housing development be supported by project-based rental or operating subsidies) for all 2020 Applicants, so that the rule is applied equitably and Applicants are assured of the correct requirement;

**NOW, therefore, it is hereby**

**RESOLVED**, that waiver of project-based or operating subsidy for 75% of all Units in a supportive housing development under §11.1(d)(122)(E)(ii) is hereby approved for all 2020 Applications; and

**FURTHER RESOLVED**, that the practical result of the waiver is that 10 TAC §11.1(d)(122)(E)(ii) will be applied to all 2020 Applications so as to reduce the number of required units under this provision from “all Units” to “a minimum of 25% of all Units.” .

### **BACKGROUND**

At its meeting on November 7, 2019, the TDHCA Governing Board approved the final 2020 QAP with a change to the requirements of 10 TAC §11.1(d)(122)(E)(ii) relating to the definition of Supportive Housing, for submittal to the Governor as required by Tex. Gov’t Code §2306.6724, relating to Deadlines for Allocation of Low Income Housing Tax Credits. The Governor modified and approved the final QAP, leaving the Board’s amendment in place. The Board’s amendment was then inadvertently omitted from the 2020 QAP submitted to the *Texas Register* on December 9, 2019. Due to the timing requirements in Tex. Gov’t Code §2306.6724, further amendment of the QAP to correct this oversight is not a viable solution.

The change made by the Board reduced the number of required units under this provision from “all Units” to a minimum of 25% of all Units, as follows:

ii) financed with debt that meets feasibility requirements under Subchapter D of this chapter without exemptions and must also be supported by project-based rental or operating subsidies for a minimum of 25% of all Units, and meet all of the criteria in subclauses (I) through (VIII) of this clause:

A waiver for 75% units to be supported by project-based rental or operating subsidies, leaves a minimum of 25% of all units. This clarifies requirements for Applicants, and allows implementation of the Board’s direction. Waiver of the requirement for 75% of the units for all Applications assures they are all held to the same requirements without individual waiver requests. Per the waiver requirements of 10 TAC §11.207, the omission of the Board’s change to this definition was not foreseeable and was inadvertent, despite the best efforts and review systems of staff to accurately transmit the final version to the *Texas Register*. By granting the waiver, it manifestly serves the policies and purposes of Tex. Gov’t Code ch. 2306 by ensuring that the Governor’s approval of the QAP, with the changes transmitted, are given effect. Staff will propose that this change be made to the 2021 QAP so that additional waivers will not be required.

7a

BOARD ACTION REQUEST  
COMPLIANCE DIVISION  
JANUARY 16, 2020

Presentation, discussion, and possible action on an order proposing the repeal of 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review Advisory Committee; an order proposing new 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review Advisory Committee; and directing their publication for public comment in the Texas Register

RECOMMENDED ACTION

WHEREAS, the current Previous Participation and Executive Award Review Advisory Committee rule was adopted on December 30, 2018;

WHEREAS, staff has determined that the rule is not operating efficiently and needs to be revised, and such revision is being proposed through the repeal of the current rule and a simultaneous new rule to be proposed in its place;

WHEREAS, a roundtable to discuss the staff draft of the proposed amendments to this rule was held on December 13, 2019;

WHEREAS, staff recommends to the Board that there is a continuing need for this rule to exist, which is to ensure compliance with applicable sections of Tex. Gov't Code Chapter 2306; and

WHEREAS, such proposed rulemaking will be published in the Texas Register for public comment and subsequently returned to the Board for final adoption;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director and his designees be and each of them hereby are authorized, empowered, and directed, for and on behalf of the Department, to cause the proposed actions herein in the form presented to this meeting, to be published in the Texas Register for public comment, and in connection therewith, make such non-substantive technical corrections as they may deem necessary to effectuate the foregoing including any requested revisions to the preambles.

## BACKGROUND

Tex. Gov't Code §2306.057 requires a compliance assessment before the Board approves any project application. This rule is the process and procedure used for this assessment. The current rule was adopted on December 30, 2018, and staff has recognized the need to make changes to the rule.

A roundtable to discuss the staff draft of this rule was held on December 13, 2019. Stakeholders did not express concerns with these proposed amendments. The primary changes are explained below.

§1.301(b) Definitions. Staff is proposing to add a definition for Actively Monitored Property and throughout the rules uses this term to describe an applicant's portfolio size. The proposed definition is: *(1) Actively Monitored Development—A Development that within the last three years has been monitored by the Department, either through a Uniform Physical Condition Standards (UPCS) inspection or a file monitoring review. UPCS inspections include inspections completed by Department staff, Department contractors and inspectors from the Real Estate Assessment Center through federal alignment efforts.*

This definition could affect some applicants by decreasing their portfolio size. This is relevant because the rule classifies applications as a category 2 or 3 by comparing events of noncompliance to portfolio size. Under the current rule, developments that have been awarded, but were not yet constructed, were sometimes included in portfolio size and other times they were not because they had not yet been entered into a department database. Staff is recommending this change to clearly establish how portfolio size is determined and to more accurately assess the number of events in an applicant's portfolio.

§1.301 (c) Items Not Considered. Staff is recommending deleting the following:

"(9) Events of Noncompliance associated with a Development that has submitted documentation, using the appropriate Department form, that the Applicant is not in Control of the Development with Events of Noncompliance for purposes of management and compliance. The term "Combined Portfolio" used in this section does not include those properties with such documentation;"

The Department has one definition of control for the Department's multifamily programs. This amendment will align this rule with other Department rules.

§1.301(e) Determination of Compliance Status. Staff is proposing to add the following:

"Combined Portfolios will not be designated as a Category 3 if both Applicants are considered a Category 2 when evaluated separately. For example, if each Applicant is a Category 2 and their Combined Portfolio is a Category 3, the Application will be considered a Category 2."

§1.301(f) Compliance Recommendation to EARAC. Staff is proposing to rename this section "Compliance Notification to Applicant and EARAC." In addition, staff is proposing to add the following language:

- (1) Previously approved. If EARAC or the Board previously approved the compliance history of an Applicant, with or without conditions (including approvals resulting from a dispute under §1.303(g) of this subchapter) such conditions have not been violated, and no new events have occurred since the last approval, the compliance history will be deemed acceptable without further review or discussion and recommended as approved or approved with the same prior conditions."

The other amendments to this section of the rule remove duplicative language and make consistent the notification process for Category 2 and Category 3 applicants.

§1.301(g) Other possible Conditions to be made to an award by the Compliance Division. Staff is proposing to delete this section in its entirety, rename it "Compliance Recommendation to EARAC for Awards" and replace the current rule with the following:

"(1) After taking into consideration the information received during the seven-day period, Category 2 applications will be recommended for approval or approval with conditions (for compliance purposes only). Any recommendation for an award with conditions will utilize the conditions identified in §1.303 of this subchapter. The Applicant will be notified if their award is recommended for approval with conditions.

(2) After taking into consideration the information received during the seven-day period, Category 3 applications will be recommended for approval, approval with conditions (for compliance purposes only), or denial. Any recommendation for an award or ownership transfer with conditions will utilize the conditions identified in §1.303 of this subchapter. The Applicant will be notified if their award is recommend for denial or approval with conditions.

(3)Applicants that will be recommended for denial or awarded with conditions will be informed of their right to file a Dispute under §1.303 of this subchapter."

§1.303(c) EARAC Recommendation Process. Staff is recommending amendments to this section to eliminate the requirement for staff to recommend denial of all Category 3 applications.

If staff recommends denial of a Category 3 application, or award with conditions for a Category 2 or Category 3 application, the applicant will be notified and have the opportunity to dispute the staff recommendation before the Board.

§1.303(d). Staff is proposing amendments to this section of the rule to eliminate the unnecessary connection between events of noncompliance and possible conditions. This will allow staff and applicants to more easily pick from a list of possible conditions that both parties believe will help improve the compliance status of the applicant's portfolio.

Attachment 1: Preamble, including required analysis, for proposed repeal of 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review Advisory Committee

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review Advisory Committee. The purpose of the proposed repeal is to streamline the process for conducting previous participation reviews.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the proposed repeal would be in effect:

1. The proposed repeal does not create or eliminate a government program but relates to changes to an existing activity, previous participation reviews.
2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The proposed repeal does not require additional future legislative appropriations.
4. The proposed repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The proposed repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The proposed repeal will not expand, limit, or repeal an existing regulation.
7. The proposed repeal will not increase nor decrease the number of individuals subject to the rule's applicability.
8. The proposed repeal will not negatively nor positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed repeal does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the changed sections would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held January 31, 2020, to March 2, 2020, to receive input on the proposed action. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Patricia Murphy, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email [patricia.murphy@tdhca.state.tx.us](mailto:patricia.murphy@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, March 2, 2020.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed amended sections affect no other code, article, or statute.

§1.301. Previous Participation Reviews for Multifamily Awards and Ownership Transfers

§1.302. Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter

§1.303. Executive Award and Review Advisory Committee (EARAC)

Attachment 2: Preamble, including required analysis, for proposed amendment of 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review Advisory Committee

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 1, Subchapter C, Previous Participation and Executive Award Review Advisory Committee which includes new §1.301 Previous Participation Reviews for Multifamily Awards and Ownership Transfers, §1.302 Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter, and §1.303 Executive Award and Review Advisory Committee (EARAC). The purpose of the proposed new sections is to streamline the process for conducting previous participation reviews. The proposed sections add a new definition for Actively Monitored Development; align the consideration of control with other Department rules; clarify that if both Applicants are considered a Category 2 when evaluated separately and their Combined Portfolio is a Category 3, the Application will be considered a Category 2; provide that previously approved applicants are approved provided that conditions have not been violated and there have been no new events of noncompliance; eliminate the requirement for the compliance division to recommend denial for all Category 3 applicants; and eliminate the connection between events of noncompliance and possible conditions.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the proposed new sections would be in effect:

1. The proposed new sections do not create or eliminate a government program but relates to changes to an existing activity, previous participation reviews.
2. The proposed new sections do not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The proposed new sections do not require additional future legislative appropriations.
4. The proposed new sections will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The proposed new sections are not creating a new regulation, except that they are replaced sections being repealed simultaneously to provide for revisions.
6. The proposed new sections will not expand, limit, or repeal an existing regulation.
7. The proposed new sections will not increase nor decrease the number of individuals subject to the rule's applicability.
8. The proposed new sections will not negatively nor positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the proposed new sections and determined that the proposed amendments will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed new sections do not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the proposed new sections as to their possible effects on local economies and has determined that for the first five years the proposed new sections would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed new sections are in effect, the public benefit anticipated as a result of the new sections would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the new sections.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed new sections are in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held January 31, 2020, to March 2, 2020, to receive input on the proposed new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Patricia Murphy, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email [patricia.murphy@tdhca.state.tx.us](mailto:patricia.murphy@tdhca.state.tx.us). ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, March 2, 2020.

STATUTORY AUTHORITY. The proposed new sections are made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed new sections affect no other code, article, or statute.

## Rule §1.301 Previous Participation Reviews for Multifamily Awards and Ownership Transfers

(a) Purpose and Applicability. The purpose of this rule is to provide the procedures used by which the Department to comply ~~complies~~ with Tex. Gov't Code §§2306.057, and 2306.6713, and ~~2306.6719~~ which ~~require~~ require, among other things, ~~that prior to awarding funds or other assistance through the Department's Multifamily Housing Programs or approving a Person to acquire an existing multifamily Development monitored by the Department a previous participation review will be performed by the Compliance Division to assess the compliance history of the Applicant and any Affiliate, the compliance issues associated with the proposed or existing Development, and provide such assessment to the Board. This rule also ensures Department compliance with 2 CFR §200.331(b) and (c), and Uniform Grant Management Standards (UGMS), where applicable,~~ which requires that the Department evaluate an Applicant's risk of noncompliance and consider imposing conditions, if appropriate, prior to awarding funds for certain applicable programs, which may include multifamily activities.

(b) Definitions. The following definitions apply only as used in this section Subchapter. Other capitalized terms used in this section have the meaning assigned in the specific Chapters and Rules of this Title that govern the program associated with the request, or assigned by federal or state laws ~~shall have the meaning ascribed in the rules governing the program for which the Application has requested funds or is participating.~~

(1) Actively Monitored Development--A Development that within the last three years has been monitored by the Department, either through a Uniform Physical Condition Standards (UPCS) inspection or a file monitoring review. UPCS inspections include inspections completed by Department staff, Department contractors and inspectors from the Real Estate Assessment Center through federal alignment efforts.

(2) ~~(1)~~ Affiliate--Persons are Affiliates of each other or are "affiliated" if they are under common Control by each other or by one or more third parties. "Control" is as defined in 10 TAC Chapter §11.1 of this Title. For Applications for Multifamily Direct Loans and 811 PRA, or for Ownership Transfers of Multifamily Properties containing Multifamily Direct Loans or 811 PRA, for purposes of assurance that the Affiliate is not on the Federal Suspended or Debarred Listing, Affiliate is also defined as required by 2 CFR Part 180.

(3) Applicant—In addition to the definition of applicant in 10 TAC §11.1 of this Title, in this Subchapter, the term applicant includes Persons requesting approval to purchase a Department monitored Development.

(4) ~~(2)~~ Combined Portfolio--Actively Monitored All-Developments within the Control of Persons affiliated with the Application as identified by the Previous Participation Review and as limited by Subsection (c) of this section.

(5) ~~(3)~~ Corrective Action Period--The timeframe during which an Owner may correct an Event of Noncompliance, as permitted in 10 TAC §10.602 or §10.803 of this Title, including any permitted extension or deficiency period.

(6) ~~(4)~~ Events of Noncompliance--Any event for which a multifamily rental Development may be found to be in noncompliance for compliance monitoring purposes as further provided for in 10 TAC §10.803 of this Title or in the table provided at 10 TAC §10.625 of this Title.

(7) ~~(5)~~ Monitoring Event-- An onsite or desk monitoring review, a Uniform Physical Condition Standards inspection, the submission of the Annual Owner's Compliance Report, Final Construction Inspection, a

Written Policies and Procedures Review, or any other instance when the Department's Compliance Division or other reviewing area provides written notice to an Owner or Contact Person requesting a response by a certain date. This would include, but not be limited to, responding to a tenant complaint.

~~(8) (6)~~ Person--"Person" is as defined in 10 TAC Chapter 11. For Applications for Multifamily Direct Loans and 811 PRA, or for Ownership Transfers of Multifamily Properties containing Multifamily Direct Loans or 811 PRA, for purposes of assurance that the Applicant or Affiliate is not on the Federal Suspended or Debarred Listing, Person is also defined as required by 2 CFR Part 180.

~~(9) (7)~~ Single Audit--As used in this rule, the term relates specifically to an audit required by 2 CFR §200.501 or UGMS Subpart E.

(c) Items Not Considered. When conducting a previous participation review the following will not be taken into consideration:

(1) Events of Noncompliance, Findings, Concerns, and Deficiencies (under any Department program) that were corrected over three years from the date the Event is closed ~~unless required to be taken into consideration by federal or state law, by court order, or voluntary compliance agreement;~~

(2) Events of Noncompliance with an "out of compliance date" prior to the Applicant's ~~or proposed incoming Owner's~~ period of Control if the event(s) is currently corrected;

(3) Events of Noncompliance with an "out of compliance date" prior to the Applicant's ~~or proposed incoming Owner's~~ period of Control if the event(s) is currently uncorrected and the Applicant ~~or proposed incoming Owner~~ has had Control for less than one year, ~~and has had no legal ability to effectuate corrective action~~ or if the Owner is still within the timeframe of a Department-approved corrective action from the Department's Enforcement Committee;

(4) The Event of Noncompliance "Failure to provide Fair Housing Disclosure notice";

(5) The Event of Noncompliance "Program Unit not leased to Low income Household" sometimes referred to as "Household Income above income limit upon initial Occupancy" for units at ~~properties~~ Developments participating in U.S. Department of Housing and Urban Development programs (or used as HOME Match) or U.S. Department of Agriculture, if the household resided in the unit prior to an allocation of Department resources and Federal Regulations prevent the Owner from correcting the issue;

(6) The Event of Noncompliance "Casualty loss" if the restoration period has not expired;

(7) Events of Noncompliance that the Applicant ~~or proposed incoming Owner~~ believes can never be corrected and the Department agrees in writing that such item should not be considered;

(8) Events of Noncompliance corrected within their Corrective Action Period or within 10 days of the day the Owner received notice that the Corrective Action was insufficient ~~and needed further remedy, so long as evidence of such satisfaction within 10 days is provided by the Owner to the Department;~~

~~(9) Events of Noncompliance associated with a Development that has submitted documentation, using the appropriate Department form, that the Applicant is not in Control of the Development with Events of Noncompliance for purposes of management and compliance. The term "Combined Portfolio" used in this section does not include those properties with such documentation; and~~

~~(9) (40)~~ Events of failure to respond within the Corrective Action Period which have been fully corrected prior to January 1, 2019, will not be taken into consideration under ~~Subsection subsection~~ (e)(2)(C) and (e)(3)(C) of this section; and. ~~However, this shall not operate to alter or limit any responsibility of the Department to report such matters to the Internal Revenue Service as events of noncompliance not corrected within the corrective action period.~~

(10) Events of Noncompliance precluded from consideration by Tex. Gov't Code §2306.6719(e).

(d) Applicant Process. Persons affiliated with an Application or an Ownership ~~T~~ransfer request must complete the Department's Uniform Previous Participation Review Form and respond timely to staff inquiries regarding apparent errors or omissions, but for Applications no later than the Administrative Deficiency deadline. ~~A~~ For an Ownership Transfer request, a recommendation will ~~not be delayed made~~ if an Applicant or proposed incoming Owner fails to provide until the required forms or ~~fails to provide~~ timely-responsive information is provided ~~when requested.~~

(e) Determination of Compliance Status. Through a review of the form, Department records, and the compliance history of the Affiliated multifamily Developments, staff will determine the applicable category for the Application or Ownership Transfer request using the criteria in Paragraphs (1) through (3) of this subsection. Combined Portfolios will not be designated as a Category 3 if both Applicants are considered a Category 2 when evaluated separately. For example, if each Applicant is a Category 2 and their Combined Portfolio is a Category 3, the Application will be considered a Category 2. ~~The Application will be classified in the highest applicable category, based upon all Persons for whom previous participation review is conducted.~~

(1) Category 1. An Application will be considered a Category 1 if the Actively Monitored Developments in the Combined Portfolio have no issues that are currently uncorrected, all Monitoring Events were responded to during the Corrective Action Period, and the Application does not meet any of the criteria of Category 2 or 3.

(2) Category 2. An Application will be considered a Category 2 if any one or more of the following criteria are met:

(A) The number of uncorrected Events of Noncompliance plus the number of corrected Events of Noncompliance that were not corrected during the Corrective Action Period total at least three but is less than 50% of the number of Actively Monitored Developments ~~properties~~ in the Combined Portfolio;

(B) There are uncorrected Events of Noncompliance but the number of Events of Noncompliance is 10% or less than the number of ~~properties~~ Actively Monitored Developments in the Combined Portfolio. ~~If Corrective corrective action has been uploaded to the Department's Compliance Monitoring and Tracking System (CMTS) or if the noncompliance is corrected and evidence of corrective action is submitted during the seven day period referenced in Subsection (f) of this section it will be reviewed and the Category determination may change as appropriate; or~~

(C) Within the three years immediately preceding the date of Application, any Person subject to previous participation review failed to respond during the Corrective Action Period for three or fewer Monitoring Events; or

(D) The Applicant is required to have a Single Audit and a relevant and germane issue was identified in the Single Audit (e.g. Notes to the Financial Statements), or the required Single Audit is past due. ~~Within the three years immediately preceding the date of Application, a Development in the Combined Portfolio has been the subject of a final order entered by the Board and the terms have not been violated.~~

(3) Category 3. An Application will be considered a Category 3 if any one or more of the following criteria are met:

(A) The number of uncorrected Events of Noncompliance plus the number of corrected Events of Noncompliance that were not corrected during the Corrective Action Period total at least three and

equal or exceed 50% of the number of Actively Monitored Developments ~~properties~~ in the Combined Portfolio;

(B) The number of Events of Noncompliance that are currently uncorrected total 10% or more than the number of Actively Monitored Developments ~~properties~~ in the Combined Portfolio. ~~If Corrective corrective action has been uploaded to CMTS or if the noncompliance is corrected and evidence of corrective action is submitted during the seven day period referenced in Subsection (f) of this section it will be reviewed and the Category determination may change as appropriate;~~

(C) Within the three years immediately preceding the date of Application, any Person subject to previous participation review failed to respond during the Corrective Action Period for more than three Monitoring Events;

(D) ~~Any A-Development~~ Controlled by the Applicant in the Combined Portfolio has been the subject of an a agreed final order entered by the Board and the terms have been violated;

(E) Any Person subject to previous participation review failed to meet the terms and conditions of a prior condition of approval imposed by the EARAC, the Governing Board, voluntary compliance agreement, or court order;

(F) Payment of principal or interest on a loan due to the Department is past due beyond any grace period provided for in the applicable documents for any Development currently property Controlled by the Applicant or that was Controlled by the Applicant at the time the payment was due in the Combined Portfolio and a repayment plan has not been executed with the Department, or an executed repayment plan has been violated;

(G) The Department has requested and not been ~~timely~~ provided evidence that the owner has maintained required insurance on any collateral for any loan held by the Department related to any Development a property Controlled by the Applicant in the Combined Portfolio;

(H) The Department has requested and not been ~~timely~~ 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 related to any a property Development Controlled by the Applicant in the Combined Portfolio;

(I) Fees or other amounts owed to the Department by any Person subject to previous participation review are 30 days or more past due and a repayment plan has not been executed with the Department, or an executed repayment plan has been violated;

(J) Despite past condition(s) agreed upon by any Person subject to previous participation review to improve their compliance operations, three or more new Events of Noncompliance have since been identified by the Department, and have not been resolved during the corrective action period;

(K) Any Person subject to previous participation review has or had Control of a TDHCA funded Development that has gone through a foreclosure; or

(L) Any Person subject to previous participation review or the proposed incoming owner is currently debarred by the Department or currently on the federal debarred and suspended listing.

(f) ~~Compliance Notification to Applicant and EARAC Recommendation to EARAC. After determining the appropriate category as described in Subsection (e) of this section, The the Compliance Division will notify Applicants of their compliance status from the categories identified in paragraphs (1) to (4) of this subsection. make a recommendation to EARAC in accordance with the following paragraphs, as applicable.~~

(1) Previously approved. If EARAC or the Board previously approved the compliance history of an Applicant, with or without conditions (including approvals resulting from a Dispute under §1.303(g) of

this subchapter) such conditions have not been violated, and no new events have occurred since the last approval, the compliance history will be deemed acceptable without further review or discussion and recommended as approved or approved with the same prior conditions.

~~(2) (1) Category 1. The compliance history of Category 1 applications will be deemed acceptable (for Compliance purposes only) without further review or discussion.~~

~~(3) (2) Category 2 and Category 3. Category 2 and 3 Applicants The Applicant or proposed incoming Owner will be informed by the Compliance Division that the of its determination that an Application is will be classified as a Category 2 or 3 and provided a seven calendar day period to provide written comment, submit any remaining evidence of corrective action for uncorrected events, propose one or more of the conditions listed in §1.303 of this subchapter, or propose other conditions for consideration before the Compliance Division makes its final submission to EARAC. ~~As it relates to Monitoring Events that occurred prior to the initiation of the 10 day period to provide additional corrective action provided for in §10.602(b) of this title (relating to Notice to Owners and Corrective Action Periods), an Applicant may provide evidence during this seven day period to describe any unique considerations that the Applicant thinks should be considered. If EARAC previously reviewed the previous participation for affiliated multifamily Developments, and no new events have occurred since the last previous participation review, the Applicant will not be required to provide comment on the prior events of noncompliance, but will be provided the opportunity to propose conditions or mitigations;~~~~

~~(4) The Department will not make an award or approve an Ownership Transfer to any entity who has an Affiliate, Board member, or a Person identified in the Application that is currently on the Federal Debarred and Suspended Listing. An Applicant or entity requesting an Ownership Transfer will be notified of the debarred status and will be given the opportunity (subject to other Department rules) to remove and replace the Affiliate, Board member, or Person so that the transfer or award may proceed.~~

~~(B) Based on the compliance history and Applicant response, the Compliance Division will recommend to EARAC award, award with conditions, or denial. In making this decision, the Compliance Division may not consider the compliance history precluded by Tex. Gov't Code §2306.6719(e). If EARAC previously reviewed and approved or approved with conditions the previous participation for affiliated multifamily Developments, and no new events have occurred since the last previous participation review, the compliance history will be deemed acceptable and recommended as approved or approved with the same prior conditions, by EARAC, even if the prior approval or approval with conditions was a result of a successful dispute under §1.303(g) of this subchapter;~~

~~—(C) Any recommendation for an award with conditions will utilize the conditions identified in §1.303 of this subchapter. Failure to correct noncompliance or meet conditions by the date established by the Board based on the recommendation of EARAC and/or meet terms and conditions related to a recommendation or award may be considered by the Board in its consideration of future actions for the Applicant or Application and may serve as grounds for the initiation of proceedings to take other disciplinary actions such as imposition of administrative penalties or debarment as further provided for in Chapter 2 of this title (relating to Enforcement).~~

~~—(D) EARAC will provide notice to the Applicant of the final recommendation from the Compliance Division for awards with conditions or denials, and the Applicant may, if it desires, exercise its right to file a dispute under §1.303 of this subchapter.~~

~~(3) Category 3.~~

~~—(A) The Applicant or proposed incoming owner will be informed by the Compliance Division of the determination that an Application will be classified as a Category 3 and provided a seven calendar day period to provide written comment, submit any remaining evidence of corrective action for uncorrected events, propose one or more of the conditions listed in §1.303 of this subchapter, or propose other conditions for consideration before the Compliance Division makes its final submission to EARAC. After review of any corrective action submitted during the seven calendar day period, if the Application is still considered a Category 3, the Compliance Division will recommend to EARAC denial of the award. In making this decision, the Compliance Division may not consider the compliance history precluded by Tex. Gov't Code §2306.6719(e). EARAC will provide notice to the Applicant of the final recommendation from the Compliance Division and the specific rule or statutory-based requirement will be identified, along with the Applicant's right to dispute the negative recommendation as described in §1.303 of this subchapter.~~

(g) Compliance Recommendation to EARAC for Awards Other Possible Conditions to be Made to an Award by the Compliance Division.

(1) After taking into consideration the information received during the seven-day period, Category 2 Applications will be recommended for approval or approval with conditions (for compliance purposes only). Any recommendation for an award with conditions will utilize the conditions identified in §1.303 of this subchapter. The Applicant will be notified if their award is recommended for approval with conditions.

(2) After taking into consideration the information received during the seven-day period, Category 3 applications will be recommended for approval, approval with conditions (for compliance purposes only) or denial. Any recommendation for an award or ownership transfer with conditions will utilize the conditions identified in §1.303 of this subchapter. The Applicant will be notified if their award is recommended for denial or approval with conditions.

(3) An Applicant that will be recommended for denial or awarded with conditions will be informed of their right to file a Dispute under §1.303 of this subchapter.

~~—(1) If the Applicant is required to have a Single Audit, the Compliance Division will obtain the required audit and may propose conditions or recommend denial based on the single audit findings or a relevant and germane issue identified in the Single Audit (e.g., Notes to the Financial Statements).~~

~~—(2) If the Applicant is applying for a Direct Loan award and it or its Affiliate has monitoring from the U.S. Department of Housing and Urban Development, Office of Inspector General, or another state agency in the past three years, the Compliance Division will obtain the required information and review the required information, and may propose conditions based on the disclosure or relevant and germane issue identified in the monitoring report.~~

~~—(3) If the Applicant has a Finding or Deficiency associated with activities other than multifamily activities, the Compliance Division may propose conditions or recommend denial based on a Finding or Deficiency if it is relevant and germane to the award being considered.~~

~~(h) Eligibility for the Department's Multifamily Direct Loans and 811 PRA and Eligibility for Ownership Transfer for Developments containing the Department's Multifamily Direct Loans and 811 PRA.~~

(h) Compliance Recommendation for Ownership Transfers

(1) After taking into consideration the information received during the seven-day period the results will be reported to the Executive Director with a recommendation of approval, approval with conditions, or denial. If the Executive Director determines that the request should be denied, or approved with conditions and the requesting entity disagrees, the matter may be appealed to the Board under §1.7 of this Title (relating to Appeals).

RULE §1.302 Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter

~~(a) Purpose and applicability. The purpose of this rule is to provide the procedures by which the Department complies with Tex. Gov't Code §2306.057 which requires that prior to awarding project funds a review of the applying entity's previous participation will be performed by the Compliance Division, and, as applicable, with 2 CFR §200.331(b) and (c), and UGMS which requires that the Department evaluate an Applicant's risk of noncompliance and consider imposing conditions if appropriate prior to awarding funds for certain applicable programs. This section applies to program awards not covered by §1.301 of this subchapter. With the exception of a household or project commitment contract, prior to awarding or allowing access to Department funds through a Contract or through a Reservation Agreement a previous participation review will be performed in conjunction with the presentation of award actions to the Department's Board.~~

(b) Capitalized terms used in this section herein have the meaning assigned in the specific Chapters and Rules of this ~~Part-Title~~ that govern the program associated with the request, or assigned by federal or state laws. For this section, the word Applicant means the entity that the Department's Board will consider for an award of funds or a Contract. As used in this section, the term Single Audit relates specifically to the audit required by 2 CFR §200.501 or UGMS Subpart E.

(c) Upon Department request, Applicant will be required to submit:

(1) A listing of the members of its board of directors, council, or other governing body as applicable or certification that the same relevant information has been submitted in accordance with §1.22 of this subchapter (relating to Providing Contact Information to the Department), and if applicable with §6.6 of this ~~part-Title~~ (relating to Subrecipient Contact Information and Required Notifications);

(2) A list of any multifamily Developments owned or Controlled by the Applicant that are monitored by the Department;

(3) Identification of all Department programs that the Applicant has participated in within the last three years;

(4) An Audit Certification Form for the Applicant or entities identified by the Applicant's Single Audit, or a certification that the form has been submitted to the Department in accordance with §1.403 of this chapter (relating to Single Audit Requirements). If a Single Audit is required by UGMS Subpart E, a copy of the State Single Audit must be submitted to the Department;

~~(5) A copy of the most recent three years federal or state agency monitoring reports that resulted in a finding or disallowed costs (only if the Applicant is applying for a federal award);~~

~~(5)~~ (6) In addition to direct requests for information from the Applicant, information is considered to be requested for purposes of this section if the requirement to submit such information is made in a NOFA or Application for funding; and

(6) ~~(7)~~ Applicants will be provided a reasonable period of time, but not less than seven calendar days, to provide the requested information.

(d) The Applicant's/Affiliate's financial obligations to the Department will be reviewed to determine if any of the following conditions exist:

(1) The Applicant or Affiliate entities identified by the Applicant's Single Audit owes an outstanding balance in accordance with §1.21 of this chapter (relating to Action by Department if Outstanding Balances Exist), and a repayment plan has not been executed between the Subrecipient and the Department or the repayment plan has been violated;

(2) 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; or

(3) 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.

(e) The Single Audit of an Applicant, or Affiliate entities identified by the Applicant's Single Audit, subject to a Single Audit, and not currently contracting for funds with the Department will be reviewed. In evaluating the Single Audit, the Department will consider both audit findings, and management responses in its review to identify concerns that may affect the organization's ability to administer the award. The Department will notify the Applicant of any Deficiencies, findings or other issues identified through the review of the Single Audit that requires additional information, clarification, or documentation, and will provide a deadline to respond.

(f) The Compliance Division will make a recommendation of award, award with conditions, or denial based on:

(1) The information provided by the Applicant;

(2) Information contained in the most recent Single Audit;

(3) Issues identified in Subsection (d) of this section;

(4) The Deficiencies, Findings and Concerns identified during any monitoring visits conducted within the last three years (whether or not the Findings were corrected during the Corrective Action Period); and

(5) The Department's record of complaints concerning the Applicant.

(g) Compliance Recommendation to EARAC.

(1) If the Applicant has no history with Department programs, and Compliance staff has not identified any issues with the Single Audit or other required disclosures, the Application will be deemed acceptable (for Compliance purposes) without EARAC review or discussion.

(2) An Applicant with no history of monitoring Findings, Concerns, and/or Deficiencies or with a history of monitoring Findings, Concerns, and/or Deficiencies that have been awarded without conditions subsequent to those identified Findings, Concerns, and/or Deficiencies, will be deemed acceptable without EARAC review or discussion for Compliance purposes, if there are no new monitoring Findings, Concerns, or Deficiencies or complaint history, and if the Compliance Division determines that the most recent Single Audit or other required disclosures indicate that there is no significant risk to the Department funds being considered for award.

(3) The Compliance Division will notify the Applicant when an intended recommendation is an award with conditions or denial. Any recommendation for an award with conditions will utilize the conditions identified in §1.303 of this subchapter. The Applicant will be provided a seven calendar day period to provide written comment, submit any remaining evidence of corrective action for uncorrected events, propose one or more of the conditions listed in §1.303 of this subchapter, or propose other conditions for consideration by the Board.

(4) After review of materials submitted by the Applicant during the seven day period, the Compliance Division will make a final recommendation regarding the award. ~~If recommending denial or award with conditions, the EARAC will provide notice to the Applicant of a final recommendation that is an award with conditions or denial. The Applicant will be notified of~~ may, if they desire, exercise their right to file a dispute under §1.303 of this subchapter.

(h) Consistent with §1.403 of Subchapter D of this chapter, (relating to Single Audit Requirements), the Department may not enter into a Contract or extend a Contract with any Applicant who is delinquent in the submission of their Single Audit unless an extension has been approved in writing by the cognizant federal agency except as required by law, and in the case of certain programs, funds may be reserved for the Applicant or the service area covered by the Applicant.

(i) Except as required by law, the Department will not enter into a Contract with any Applicant or entity who has an, Affiliate, Board member, or person identified in the Application that is currently debarred by the Department or is currently on the Federal Suspended or Debarred Listing. Applicants will be notified of the debarred status of an Affiliate, a Board Member or Person and will be given an opportunity to remove and replace that Affiliate, Board Member or Person so that funding may proceed. However, individual Board Member's participation in other Department programs is not required to be disclosed, and will not be taken into consideration by EARAC.

~~(j) Except as required by law, the Department will not enter into a Contract with any Applicant who is currently debarred by the Department or is currently on the federal debarred and suspended listing.~~

~~(j) (k)~~ Previous Participation reviews will not be conducted for Contract extensions. However, if the Applicant is delinquent in submission of its Single Audit, the Contract will not be extended except as required by law, unless the submission is made, and the Single Audit has been reviewed and found acceptable by the Department.

~~(k) (l)~~ For CSBG funds required to be distributed to Eligible Entities by formula, the recommendation of the Compliance Division will only take into consideration Subsections (i) ~~and (j)~~ of this section.

~~(l) (m)~~ Previous Participation reviews will not be conducted for Contract Amendments that staff is authorized to approve.

#### RULE §1.303 Executive Award and Review Advisory Committee (EARAC)

(a) Authority and Purpose. The Executive Award and Review Advisory Committee (EARAC) is established by Tex. Gov't Code §2306.1112 to make recommendations to the Board regarding funding and allocation decisions related to Low Income Housing Tax Credits and federal housing funds provided to the state under the Cranston Gonzalez National Affordable Housing Act. Per Tex. Gov't Code §2306.1112(c), EARAC is not subject to Tex. Gov't Code, Chapter 2110. The Department also utilizes EARAC as the body to consider funding and allocation recommendations to the Board related to other programs, and to consider an awardee under the requirements of 2 CFR §200.331(b) and (c), and UGMS, which requires that the Department evaluate an applicant's risk of noncompliance and consider imposing conditions if appropriate prior to awarding funds for certain applicable programs and as described in §1.403 of

Subchapter D of this chapter. It is also the purpose of this rule to provide for the operation of the EARAC, to provide for considerations and processes of EARAC, and to address actions of the Board relating to EARAC recommendations. Capitalized terms used in this section herein have the meaning assigned in the specific Chapters and Rules of this Title that govern the program associated with the request, or assigned by federal or state laws.

(b) EARAC may meet ~~in person or by teoemail to~~ make discuss matters within its statutory scope and as noted in Subsection (a) of this section, including (without limitation) recommendations on awards, discuss deficiencies in-needed information to make a recommendations recommendation, proposed or recommended conditions on awards, and address addressing inquiries by Applicants or responses to a negative recommendation.

(c) EARAC Recommendation Process.

(1) A positive recommendation by EARAC represents a determination that, at the time of the recommendation and based on available information, EARAC each of the applicable and required members has not identified a rule or statutory-based impediment ~~(within their area of expertise)~~ that would prohibit the Board from making an award.

(2) A positive recommendation by EARAC may have conditions placed on it. Conditions placed on an award by EARAC will be limited to those conditions noted in Subsection (e) of this section, or as suggested by the Applicant and agreed upon by the Department.

(3) The Applicant will be notified of proposed all such conditions, proposed by EARAC. If the Applicant does not concur with the applicability of one or more of the conditions, it will be provided an opportunity to dispute the conditions as described in Subsection (g) of this section, regarding EARAC Disputes.

(4) Category 3 applicants that will be recommended for denial A negative recommendation by EARAC will result if one of the applicable required members has determined that an Applicant has not satisfied a material requirement of TDHCA rule or federal or state statute relevant to the award sought and the material requirement cannot be cured through one of the conditions proposed by the Applicant or listed in Subsection (e) of this section. When a negative recommendation is made, the Applicant will be notified and the specific rule or statutory-based requirement will be identified, along with notification informed of their the Applicant's right to dispute the negative EARAC recommendation as described in Subsection (g) of this section, regarding EARAC Disputes.

(d) Conditions to an award may be placed on a single property, a portfolio of properties, or a portion of a portfolio of properties if applicable (e.g., one region of a management company is having issues, while other areas are not). The conditions listed in Subsection (e) of this section may be customized to provide specificity regarding affected properties, Persons or dates for meeting conditions.

(1) Category 2 or Category 3 Applications made and reviewed under §1.301 of this subchapter that are considered a Category 2 or Category 3 because of any of the following Events of Noncompliance may be awarded with the imposition of one or more of the conditions listed in Subsection (e), (1) through (19) of this section:

- ~~(A) Noncompliance related to Affirmative Marketing;~~
- ~~—(B) Development is not available to the general public because of leasing issues;~~
- ~~—(C) Project Failed to meet minimum set aside;~~
- ~~—(D) No evidence of or failure to certify to the material participation of a non-profit or HUB;~~

- (E) Development failed to meet additional state required rent and occupancy restrictions;
  - (F) Noncompliance with social service requirements;
  - (G) Development failed to provide housing to the elderly as promised at application;
  - (H) Failure to provide special needs housing as required by LURA;
  - (I) Changes in Eligible Basis or Applicable percentage;
  - (J) Failure to submit all or parts of the Annual Owner's Compliance Report;
  - (K) Failure to submit quarterly reports;
  - (L) Noncompliance with utility allowance requirements;
  - (M) Noncompliance with lease requirements;
  - (N) Noncompliance with tenant selection requirements;
  - (O) Program Unit not leased to Low Income household;
  - (P) Program unit occupied by nonqualified full-time students;
  - (Q) Gross rent exceeds the highest rent allowed under the LURA or other deed restriction;
  - (R) Failure to provide Tenant Income Certification and documentation;
  - (S) Failure to collect required tenant data;
  - (T) Development evicted or terminated the tenancy of a low-income tenant for other than good cause;
  - (U) Household income increased above 80% at recertification and Owner failed to properly calculate rent (HOME and MFDL only); and
  - (V) Noncompliance with 10 TAC Chapter 8.
- (2) Applications made and reviewed under §1.301 of this subchapter that are considered a Category 2 because of any of the following Events of Noncompliance may be awarded with the imposition of one or more of the conditions listed in Subsection (e)(10) through (12) of this section:
- (A) Violations of the Uniform Physical Condition Standards;
  - (B) TDHCA has referred an unresolved Fair Housing Design and Construction issue to the Texas Workforce Commission Civil Rights Division;
  - (C) Failure to provide amenity as required by LURA;
  - (D) Unit not available for rent;
  - (E) Failure to resolve final construction deficiencies within the Corrective Action Period;
  - (F) Noncompliance with the accessibility requirements of §504 of the Rehabilitation Act of 1973 and 10 TAC Chapter 1, Subchapter B.
- (3) For Applications with subrecipient monitoring Findings, Concerns, or Deficiencies or Single Audit information that indicates a risk to Department, funds may be awarded with the imposition of one or more of the conditions listed in Subsection (e)(1), (3), (9), (13), (14), (15), (16), or (19) of this section.
- (4) Applications made and reviewed under §1.301 of this subchapter that are considered a Category 2 because of non-responsiveness may be awarded with the imposition of one or more of the conditions listed in Subsection (e)(5), (6), or (7).

(e) Possible Conditions.

(1) Applicant/Owner is required to ensure that each Person subject to previous participation review for the Combined Portfolio will correct all applicable issues of non-compliance identified by the previous participation review on or before a specified date and provide the Department with evidence of such correction within 30 calendar days of that date.

(2) Owner is required to have qualified personnel or a qualified third party perform a one-time ~~onetime~~ review of an agreed upon percentage of files and complete the recommended actions of the reviewer

on or before a specified deadline for an agreed upon list of Developments. Evidence of reviews and corrections must be submitted to the Department upon request.

(3) The Applicant or the management company contracted by the Applicant is required to prepare or update its internal procedures to improve compliance outcomes and to provide copies of such new or updated procedures to the Department upon request or by a specified date.

(4) Owner agrees to hire a third party to perform reviews of an agreed upon percentage of their resident files on a quarterly basis, and complete the recommended actions of the reviewer for an agreed upon list of Developments. Evidence of reviews and corrections must be submitted to the Department upon request.

(5) Owner is required to designate a person or persons to receive Compliance correspondence and ensure that this person or persons will provide timely responses to the Department for and on behalf of the proposed Development and all other Development subject to TDHCA LURAs over which the Owner has the power to exercise Control.

(6) Owner agrees to replace the existing management company, consultant, or management personnel, with another of its choosing.

(7) Owner agrees to establish an email distribution group in CMTS, to be kept in place until no later than a given date, and include agreed upon employee positions and/or designated Applicant members.

(8) Owner is required to revise or develop policies regarding the way that it will handle situations where persons under its control engage in falsification of documents. This policy must be submitted to TDHCA on or before a specified date and revised as required by the Department.

(9) Owner or Subrecipient is required to ensure that agreed upon persons attend and/or review the trainings listed in (A), (B), (C) and/or (D) of this subsection (only for Applications made and reviewed under §1.301 of this subchapter) and/or (E) for applications made and reviewed under §1.302 of this subchapter and provide TDHCA with certification of attendance or completion no later than a given date.

(A) Housing Tax Credit Training sponsored by the Texas Apartment Association;

(B) 1st Thursday Income Eligibility Training conducted by TDHCA staff;

(C) Review one or more of the TDHCA Compliance Training Presentation webinars:

(i) 2012 Income and Rent Limits Webinar Video;

~~(ii) How to properly use the Income and Rent Tool;~~

(ii) ~~(iii)~~ 2012 Supportive Services Webinar Video;

~~(iv) How to identify and properly implement Supportive Services;~~

(iii) ~~(v)~~ Income Eligibility Presentation Video;

(iv) ~~(vi)~~ 2013 Annual Owner's Compliance Report (AOCR) Webinar Video;

~~(vii) 2015 Tenant Selection Criteria Webinar Video;~~

(v) ~~(viii)~~ 2015 Most current Tenant Selection Criteria Presentation;

~~(ix) 2015 Tenant Selection Criteria Q and A's;~~

~~(x) §10.610 Tenant Selection Criteria;~~

~~(xi) 2015 Affirmative Marketing Requirements Webinar Video;~~

(vi) ~~(xii)~~ 2015 Most current Affirmative Marketing Requirements Presentation;

~~(xiii) 2015 Affirmative Marketing Requirements Q and A's;~~

(vii) ~~(xiv)~~ Fair Housing Webinars (including but not limited to the 2017 FH webinars);

(D) Training for Certified Occupancy Specialist or Blended Occupancy Specialist; or

(E) Any other training deemed applicable and appropriate by the Department, which may include but is not limited to, weatherization related specific trainings such as OSHA, Lead Renovator, or Building Analyst training.

(10) Owner is required to submit the written policies and procedures for all Developments subject to a TDHCA LURA for review and will correct them as directed by the Department.

(11) Owner is required to have qualified personnel or a qualified third party perform Uniform Physical Condition Standards inspections of 5% of their Units on a quarterly basis for a period of one year, and promptly repair any deficiencies. Different Units must be selected every quarter. Evidence of inspections and corrections must be submitted to the Department upon request.

(12) Within 60 days of the condition issuance date the Owner will contract for a third party Property Needs Assessment and will submit to the Department a plan for addressing noted issues along with a budget and timeframe for completion.

(13) Owner agrees to have a third party accessibility review of the Development completed at a time to be determined by the Applicant but no later than prior to requesting a TDHCA final construction inspection. Evidence of review must be submitted to the Department upon request.

(14) Applicant/Owner is required to ~~ensure that each entity it controls and each individual with whom it is related by virtue of their being an officer, director, partner, manager, controlling owner, or other similar relationship, however designated, and each entity they control that is subject to any TDHCA contract will cause such entities to provide all such documentation relating to the~~ a Single Audit on or before a specified date.

(15) Any of the conditions identified in 2 CFR §200.207 which may include but are not limited to requiring additional, more detailed financial reports; requiring additional project monitoring; or establishing additional prior approvals. If such conditions are utilized, the Department will adhere to the notification requirements noted in 2 CFR §200.207(b).

(16) Applicant is required to have qualified personnel or a qualified third party perform an assessment of its operations and/or processes and complete the recommended actions of the reviewer on or before a specified deadline.

(17) Applicant is required to have qualified personnel or a qualified third party performs DOE required Quality Control Inspections of 5% of its Units on a quarterly basis for a period of one year, and promptly repair any deficiencies. Different Units must be selected every quarter. Evidence of inspections and corrections must be submitted upon request.

(18) Applicant is required to provide evidence that reserves for physical repairs are fully funded as required by §10.302(d)(2)(i) 404 of this Title (relating to Replacement Reserves).

(19) In the case of a Development being funded with direct loan funds, Applicant is required to provide evidence of invoices and a lien waiver from the contractor, subcontractor, materials supplier, equipment lessor or other party to the construction project stating they have received payment and waive any future lien rights to the property for the amount paid at the time of every draw request submitted.

(f) Failure to meet conditions.

(1) The Executive Director may, for good cause and as limited by federal commitment, expenditure, or other deadlines, grant one extension to a deadline specified in a condition, with no fee required, for up to six months, if requested prior to the deadline. Any subsequent extension, or extensions requested after the deadline, must be approved by the Board.

(2) ~~If With the exception of awards considered for CSBG funds required to be distributed to Eligible Entities by formula, if any condition agreed upon by the Applicant and imposed by the Board is not met as determined by the evidence submitted (or lack thereof) when requested, the Applicant may be referred to the Enforcement Committee for assessment of an administrative penalty or recommended for debarment.~~

(g) Dispute of EARAC Recommendations.

(1) ~~The purpose of EARAC is to make recommendations to the Board on certain awards and approvals. As such, the Appeal provisions in §1.7 of this title relating to the appeals of a staff decision to the Executive Director, are not applicable.~~

(2) If an Applicant does not agree with any of the following items, an Applicant or potential Subrecipient of an award may file a dispute that may be considered by EARAC or may be presented to the Board without further EARAC consideration consistent with Paragraph (3) of this subsection.

(A) Their category as determined under §1.301(f) of this subchapter;

(B) Any conditions proposed by EARAC; or

(C) A negative recommendation by EARAC.

(3) Prior to the Board meeting at which the EARAC recommendation is scheduled to be made, an Applicant or potential Subrecipient may submit to the Department (to the attention of the Chair of EARAC), ~~as provided herein, a letter (the their Dispute) detailing setting forth:~~

(A) The condition or determination with which the Applicant or potential Subrecipient disagrees;

(B) The reason(s) why the Applicant/potential Subrecipient disagrees with EARAC's recommendation or conditions;

(C) If the dispute relates to conditions, any suggested alternate condition language;

(D) If the dispute relates to a negative recommendation, any suggested conditions that the Applicant believes would allow a positive recommendation to be made; and

(E) Any supporting documentation not already submitted to EARAC.

(4) An Applicant must file a written Dispute not later than the seventh calendar day after notice of denial or award with conditions has been provided ~~of EARAC's recommendation~~. The Dispute must include ~~a hard copy and pdf version of all any materials, if any, that the Applicant wishes to have provided to the EARAC and/or the Board to consider. in connection with its consideration of the matter, if heard by the Board. An Applicant may request to meet with EARAC and EARAC is not obligated to meet with the Applicant. should note if it is requesting to be present at EARAC meeting at which the dispute is considered.~~

(5) EARAC is not required to consider ~~reconsider~~ a Disputed matter prior to making its recommendation to the Board.

(6) ~~If EARAC will not recommend to an Applicant conditions other than those set forth in this subchapter. However,~~ if an Applicant proposes alternative conditions EARAC may provide the Board with a recommendation to accept, reject, or modify such proposed alternative conditions.

(7) A Dispute will be included on the Board agenda if received at least seven ~~five~~ Department business calendar days prior to the required posting date of that agenda. If the Applicant desires to submit additional materials for Board consideration, it may provide the Department ~~the secretary of EARAC~~ with such materials, provided in pdf form, to be included in the presentation of the matter to the Board if those materials are provided not later than close of business of the fifth ~~Department business~~ calendar day before the date on which notice of the relevant Board meeting materials must be posted, allowing staff sufficient time to review the Applicant's materials and prepare a presentation to the Board

reflecting staff's assessment and recommendation. The agenda item will include the materials provided by the Applicant and may include a staff response to the dispute and/or materials. It is within the board chair's discretion whether or not to allow an applicant to supplement its response. An Applicant who wishes to provide supplemental materials at the time of the Board meeting must comply with the requirements of §1.10 of this chapter (relating to Public Comment Procedures). There is no assurance the board chair will permit the submission, inclusion, or consideration of any such supplemental materials.

(8) The Board and EARAC will make reasonable efforts to accommodate properly and timely filed Disputes under this subsection, ~~but there may be unanticipated circumstances in which the continuity of assistance or other exigent circumstances dictate proceeding with a decision notwithstanding the fact that an Applicant disagrees with an EARAC finding or recommendation. These situations, should they arise, will be addressed on an ad hoc basis.~~

~~(h) In the event that this subchapter does not adequately address specific facts and circumstances which may arise, nothing herein shall serve to limit the ability of staff to bring to the Board as information or to seek guidance or interpretation through a properly posted item on any manner relating to the administration of the previous participation review process in general or as it may relate to any one or more specific applications, awards, or other matters.~~

(i) Board Discretion. Subject to limitations in federal statute or regulation or in UGMS, the Board has the discretion to accept, reject, or modify any EARAC recommendations in response to a recommendation for an award or in response to a Dispute. The Board may impose other conditions not noted or contemplated in this rule as recommended by EARAC, or as requested by the Applicant; in such cases the conditions noted will have the force and effect of an order of the Board.

~~(j) In the event that the Board adopts a treatment of any matter subject to this subchapter that varies from the prescribed manner in which the strict application of this subchapter would have treated it, the Board's adopted outcome shall automatically and without need of any further request or action by Applicant or staff constitute a waiver to the extent required.~~

~~(k) Treatment of Previous Participation Reviews for Ownership Transfers. By statute responsibility to approve or deny ownership transfers is vested in the Executive Director. He or she may consider whether the results of a previous participation review constitute "good cause" to withhold approval of the requested transfer. If the Executive Director determines that the results of the previous participation review constitute good cause to withhold approval, he or she shall so notify the parties requesting the transfer and give them an opportunity to propose conditions to address the Executive Director's concerns. Any agreed conditions are not limited to the conditions specified under Subsection (e) of this section although any or all of them may be utilized if appropriate. Any agreement to effectuate the addressing of such concerns shall take effect only upon acceptance by the Board. If no agreement can be reached and the Executive Director believes there is no good cause basis to grant the transfer approval, the matter may be appealed to the Board under §1.7 of this title (relating to Appeals).~~

7b

**TO BE POSTED  
NOT LATER THAN  
THE THIRD DAY  
BEFORE THE  
DATE OF THE  
MEETING**